

**FLORIDA WATER STARSM PROGRAM COMMERCIAL AND INSTITUTIONAL
PROPERTY PARTICIPATION AGREEMENT**

THIS AGREEMENT is made this _____ day of _____, 20____, between the South Florida Water Management District (“SFWMD”) and _____ (“Licensee”).

(name corporate builder, manager or owner-

Circle one) WITNESSETH:

WHEREAS, SFWMD offers a promotional program entitled: Florida Water StarSM (“Program”);

WHEREAS, the purposes of the Program are to establish minimum voluntary standards for water efficiency in residential and commercial construction and development, encourage the building industry to create residences, units, structures, and landscapes that meet those standards, encourage consumers to select such residences and landscapes, and improve existing residential properties;

WHEREAS, the Licensee is the owner, developer, or builder of a commercial, governmental, or residential multi-unit project or a commercial single unit project, known as _____ and located at _____;
and, (project name) (address)

WHEREAS, the Licensee wishes to participate in the Program.

NOW, THEREFORE, in consideration of the above stated premises, which are hereby made a part of this Agreement, the mutual promises and agreements set forth in this Agreement and referenced attachments, receipt of which is hereby acknowledged, the parties agree as follows:

1. Commencement and Expiration of Agreement

The terms of this Agreement shall commence on the date of acceptance. This Agreement shall be for the duration of the project identified herein, unless cancelled by written notice by either party; provided, however, that if Licensee fails to begin construction of any residential structures implementing the Program within two (2) years of the effective date, this Agreement shall automatically terminate. The District may waive automatic termination upon a showing of good cause by the Licensee.

2. Termination of Agreement

This Agreement may be terminated by either party, with or without cause, by providing at least thirty (30) days written notice to the other party of its intention to terminate. Licensee’s sole remedy for any alleged breach of this Agreement is termination pursuant to this provision.

3. Governing Laws

This Agreement and all rights, duties and obligations hereunder shall be governed by the laws of the state of Florida and the city and/or county jurisdiction where the Project is located.

4. Assignment

The Licensee may not assign nor delegate any portion of this Agreement to a third party without the prior written consent of SFWMD.

5. Indemnity

Licensee is solely responsible for the proper construction and implementation of all of the residential water efficiency measures covered by the Program and selected for implementation in accordance with applicable federal, state, and local regulations and the requirements of Licensee's contract with the homeowner. Licensee agrees to indemnify and hold harmless SFWMD, and any and all directors, officers, employees and agents of SFWMD, against any and all claims and demands arising out of Licensee's fraudulent use or misrepresentation of the Program and any claims based upon the construction or implementation of the residential water efficiency measures provided for under the Program.

6. Independent Contractor

Licensee's participation in the Program shall be as an independent contractor and not as an agent or employee of SFWMD.

7. Licensee as Principal

Licensee is solely responsible for any and all work performed by subcontractors of Licensee or installer pursuant to this Agreement.

8. License and Permit Requirements

- 8.1 Licensee is solely responsible for ensuring that Licensee, its contractors, or its agents hold all necessary licenses from all appropriate entities and governmental agencies in the state of Florida and applicable city and/or county jurisdictions, as may be applicable to construction of the Program's water efficiency measures.
- 8.2 Licensee is solely responsible for ensuring that Licensee, its contractors, or its agents obtain all permits or authorizations required to design and/or construct all homes, landscapes and relevant facilities, as may be related to the Program's water efficiency measures.
- 8.3 Licensee warrants all such licenses are now and shall remain current and in good standing during the term of this Agreement.

9. Equipment and Performance Standards

Licensee agrees to abide by all requirements and selected standards set forth in Attachment B and the Florida Water StarSM Program Technical Manual (available on the

Florida Water Star webpage <http://floridawaterstar.com/>) and further agrees that SFWMD may revise the requirements and standards by providing written notice to Licensee at least 120 days prior to the effective date of the new requirements and standards. In the event the requirements and standards are changed during construction of the project that is the subject of this Agreement, Licensee may elect to abide by the requirements and standards in effect on the date the project was submitted to SFWMD for inclusion in the Program or by the standards in effect on the date of completion.

10. Training

Any costs incurred by Licensee for staff training (i.e., salaries, transportation) will be the sole responsibility of Licensee and will not be reimbursed by SFWMD.

