



Interoffice Memorandum

April 12, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Ed Torres, MS, PE, LEED AP, Director
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", with a long horizontal stroke extending to the right.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
April 27, 2021 BCC Meeting
Cost-Share Agreement between St. Johns River Water Management
District and Orange County for the Cypress Lake Wellfield - Oak
Meadows AWS Delivery Enhancements Project
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

The St. Johns River Water Management District (SJRWMD) offers funding through a cost-share program for the construction of Alternative Water Supply (AWS) projects that benefit the region by reducing groundwater withdrawals.

Utilities staff submitted an application requesting funding for the construction of Variable Frequency Drives at Oak Meadows Water Supply Facility (Project), associated with recommendations in the Cypress Lake Wellfield Implementation Report. On October 13, 2020, the SJRWMD Governing Board approved cost-share funding for the Project in the not-to-exceed amount of \$69,286. Included in the Cost-Share Agreement is additional Project funding from Florida Department of Environmental Protection in the not-to-exceed amount of \$665,500. A total not-to-exceed amount of \$734,786 for the Project will be applied toward the overall estimated construction cost of \$1,330,000. The Cypress Lake Wellfield – Oak Meadows AWS Project delivery enhancements will enable Orange County to maximize existing ground water sources and provide operational flexibility needed to deliver AWS to customers.

The County Attorney's Office and Risk Management Division reviewed the agreement and find it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Cost-Share Agreement between the St. Johns River Water Management District and Orange County Contract #36368 for the Cypress Lake Wellfield – Oak Meadows AWS Delivery Enhancement Project in the total not-to-exceed amount of \$734,786 and authorization for the County Administrator to approve scheduling or other administrative changes and execute minor amendments to the agreement which do not affect the total aggregate amount of the budget or intent of the Project.

District 6.

BCC Mtg. Date: April 27, 2021

**COST-SHARE AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND ORANGE COUNTY**

THIS AGREEMENT (“Agreement”) is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the “District”), whose address is 4049 Reid Street, Palatka, Florida 32177, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“Recipient”), 201 S. Rosalind Avenue, Orlando, Florida 32801. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

The waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote the conservation, development, and proper utilization of surface and ground water. Pursuant to chapter 373, Fla. Stat., the District is responsible for the management of the water resources within its geographical area.

The Florida Department of Environmental Protection’s Alternative Water Supply (AWS) cost-share funding program is designed to fund AWS projects that benefit the region by reducing groundwater withdrawals. The District is also providing funding for this program.

The District has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the water resources and one or more of the District’s missions and initiatives.

At its October 13, 2020 meeting, the Governing Board selected Recipient’s proposal for cost-share funding. The parties have agreed to jointly fund the following project in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter the “Project”):

Cypress Lake Wellfield - Oak Meadows AWS Delivery Enhancements Project

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A — Statement of Work; and (3) all other attachments, if any. The parties hereby agree to the following terms and conditions.

I. TERM; WITHDRAWAL OF OFFER

- (a) The term of this Agreement is from the date upon which the last party has dated and executed the same (“Effective Date”) until September 30, 2023 (“Completion Date”). Recipient shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions. Any request for an extension of time beyond the Completion Date must be made before July 1, 2023. Timely requests to extend, for longer than six months, the Completion Date of the Agreement for projects whose District contribution exceeds \$100,000 may only be approved by the District’s Governing Board. Notwithstanding specific mention that certain provisions survive termination or expiration

of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof (e.g., delivery of a final report, will remain in full force and effect after the Completion Date as necessary to effect performance).

(b) This Agreement constitutes an offer until authorized, signed and returned to the District by Recipient. This offer terminates 45 days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the District's Project Manager, stating the reason(s) therefor. Request for extension of time after the 45 days will be denied. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.

2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The District's Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the District will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the District arising from or by reason of this Agreement.

3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the District does not assert an ownership interest in any of the deliverables under this Agreement.

4. **AMOUNT OF FUNDING**

(a) For satisfactory completion of the Project, the District shall pay Recipient approximately 55% of the total Project cost, but in no event shall the District cost-share exceed \$734,786. The District cost-share is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the District's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.

