



SOUTH FLORIDA WATER MANAGEMENT DISTRICT ANNUAL COOPERATIVE FUNDING AGREEMENT

This **Agreement** is entered into between “the Parties,” **THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT** (SFWMD), the “**District**”, and the **MIAMI-DADE LIMESTONE PRODUCTS ASSOCIATION, INC.** (hereinafter referred to as the “**Recipient**”). The **Recipient** 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 shall abide by all legal, financial, and reporting requirements for all funding received by the **Recipient** from the **District**. The purpose of this Agreement is to establish administrative procedures to allow for the efficient and timely payment of certain mitigation projects undertaken by the Recipient using funds provided by the Lake Belt Mitigation Fee and held in the Lake Belt Mitigation Trust Fund managed by the District.

ARTICLE 1 – PROJECT

- 1.1 The **Recipient** shall fully and timely complete each work item approved by the Lake Belt Mitigation Committee (Committee) .
- 1.2 Each Project to be funded under this Agreement must first be approved by the Committee. Once approved by the Committee, the scope of work, project schedule and project expenditure requirements (Project Documents), shall be attached and incorporated by reference to this Agreement as “Exhibit A.”
- 1.3 The **Recipient** shall provide, in whatever form reasonably requested by the **District**, any supporting documentation utilized as a basis for expenditure of the funds advanced by the **District** pursuant to this Agreement. This paragraph shall survive the expiration or termination of this **Agreement**.

ARTICLE 2 – TERM OF THE AGREEMENT

- 2.1 This **Agreement** shall commence on October 1, 2010, and shall terminate on September 30, 2015(the “Termination Date”).
- 2.2 The Parties agree that time is of the essence in the performance of each and every obligation under this **Agreement**.

ARTICLE 3 – COMPENSATION / CONSIDERATION

- 3.1 Under the terms of this **Agreement**, the **District** will advance to the **Recipient’s counsel**, on behalf of the **Recipient**, the funding amount approved for each Project by the Committee from the Lake Belt Mitigation Trust Fund established in Section 373.41492, Florida Statutes. These funds **shall be used** for the specific work item described in the Project Documents. The **District** will not reimburse the **Recipient** for work that commences prior to the commencement date of the **Agreement**.
- 3.2 The **Recipient** assumes sole responsibility for all work that is performed pursuant to this Agreement. By providing funding hereunder, the **District** does not make any warranty, guaranty, or any representation whatsoever regarding any of the work performed hereunder, including, but not limited to, the adequacy or sufficiency of all or any part of work performed for each Project approved by the Committee.
- 3.3 The **Recipient** hereby agrees not to use **District** funding for any of **Recipient’s** overhead or administrative expenses. **District** funds will be used exclusively for payment to contractors to accomplish the tasks described in the Project Documents.

- 3.4 Notwithstanding any provisions of this **Agreement** to the contrary, the **District** reserves the right, without financial or other penalty or obligation, to cancel this Agreement.
- 3.5 The **District** shall appoint a Project Manager who shall be responsible for the administration and management of this **Agreement**. The Recipient shall also designate a Project Manager (the “Recipient’s Project Manager”) who shall act as the point of contact for the administration and Project management activities of the Recipient.

ARTICLE 4 – FUNDING AND REPORTING

- 4.1 The **District** will make payment to the **Recipient** upon approval of this Agreement and the approval of any specific Project by the Committee. The **Recipient** shall provide certification that all work has been completed in accordance with each set of Project Documents.
- 4.2 In order to expedite the review process, the **Recipient** also shall submit copies of paid invoices to its contractors to the Project Manager within thirty (30) days of the invoices being paid, along with the backup documentation necessary (e.g., signed completion letter, vendor invoices, etc.) for the Project Manager to be able to ascertain clearly that each deliverable described in the Project Documents has been completed and that the costs incurred are necessary, reasonable and included within the projected budget. The **Recipient’s** Project Manager shall submit the final close-out report and invoices no later than thirty (30) days after receipt of the final invoice.
- 4.3 The Project Manager shall compile the submitted invoices and submit the invoices at least semi-annually to the Committee for review at its regular meetings. The Committee shall note its review and acceptance of the invoices in its minutes.
- 4.4 The **District** will have the right but not the obligation to inspect all work and review final reports. It is the policy of the **District** that payment by the **Recipient** to all of its contractors for all goods and services will be made in a timely manner.
- 4.5 The Recipient’s Project Manager shall submit quarterly progress reports, including a summary of the status of the Project and any paid invoices, to the Project Manager. Upon request by the **District**, the **Recipient** shall provide as supporting documentation, all work products associated with the completion of each task described in the Project Documents. In no event, shall the **District’s** total obligation for this **Agreement** exceed the amount specified for each Project approved by the Committee.
- 4.6 Funds disbursed by the **District** to the **Recipient’s** counsel pursuant to this **Agreement** shall be deposited in escrow into an earmarked account of **Recipient’s** counsel and disbursed by Recipient’s counsel in accordance with the terms of this **Agreement**. Any funds remaining in the account of **Recipient’s** counsel as of the date of final completion and acceptance of a Project, including any accrued interest, shall be returned to the **District** for prompt depositing into the Lake Belt Mitigation Trust Fund. The **Recipient** may request the **District** to permit some or all of the funds to remain in the account of **Recipient’s** counsel only if such funds will be needed to pay invoices outstanding for the tasks undertaken by contractors to complete work items identified in the Project Documents.

