

FLORIDA WATER STARSM PARTICIPATION AGREEMENT FOR COMMERCIAL PROPERTIES

THIS AGREEMENT is made this ____ day of _____, 20____, by and between the St. Johns River Water Management District, whose mailing address is 4049 Reid Street, Palatka, Florida 32177 (hereafter “SJRWMD”), and

_____, whose mailing address is:
(Company Name)

_____, (hereafter “Licensee”).

Project Name: _____

Project Location: _____

Primary Contact: _____

WHEREAS:

- SJRWMD offers a certification program that is entitled: Florida Water StarSM (hereafter “the Program”), and
- The purposes of the Program are to establish minimum voluntary standards for water efficiency in construction and development, encourage the building industry to create structures and landscapes that meet those standards, encourage consumers to select such buildings and developments, and improve existing residences and commercial properties; and
- Licensee is the owner or developer of a commercial, governmental, or residential multi-unit project, or a commercial single unit project; and
- Licensee wishes to participate in the Program with regard to the project identified above (“the Project”).

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, unless cancelled by written notice by either party; provided, however, that if Licensee fails to begin construction of any structures or other facilities 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 by Licensee of good cause.

2. Termination of Agreement

This Agreement may be terminated by either party, with or without cause, by providing not less than 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 constructed.

4. Assignment

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

5. Indemnity

Licensee is solely responsible for the proper construction and implementation of all of the water-efficiency measures covered by the Program and selected for implementation in accordance with applicable federal, state, and local regulations. Licensee agrees to indemnify and hold harmless SJRWMD, its officers, directors, employees and agents, 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 water-efficiency measures provided for under the Program.

6. Independent Entity

Licensee participates in the Program as an independent entity for its own use and advantage and not as an agent or contractor of SJRWMD.

7. Licensee as Principal

Licensee is solely responsible for all work performed by any employees, contractors, subcontractors, or agents pursuant to this Agreement.

8. License and Permit Requirements

- 8.1 Licensee is solely responsible for ensuring that Licensee, its contractors or 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 agents, obtain all permits or authorizations required to design and/or construct the structure, landscape and relevant facilities, as may be related to the Program's water efficiency measures.
- 8.3 Licensee warrants all such licenses and permits 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 A and further agrees that SJRWMD may revise the requirements and standards by providing written notice to Licensee not less than 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, Licensee

may elect to abide by either the requirements and standards in effect on the date the Project was submitted to SJRWMD for inclusion in the Program, or by the standards in effect on the date of completion.

10. Use of SJRWMD's Florida Water StarSM and Water StarSM Program Names and Logos

- 10.1 The Florida Water StarSM Program name and logo are the sole and exclusive property of SJRWMD and are protected by the copyright laws of the United States and the state of Florida. Licensee is granted a non-exclusive license to utilize the Florida Water StarSM Program name and logo in accordance with the terms of this Agreement so long as this Agreement remains in effect. Licensee shall not take any action that will impair SJRWMD's right, title, and interest in the Florida Water StarSM name and logo.
- 10.2 Only Licensees approved for participation in the Program may use the Program logo and materials in advertising. Licensee may request written approval from SJRWMD for a contractor, subcontractor, or agent to use the Florida Water StarSM name and logo.
- 10.3 Use of the Program name, logo and materials does not constitute an endorsement of a project.
- 10.4 No changes are permitted to the Program name and logo without express approval from SJRWMD.
- 10.5 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, SJRWMD 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 SJRWMD.

11. SJRWMD Right of Inspection; Warranties

- 11.1 At its discretion, SJRWMD may investigate Licensee's compliance with the requirements and standards set forth in Addendum A of this Agreement. SJRWMD 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.
- 11.2 SJRWMD makes no warranties whatsoever to Licensee or any other person or entity regarding the efficacy of the water-efficiency measures covered by the Program.

12. Promotional Materials

At its discretion, SJRWMD will provide promotional and advertising support through media, such as, but not limited to, its Web site, newsletters, news releases, decals, and collateral materials, to promote Licensee's participation in the Program. Licensee hereby consents to SJRWMD utilizing Licensee's name and project name in any such promotional materials.

13. Customer Disputes

Licensee shall be solely responsible for the resolution of all disputes between Licensee and

Licensee's customers regarding the construction and implementation of the Program's water efficiency measures. Failure to resolve disputes associated with the Florida Water StarSM features may result in removal of Licensee from the Program.

14. 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 SJRWMD and Licensee.

15. Waiver

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

16. 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 Duval County if substantial performance of the Project is in Alachua, Baker, Bradford, Clay, Duval, Nassau, Putnam, and/or St. Johns counties, or in Orange County if substantial performance of the Project is in Brevard, Flagler, Indian River, Lake, Marion, Okeechobee, Orange, Osceola, Seminole, or Volusia counties. 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 trial by the court and waives its right to seek a jury trial in such proceedings.

17. Entire Agreement

This Agreement, along with any and all documents incorporated by reference herein, 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 St. Johns River 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.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

LICENSEE

By: _____
Executive Director or Designee

By: _____

Date: _____

Typed Name and Title

Date: _____

Attest: _____

Typed Name and Title

Documents attached:

Attachment A — Florida Water StarSM Commercial Program Overview

Attachment B — Using the Florida Water StarSM logo