(b) "Construction cost" is defined to include actual costs of constructing Project facilities, including construction management. Land acquisition, engineering design, permitting, and solicitation costs are excluded. Construction cost does not include any costs incurred prior to the Effective Date, unless expressly authorized by the Statement of Work. Costs that are excluded will not be credited toward Recipient's cost-share.

(c) Work performed or expenses incurred after the Completion Date are not eligible for Cost-Share reimbursement.

5. **PAYMENT OF INVOICES**

(a) Recipient shall submit itemized invoices as per the Statement of Work, Attachment A for reimbursable expenses by one of the following two methods: (1) by email to acctpay@sjrwmd.com (preferred) or (2) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177-2571. The invoices shall be submitted in detail sufficient for proper pre-audit and post-audit review. Invoices shall include a copy of contractor and supplier invoices to Recipient and proof of payment. Recipient shall be reimbursed for 100% of approved cost or the not-to-exceed sum of \$734,786, whichever is less.

The District shall not withhold any retainage from this reimbursement. District reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.

- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.
- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.**
- (d) All invoices shall include the following information: (1) District contract number; (2) Recipient's name, address, and authorization to directly deposit payment into Recipient's account (if Recipient has not yet provided the District with a completed Direct Deposit Authorization form; (3) Recipient's invoice number and date of invoice; (4) District Project Manager; (5) Recipient's Project Manager; (6) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work), in addition, see Attachment D, "CONTRACT PAYMENT REQUIREMENTS FOR STATE FUNDED COST REIMBURSEMENT CONTRACTS," (7) Progress Report (if required); (8) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action within 20 business days of receipt, stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice.
- (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Recipient and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.
- (f) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

(g) **Annual budgetary limitation.** For multi-fiscal year agreements, the District must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment A, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the District's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the District to receive this request is August 1 of the then-current fiscal year. The District may in its sole discretion prepare a District Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).

6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Recipient accepts all risks arising from construction or operation of the Project. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in §768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations.

7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Recipient and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. **PROJECT MANAGEMENT**

(a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) email. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

DISTRICT
 Nitesh Tripathi, Ph.D., Project Manager
 St. Johns River Water Management District
 4049 Reid Street
 Palatka, Florida 32177
 Phone: 386-312-2359
 Email: ntripathi@sjrwmd.com

RECIPIENT
 Brandon Bryant, P.E., Project Manager
 Orange County Utilities
 9150 Curry Ford Road
 Orlando, Florida 32825
 Phone: 407-254-9721
 Email: Brandon.Bryant@ocfl.net

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Project. The District's Project Manager may issue a District Supplemental Instruction (DSI) form, Attachment C, to authorize minor adjustments to the Project that are consistent with the purpose of the Project. Both parties must sign the DSI. A DSI may not be used to change the District cost-share or percentage, quantity, quality or the Completion Date of the Project, or to change or modify the Agreement.

9. PROGRESS REPORTS AND PERFORMANCE MONITORING.

- (a) **Progress Reports.** Recipient shall provide to the District quarterly Project update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Recipient shall use the District's Project Progress Report form, Attachment B. Recipient shall submit the Project Progress Reports to the District's Project Manager and District's Budget Manager within 30 days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31).
- (b) **Performance Monitoring.** For as long as the Project is operational, the District shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the District any data that is requested pertaining to performance of the Project.

10. **WAIVER.** The delay or failure by the District to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the District's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

11. FAILURE TO COMPLETE PROJECT

- (a) Should Recipient fail to complete the Project, Recipient shall refund to the District all of the funds provided to Recipient pursuant to this Agreement. However, the District, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the District may excuse Recipient from the obligation to return funds provided hereunder. If the Project has not been completed within 30 days after the Completion Date, Recipient shall provide the District with notice regarding its intention as to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the time for Project completion or the scope of the Project. Failure to complete the Project within 90 days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.
- (b) In the event the Project constitutes a portion of the total functional project, this paragraph shall apply in the event the total functional project is not completed. In such event, the 90-day timeframe provided herein shall commence upon the date scheduled for completion of the total functional project at the time of execution of this Agreement, unless extended by mutual agreement of the parties. Paragraphs 11(a) and 11(b) shall survive the termination or expiration of this Agreement.