ARTICLE 5 – CONTRACT MANAGEMENT

- 5.1 The Parties shall direct all matters arising in connection with the performance of this **Agreement** to the attention of the Project Manager for attempted resolution or action. The Project Manager will be responsible for overall coordination and oversight relating to the performance of this **Agreement**.

- 5.2 All notices, demands, or other communications regarding this **Agreement**, other than those set forth in the preceding paragraph 4.2, shall be in writing and forwarded to the attention of the respective Project Managers by certified mail, return receipt requested.
- 5.3 Should either Party change its address, or its designated representative for purposes of this Agreement, written notice of such new address or new representative shall promptly be sent to the other Party.

ARTICLE 6 – TERMINATION / REMEDIES

- 6.1 It is the policy of the **District** to encourage good business practices by requiring recipients to materially perform in accordance with the terms and conditions of the **Agreement**. In accordance with Chapter 40E-7, Part II of the Florida Administrative Code, “Material Breach” is defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the **Agreement**.
- 6.2 If the **Recipient** materially fails to fulfill its obligations under this **Agreement**, the **District** will provide written notice of the deficiency by forwarding a Cure Notice to the Recipient’s Project Manager citing the specific nature of the material breach. The **Recipient** shall have thirty (30) days to cure the breach. If the **Recipient** fails to cure the breach within the thirty (30) day period, the **District** will issue a Termination for Default Notice. Upon issuance of a Termination for Default Notice, any unexpended funds remaining from any funds previously disbursed by the **District** to **Recipient’s** counsel shall be returned to the District for prompt depositing in the Lake Belt Mitigation Trust Fund and both Parties shall be relieved of any and all future obligations under this Agreement.
- 6.3 Either Party may terminate this Agreement at any time for convenience upon sixty (60) days prior written notice to the other Party. Any such termination will be accomplished by delivery of a Notice of Termination to the other Party, specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. Upon termination of this Agreement for convenience, both Parties shall be relieved of any and all future obligations under this Agreement and the District shall be entitled to the return of any unexpended funds, including any accrued interest, remaining from any funds previously disbursed by the District to Recipient’s counsel, less any funds needed to pay : a) *bona fide* invoices for work items described in the Project Documents, and b) mobilization or similar charges incurred by the Recipient as a result of such termination under any third-party agreement entered into in connection with approved Project Documents.
- 6.4 In the event a dispute arises, which the Parties cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.
- 6.5 In the event of a material breach of this Agreement that has not been timely cured, the non-breaching Party shall have only the remedies set forth in paragraphs 6.2 -6.4 above, with each Party bearing its own costs and attorneys’ fees.

ARTICLE 7 – RECORDS RETENTION

- 7.1 The **Recipient** shall maintain records and the **District** will have inspection and audit rights as follows:
- A. Maintenance of Records. The **Recipient** shall maintain all financial records and reports directly related to the 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 upon

reasonable request by the District for a period of five (5) years from the Termination Date under this **Agreement**.

- B. Examination of Records. The **District** will have the right to examine in accordance with generally accepted governmental auditing standards all records directly related to the performance of this **Agreement**. Such examination may be made only within five (5) years from the date of final payment under this **Agreement** and upon providing the Recipient with reasonable notice, time and place.
- C. Periodic Audits. The **District** may perform audits of the Recipient's records directly relating to the performance of this Agreement periodically to ensure funding objectives are being met.