11. Use of SFWMD's Florida Water StarSM and Water StarSM Program Names and Logos

- 11.1 The Florida Water StarSM Program service mark and logo, the Water StarSM service mark and logo, and the Florida Water StarSM Certification logo are the sole and exclusive property of St. Johns River Water Management District. St. Johns River Water Management District has granted SFWMD a non-exclusive license ("License") to utilize the above-referenced service marks and logos in support of the Program for as long as the License remains in effect. The Florida Water StarSM Certification Logo Guidelines are set forth in Attachment A (available on the Florida Water Star webpage <http://floridawaterstar.com/>).
- 11.2 Only Licensees approved for participation in the Program may use the Program logo and materials in advertising.
- 11.3 Use of the Program name, logo, and materials does not constitute an endorsement of the Licensee.
- 11.4 No changes are permitted to the Program name and logo without express approval from SFWMD.
- 11.5 Upon termination of this Agreement by either party, Licensee must immediately cease all use of the Program name, logo, and materials in its advertising. Should Licensee fail to immediately cease such use, SFWMD may seek extraordinary relief in the form of a temporary restraining order, preliminary or permanent injunction. Licensee hereby agrees that all legal conditions for that relief are met, including a showing of irreparable harm to SFWMD.

12. SFWMD Right of Inspection; Warranties

- 12.1 At its discretion, SFWMD may investigate Licensee's compliance with the requirements and standards set forth in Attachment B of this Agreement and the Florida Water StarSM Program Technical Manual. SFWMD assumes no duty with regard to third parties through its right of inspection to ensure that Licensee has complied with the elements of the Program or constructed any of the items

covered by the Program in accordance with applicable federal, state, or local regulations, or the requirements of Licensee's contract with the homeowner.

- 12.2 SFWMD makes no warranties whatsoever to Licensee or any other persons or entities regarding the efficacy of the residential water efficiency measures covered by the Program.
- 12.3 A purchasing commercial owner or lessee may submit a request to the District within 180 days of the commercial owner or lessee's purchase or lease of the property to re-inspect a commercial because the commercial owner or lessee believes the property was not constructed in accordance with the Program's requirements and standards. If the District's re-inspection reveals any deficiencies, Licensee shall correct any such deficiencies and reimburse the District for the costs of re-inspection. Failure to make such corrections shall result in withdrawal of the Florida Water StarSM certification for the subject residence and may also result in revocation of Licensee's right to participate in the Program.

13. Licensee Level of Participation in Program

Licensee will be participating under the following program designation as described in Attachments B and the Florida Water StarSM Program Technical Manual (Licensee Representative initial to accept):

_____ Florida Water StarSM Silver Commercial and Institutional Program Requirements

14. Promotional Materials

At its discretion, SFWMD will provide promotional and advertising support through media, such as, but not limited to, its Web site, newsletters, news releases, decals, and collateral materials for Licensee to promote its participation in the Program.

15. Customer Disputes

Licensee shall be solely responsible for the resolution of any and all disputes between Licensee's customers and Licensee. Failure to resolve disputes associated with the Florida Water StarSM features may result in removal of Licensee from the Program.

16. Exclusive Benefit of the Parties

This Agreement is not intended to create any rights, powers or interest in any third party and is made and entered into for the exclusive benefit of SFWMD and Licensee.

17. Waiver

The failure or election of SFWMD to enforce the terms and conditions of this Agreement or to exercise any right or privilege therein shall not be construed as a waiver of any other terms, conditions, rights or privileges.

18. Attorney's Fees; Venue

In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings shall be in county in which the Project is located. In the event of

any such proceedings, including appeals, each party shall bear its own attorney's fees. In the event of any civil proceedings, Licensee hereby consents to bench trial and waives its right to seek a jury trial in such proceedings.

19. Entire Agreement

This Agreement, along with any and all documents attached hereto, shall constitute the sole and entire Agreement and understanding between the parties as to the subject matter hereof. Any prior understandings, commitments or representations, expressed or implied, between the parties shall not be construed to alter or waive any part of this Agreement.

IN WITNESS WHEREOF, the South Florida Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Licensee has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
By its Executive Director or Designee

Print Name: _____
Title: _____

Attested:

Legal Form Approved:

District Clerk/Assistant Secretary
Date: _____, 20__

_____, Esq.

(name corporate builder, manager or owner-
Circle one)

Print Name: _____
Title: _____

Attachment A: Florida Water StarSM Certification Logo Guidelines
Attachment B: Florida Water StarSM Commercial and Institutional Criteria and Qualifications Checklist