12. **TERMINATION.** If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the District may provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have 30 days following receipt of the notice to cure the breach. If Recipient fails to cure the

breach within the 30-day period, the District shall issue a Termination for Default Notice terminating this Agreement without further notice. In such event, Recipient shall refund to the District all funds provided to Recipient pursuant to this Agreement within 30 days of such termination. The District may also terminate this Agreement upon ten days' written notice in the event of any material misrepresentations in the Project Proposal.

Delay or failure by the District to enforce any right, remedy or deadline hereunder shall not impair, or be deemed a waiver of, any such right, remedy or deadline, or impair the District's rights or remedies for any subsequent breach or continued breach of this Agreement.

ADDITIONAL PROVISIONS (Alphabetical)

13. **ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the District's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the District and any of Recipient's contractors or subcontractors.
14. **AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS**
- (a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the District, and copies of all invoices and supporting documentation for at least five years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the District shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.
- (b) **Repayment of Funds.** District funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the District finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein, including but not limited to construction materials not used in the Project; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the District for the same purpose; (4) Recipient has been advanced or paid unobligated funds; (5) Recipient has been paid funds in excess of the amount Recipient is entitled to receive under the Agreement; and/or (6) Recipient has received more than 100% contributions through cumulative public agency cost-share funding.
15. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
16. **COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.** Recipient and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.
17. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the District's Project Manager no later than ten business days after the precipitating

event. If not resolved by the Project Manager, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within ten business days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Project.

18. **DIVERSITY REPORTING.** The District is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The District will assist Recipient by sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.

19. **FLORIDA SINGLE AUDIT ACT**

- (a) **Applicability.** The Florida Single Audit Act (FSAA), §215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in §215.97(1)(q), Fla. Stat., awarded by the District through a project or program that is funded, in whole or in part, through state financial assistance to the District. In the event Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Recipient, Recipient must have a state single or project-specific audit for such fiscal year in accordance with §215.97, Fla. Stat.; applicable rules of the Department of Financial Services; and chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, Recipient shall consider all sources of state financial assistance, including state financial assistance received from the District, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. Recipient is solely responsible for complying with the FSAA.

If Recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of §215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with §215.97, Fla. Stat., the cost of the audit must be paid from the non-state entity's resources (i.e., Recipient's resources obtained from other than State entities).

- (b) **Program Information.** This Agreement involves the disbursement of state funding by the Florida Department of Environmental Protection (FDEP). Funding is provided under the State of Florida, Alternative Water Supplies Program, in the amount of \$665,500. The Florida Catalog of State Financial Assistance (CSFA) number for this program is CSFA No. 37.100. The District is providing funding in the amount of \$69,286.
- (c) **Additional Information.** For information regarding the state program under the above CSFA number, Recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa/catalog.aspx> for assistance. The following websites may be accessed for additional information: Legislature's Website at <http://www.leg.state.fl.us/>, State of Florida's website at <http://myflorida.com>, District of Financial Services' website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.
- (d) **Allowable Costs.** Recipient may only charge allowable costs to this Agreement, as otherwise provided herein. Any balance of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be returned to the District.