ARTICLE 8 – STANDARDS OF COMPLIANCE

- 8.1 The **Recipient**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **Agreement**. The **District** undertakes no duty to ensure such compliance.
- 8.2 The laws of the State of Florida shall govern all aspects of this **Agreement**. In the event that it is necessary for either party to initiate legal action regarding this **Agreement**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims that are justiciable in federal court.
- 8.3 To the extent applicable to the performance of this Agreement, the Recipient shall comply with Chapter 119, Florida Statutes (the Public Records Act).
- 8.4 Pursuant to Section 216.347, Florida Statutes, the **Recipient** is prohibited from the expenditure of any funds distributed by the District to Recipient under this **Agreement** to lobby the Legislature, the judicial branch, or another state agency.
- 8.5 The **Recipient** shall obtain, at its sole expense, all necessary licenses, authorizations and permits from the appropriate private party or federal, state, municipal or local agency, and other governmental approvals, prior to commencing performance of this **Agreement**. If the **Recipient** is unable to obtain all necessary permits in a timely manner, either party may elect to terminate this **Agreement**, each party to bear its own costs and attorneys' fees, notwithstanding other provisions of this **Agreement** to the contrary. In the event of such a termination, any unexpended funds, including interest, if any, remaining from any funds previously disbursed by the District to **Recipient's** counsel, less any funds needed to pay *bona fide* invoices for work items described in the Project Documents, shall be returned to the District for prompt depositing in the Lake Belt Mitigation Trust Fund.
- 8.6 The **Recipient** hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or is otherwise subjected to discrimination in any activity under this **Agreement**. The **Recipient** shall take all measures necessary to effect these assurances.
- 8.7 The **Recipient** hereby assures that it is not on the State's Convicted Vendor List, or the **District's** Suspension of Contracts List.

ARTICLE 9 – INDEMNIFICATION AND INSURANCE

For value received, which is hereby acknowledged, the Recipient shall defend, indemnify, save, and hold the District, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Recipient and other persons employed or contracted by the Recipient in the performance of the Agreement. The District will have the right to approve counsel selected by the Recipient to defend the District in the event that the District is named in any legal action. The **Recipient** acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this **Agreement**. This paragraph shall survive the expiration or termination of this **Agreement**.

ARTICLE 10 - RELATIONSHIP BETWEEN THE PARTIES

- 10.1 The **Recipient** shall be considered an independent contractor and neither the District nor the Recipient shall be considered an employee or agent of the other Party. Nothing in this **Agreement** shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors, or assigns during or after the performance of this **Agreement**. Both Parties are free to enter into contracts with other parties for similar services.
- 10.2 The **Recipient** shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this **Agreement** without the prior written consent of the **District**. Any attempted assignment in violation of this provision will be void.
- 10.3 It is the intent and understanding of the Parties that this **Agreement** is solely for the benefit of the **Recipient** and the **District**. No person or entity other than the **Recipient** or the **District** shall have any rights or privileges under this **Agreement** in any capacity whatsoever, either as third party beneficiary or otherwise.

ARTICLE 11 - GENERAL PROVISIONS

- 11.1 Notwithstanding any provisions of this **Agreement** to the contrary, the Parties shall not be held liable for any failure or delay in the performance of this **Agreement** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character that is unavoidable through the exercise of due care and beyond the control of the Parties. Failure to perform shall be excused during the continuance of such circumstances, but this **Agreement** shall otherwise remain in effect.
- 11.2 Any inconsistency in this **Agreement** shall be resolved by giving precedence in the following order:
 - A. Terms and Conditions outlined in Articles 1-11.
 - B. Exhibit "A" Project Documents.
- 11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **Agreement** by either of the Parties, their successors and assigns shall not be deemed a waiver of any of the Party's 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.

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

11.5 This **Agreement** may be amended only with the written approval of the Parties.

11.6 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**. The **Recipient** recognizes that any representations, statements or negotiations made by **District** staff do not suffice to legally bind the **District** in a contractual relationship unless they have been reduced to writing and signed by an authorized **District** representative. This **Agreement** shall insure to the benefit of and shall be binding upon the Parties, their respective assigns, and successors in interest.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this **Agreement** on the date written below.

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

By: _____

Date: _____

ATTEST:

District Clerk

SFWMD Office of Counsel Approved:

By: _____

MIAMI-DADE LIMESTONE PRODUCTS ASSOCIATION, INC.

By Authorized Official: _____

Printed Name: _____

Title: _____

Date: _____