- (e) **Audit Requirements.** Recipient shall ensure that the audit complies with the requirements of §215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by §215.97(2), Fla. Stat., and chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Statement of Work.
- (f) **Financial Reporting.** Recipient shall provide the District with a copy of any reports, management letters, or other information required to be submitted in accordance with chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable, no more than 20 days after its preparation. Recipient shall indicate the date the reporting package was delivered to Recipient in correspondence accompanying the reporting package. This information shall be directed to: St. Johns River Water Management District, Finance Director, Office of Financial Services, 4049 Reid Street, Palatka, FL 32177. A copy of the report shall also be provided to the Auditor General's Office at the following address: State of Florida Auditor General, Room 401, Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.
- (g) **Monitoring.** In addition to reviews of audits conducted in accordance with §215.97, Fla. Stat., as revised, monitoring procedures may include, but not be limited to, on-site visits by District staff, limited scope audits, and/or other procedures. Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the District. In the event the District determines that a limited scope audit of Recipient is appropriate, Recipient agrees to comply with any additional instructions provided by the District to Recipient regarding such audit. Recipient agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the District's Inspector General or the state Chief Financial Officer or Auditor General.
- (h) **Examination of Records.** In addition to the District's audit rights otherwise provided for herein, Recipient shall permit the District or its designated agent, the state awarding agency, the Department of Financial Services, the state's Chief Financial Officer and the state's Auditor General to examine Recipient's financial and non-financial records to the extent necessary to monitor Recipient's use of state financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations, which may include onsite visits and limited scope audits.
- (i) **Records Retention.** Notwithstanding any other provision of this Agreement to the contrary, Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the District, or its designee, state Chief Financial Officer, or Auditor General access to such records upon request. Recipient shall ensure that audit working papers are made available for such access for a period of three years from the date the audit report is issued, unless extended in writing by the District.

20. GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY

TRIAL. This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Orange County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

21. **INDEPENDENT CONTRACTORS.** The parties to this Agreement, their employees and agents, are independent contractors and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractors during and after the term of this Agreement. Recipient is not a contractor of the District. The District is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health care, and tax laws pertaining to Recipient, its officers, agents, and employees.
22. **CONFLICTING INTEREST IN RECIPIENT.** Recipient certifies that no officer, agent, or employee of the District has any material interest, as defined in §112.312, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
23. **NON-LOBBYING.** Pursuant to §216.347, Fla. Stat., as amended, Recipient agrees that funds received from the District under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
24. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.
25. **PUBLIC ENTITY CRIME.** 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 §287.017, Fla. Stat., for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
26. **PUBLIC RECORDS.** Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the District's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other materials related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.
27. **ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the District harmless from loss to the extent allowed by Florida law.

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 Recipient 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. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Whidgy L. Cox
Ann B. Shortelle, Ph.D., Executive Director, or designee

By: Jerry L. Demings
Jerry L. Demings, Orange County Mayor

Date: 5-13-21

Typed Name and Title
Date: APR 27 2021



Attest: Katie Smith
Katie Smith Deputy Clerk
Typed Name and Title

- Attachments:
Attachment A — Statement of Work
Attachment B — Project Progress Report Form
Attachment C — District Supplemental Instructions Form
Attachment D — Contract Payment Requirements for State-Funded Cost Reimbursement Contracts

**ATTACHMENT A - STATEMENT OF WORK
CYPRESS LAKE WELLFIELD - OAK MEADOWS AWS DELIVERY
ENHANCEMENTS PROJECT**

I. INTRODUCTION/BACKGROUND

FDEP's Alternative Water Supply (AWS) cost-share funding program is designed to fund AWS projects that benefit the region by reducing groundwater withdrawals. The District is also providing funding for this program.

Orange County (Recipient) requested funding for their Cypress Lake Wellfield - Oak Meadows AWS Delivery Enhancements Project (Project). At its October 13, 2020 meeting, the Governing Board selected Recipient's proposal for cost-share funding. FDEP has also approved funding for this project. The total estimated construction cost of the project is \$1,333,000. The District is providing funding in the not to exceed amount of \$69,286 and FDEP is providing funding in the not to exceed amount of \$665,500. This Cost Share Agreement is for the total not to exceed amount of \$734,786. Recipient is located in Orange County.

II. OBJECTIVES

The objective of this contract is to provide cost share dollars that will enable the Recipient to utilize water from an AWS. As part of a phased project to develop the regional Cypress Lake Wellfield and integrate an AWS system, the STOPR group determined preliminary infrastructure needs for locations that will be accepting water from the brackish groundwater wellfield. Before an AWS can be implemented, installation of variable frequency drives (VFDs) on the high service pumps, along with electrical and mechanical improvements necessary for the functionality of the VFDs, are required at the Oak Meadows Water Supply Facility (WSF) to allow for control of discharge and compliance with current consumptive use permit limits. The Cypress Lake facility will ultimately pump treated brackish water from a long-term sustainable water supply to Recipient's customers as demands increase. The delivery enhancements described in this application will enable Recipient to maximize existing ground water sources and provide Recipient with the operational flexibility needed to deliver the AWS to customers.

III. SCOPE OF WORK

Recipient plans to install VFDs on the high service pumps, along with electrical and mechanical improvements necessary for the functionality of the VFDs, at the Oak Meadows WSF located at 226 Dorscher Rd, Orlando FL 32835.

IV. PROJECT ADMINISTRATION AND DELIVERABLES

The Recipient shall be responsible for the following:

- Complete and obtain final project design, construction plans, and specifications;
- Obtain all required permits, including right of access to the project sites, related to project construction and subsequent operation and maintenance of the completed work;
- Assure compliance with all permits and permit conditions;
- Provide procurement for project construction;
- Perform supervision and inspection of construction;
- Perform construction contract administration;

- Assure compliance with cost accounting practices and procedures required for reimbursement of cost share funds expended.

The Recipient shall provide the following to the District’s Project Manager:

- Timely invoices for actual construction costs in accordance with this cost share agreement (i.e. quarterly, with appropriate substantiation that demonstrates that the applicant has paid for the total work cost and is seeking reimbursement up to the match amount) to enable proper review by the District’s Project Manager prior to payment authorization. Deliverables to be submitted with invoices include (as applicable):
 - Interim progress status summaries including inspections, meeting minutes and field notes and dated color photographs of the construction completed to include on-going work that represents the time-period being invoiced;
 - Final invoice submittals for completed construction including inspections and dated color photographs of the construction site prior to, during and immediately following completion of the construction task;
 - Construction plans, specifications, and contract documents for the site work must be made available upon request;
 - Written verification that the record drawings and any required final inspection reports for the project are received;
- Quarterly progress reports identifying project progress to date, key milestones reached, overall project schedule versus time for project completion, an updated spend-down plan, key issues to be resolved, project construction photos including preconstruction, construction and postconstruction with dates. Quarterly reports shall also be emailed to the District’s Budget Analyst at hbarber@sjrwmd.com.
- Certification of construction completion by a Professional Engineer registered in the state of Florida.

The Recipient shall ensure the task in the Task Identification section below is completed.

V. TASK IDENTIFICATION AND TIME FRAMES

The expiration date of this cost share agreement is September 30, 2023. The projected schedule is as follows:

Task Description	Anticipated Start Date	Anticipated Completion Date
Construction	4/21/22	9/30/23

VI. BUDGET/COST SCHEDULE

For satisfactory completion of the Project, the District shall pay Recipient approximately 55% of the total construction cost of the Project, but in no event shall the District's cost-share exceed \$734,786. It is anticipated that the FY breakdown will be \$330,736 for FY2021-22 and \$404,050 for FY2022-23.

Recipient shall invoice the District quarterly with appropriate documentation. The District’s Project Manager shall provide an invoice template that will be used. Invoices shall include a copy of the contractor’s invoices submitted to the Recipient, proof of payment by Recipient, and other required supporting documentation for reimbursement up to match amount. For in-house expenses, Recipient shall provide copies of all receipts for materials and a system report showing documentation of staff time or

other proof of staff time expenses for the Project. The final invoice shall be submitted with the final project report. If the total actual cost of this project is less than originally estimated, the District's cost-share amount shall be reduced accordingly. Recipient may invoice more frequently submitting all required documentation and include general status information. Recipient may invoice the District for Project work beginning October 13, 2020. The District will not reimburse for any expenditures that occur prior to October 13, 2020.

Recipient shall submit quarterly progress reports to the District's Project Manager and the District's Budget Analyst within 15 days of the end of quarter for work accomplished during each quarter. The email address for the District's Budget Analyst is hnbarber@sjrwmd.com. The Recipient shall submit a final project report within 15 days of Final Completion and acceptance by Orange County detailing the Project's accomplishments and any issues resolved during the course of the work.

Estimated Cost Schedule for Reimbursement per fiscal year (all dollar amounts are approximate and may be reallocated between the construction tasks for the FYs).

FY 20-21 (10/1/2021 – 9/30/2022)

Description	Estimated Task Amount	Estimated Reimbursement Amount
Construction	\$600,000	\$330,736

FY 20-21 (10/1/2022 – 9/30/2023)

Description	Estimated Task Amount	Estimated Reimbursement Amount
Construction	\$733,000	\$404,050

**ATTACHMENT B
PROJECT PROGRESS REPORT**

St. Johns River Water Management District
Project Progress Report

Date: _____

Report Number: _____

Contract/Project Identification

Project Name:	Cypress Lake Wellfield - Oak Meadows AWS Delivery Enhancements Project		
Recipient:	Orange County		
SJRWMD Contract Number:	36368	SJRWMD Project Manager:	Nitesh Tripathi, Ph.D.
		Recipient's Project Manager:	Brandon Bryant, P.E.

Construction Schedule

Construction Start Date:	
Construction Completion Date:	
Contract Expiration Date:	

Reporting Period

Beginning Date:	
Ending Date:	

Cost-Share Budget

Total Cost-Share Budget:		Cost-Share Amount Expended This Period:	
Cost-Share Amount Expended To-date:		Percent Cost-Share Budget Expended:	

Spend-Down Plan

Fiscal Year 1

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Fiscal Year 2

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Project Readiness and Schedule Tracking

Project Phase	% Complete Shown in Application	% Complete Currently	Start Date Shown in Application	Completion Date Shown in Application	Current Start Date	Current Completion Date	Notes: Explain anticipated deviations from schedule
Planning							
Design							
Permitting							
Bidding & Award							

SOW Construction Tasks/Milestones/Deliverables

Task Number	Tasks/Milestones/Deliverables	Total Construction % Complete	Start Date Shown in SOW	Completion Date Shown in SOW	Current Start Date	Current Completion Date
1						

Project update including problems, issues and solutions. Explain in detail.

Include digital photographs of work accomplished during reporting period. Attach an additional page of notes if necessary to explain reasons for lateness or unusual events or circumstances.

ATTACHMENT C — DISTRICT’S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO: Brandon Bryant, P.E., Project Manager
Orange County Utilities
9150 Curry Ford Road
Orlando, FL 32825

FROM: Nitesh Tripathi, Ph.D., Project Manager

CONTRACT NUMBER: 36368

CONTRACT TITLE: Cypress Lake Wellfield - Oak Meadows Aws Delivery Enhancements Project

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor adjustments to the work as consistent with the Contract Documents and return to the District’s Project Manager.

1. RECIPIENT’S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS:

RECIPIENT’s approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(N/A agrees to implement the Supplemental Instructions as requested but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
Nitesh Tripathi, Ph.D., District Project Manager

Acknowledged: _____ Date: _____
Procurement Specialist

c: Contract file
Financial Services

ATTACHMENT D – CONTRACT PAYMENT REQUIREMENTS FOR STATE-FUNDED COST REIMBURSEMENT CONTRACTS

Invoices for state-funded cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed, indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation shall clearly reflect the dates of service. Only expenditures for categories in the approved contract budget will be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements by cost category:

Salaries: Submit a payroll register or similar documentation showing gross salary charges, fringe benefits, other deductions, and net pay. If an individual is paid by the hour, a document reflecting the hours worked times the rate of pay is acceptable.

Fringe Benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage, rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with §112.061, Fla. Stat., which includes submission of the claim on the approved State of Florida (State) or District travel voucher.

Other direct costs: Reimbursement is based upon paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in §273.02, Fla. Stat., for subsequent transfer to the State.

In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units, times the rate being charged. The rates must be reasonable.

Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The “Reference Guide for State Expenditures” prepared by the Florida Department of Financial Services can be found at this web address: http://www.fldfs.com/aadir/reference_guide.htm