



Interoffice Memorandum

May 23, 2022

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

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department



**SUBJECT: BCC AGENDA ITEM – Consent Agenda
June 21, 2022 BCC Meeting
Seventh Amendment to Memorandum of Agreement between City of
St. Cloud, Tohopekaliga Water Authority, Orange County, Polk
County and Reedy Creek Improvement District for Cost Sharing and
Permit Compliance Coordination
Contact Person: Teresa Remudo, P. E., Deputy Director
Utilities Department
407-254-9803**

In June 2007, the South Florida Water Management District (SFWMD) approved individual 20-year Water Use Permits (WUPs) for the withdrawal of groundwater from the Floridan Aquifer to five individual utilities: the City of St. Cloud, the Tohopekaliga Water Authority, Orange County, Polk County and Reedy Creek Improvement District (collectively known as the STOPR Group). Conditions set forth in each STOPR Group member's WUP require significant aquifer level and wetland condition monitoring. Costs for this work were apportioned to each STOPR Group member based on a formula that considers both the past and projected future flows for each STOPR Group member.

Since the original Cost Sharing and Permit Compliance Agreement was approved by the Board on September 11, 2007, six amendments have been executed to extend the contract term and/or minor modifications in scope with no increase in budget due to unavoidable delays associated with the acquisition of monitoring site easements and project requirements. The sixth amendment extended the monitoring work through June 30, 2022.

This seventh amendment is needed to extend the contract term beyond June 30, 2022 to June 1, 2029 to continue the monitoring work required for the duration of the WUPs at a cost of \$3,803,187 (\$1,296,887 of which is Orange County's cost share over seven years). Tohopekaliga Water Authority will serve as contract manager during the seven year term.

The County Attorney's Office staff finds the agreement acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Seventh Amendment to Memorandum of Agreement between City of St. Cloud, Tohopekaliga Water Authority, Orange County, Polk County and Reedy Creek Improvement District for Cost Sharing and Permit Compliance Coordination

All Districts.

BCC Mtg. Date: June 21, 2022

This instrument prepared by
and return to:
Silvia M. Alderman, Esq.
Akerman LLP
201 East Park Avenue, Suite 300
Tallahassee, Florida 32301

**SEVENTH AMENDMENT TO MEMORANDUM OF AGREEMENT BETWEEN
CITY OF ST. CLOUD,
TOHOPEKALIGA WATER AUTHORITY,
ORANGE COUNTY, POLK COUNTY
AND REEDY CREEK IMPROVEMENT DISTRICT
FOR COST SHARING AND PERMIT COMPLIANCE COORDINATION**

THIS Seventh Amendment to the MEMORANDUM OF AGREEMENT BETWEEN CITY OF ST. CLOUD, TOHOPEKALIGA WATER AUTHORITY, ORANGE COUNTY, POLK COUNTY AND REEDY CREEK IMPROVEMENT DISTRICT FOR COST SHARING AND PERMIT COMPLIANCE COORDINATION (hereinafter "Seventh Amendment") is made and entered into by and between the CITY OF ST. CLOUD, a FLORIDA municipal corporation, whose address is 1300 Ninth Street, St. Cloud, Florida 34769 ("CITY"), the TOHOPEKALIGA WATER AUTHORITY, an independent special district created pursuant to chapter 2003-368, Laws of Florida, whose address is 951 Martin Luther King Blvd, Kissimmee, Florida 34741, formerly referred to as TWA ("TOHO"), ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393 ("ORANGE COUNTY"), POLK COUNTY, a political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831-9005 ("POLK COUNTY") and REEDY CREEK IMPROVEMENT DISTRICT, an independent special district created pursuant to Chapter 67-764, Laws of Florida, whose address is P.O. Box 10170, Lake Buena Vista, Florida 32830 ("RCID") all collectively referred to herein as the "PARTIES" or individually as a "PARTY."

WITNESSETH

WHEREAS, the PARTIES executed that certain Memorandum of Agreement for Cost Sharing and Permit Compliance Coordination (hereinafter the "AGREEMENT") effective October 10, 2007, relating to participation in regional cooperation to pursue water use permits in the South Florida Water Management District; and

WHEREAS, a First Amendment to the AGREEMENT was entered into by the PARTIES effective May 28, 2009, which substituted a revised Exhibit B regarding scope of services and fees entitled Exhibit B - Revised, Initial Scope of Work and Fees for Monitoring Work ("Exhibit B-Revised"); and

WHEREAS, a Second Amendment to the AGREEMENT was entered into by the PARTIES effective June 16, 2010, to modify Exhibit B – Revised, in a manner that would extend relevant timelines for work completion but not increase the budget for such work; and

WHEREAS, a Third Amendment to the AGREEMENT was entered into by the PARTIES effective January 10, 2012, providing that subsequent tasks designated as "Additional Monitoring Work" set forth in Exhibit D would be performed with a different Contract Manager (ORANGE COUNTY), under a new consultant's contract that would run through June 30, 2015, with different payment provisions; and

WHEREAS, a Fourth Amendment to the AGREEMENT was entered into by the PARTIES, effective on July 8, 2015, providing an extension of the time to complete the tasks set out in Exhibit D, to run through June 30, 2016; and

WHEREAS, a Fifth Amendment to the AGREEMENT was entered into by the PARTIES effective on May 13, 2016, providing for: Additional Monitoring Work and New Work, as modified and detailed in Exhibits E and F of said Fifth Amendment including consulting and legal services for a new period to run through June 30, 2020, for delivery of groundwater level monitoring, groundwater quality monitoring, environmental monitoring, data management and compliance reporting services, new services required to achieve compliance with their Water Use Permits ("WUPs"), and legal and consultant assistance to the PARTIES with review of proposed regulations that may impact their WUPs; providing authority for certain directors from each PARTY (except for POLK COUNTY) to execute amendments to the AGREEMENT so long as such amendments are limited to scope of services and do not result in an increase in budget or commit any PARTY to further expenditure of funds; and providing that ORANGE COUNTY would remain the Contract Manager for services rendered under Exhibit D to the completion of its contract with the consultant and TOHO would serve as the Contract Manager for consultant services rendered as described in Exhibits E and F; and

WHEREAS, a Sixth Amendment to the AGREEMENT was entered into by the PARTIES effective on April 21, 2022, as follows: changing all references from "TWA" to "TOHO" in the AGREEMENT, so as to be more consistent with the current terminology used to identify that PARTY; defining the AGREEMENT as amended by the First, Second, Third, Fourth, Fifth and Sixth Amendments as the "AMENDED AGREEMENT"; ratifying and joining in the No Budget Increase Contract Scope Change Order – Addendum Proposal #4 entered into between TOHO and WSP USA Inc. ("WSP") on March 10, 2021, to provide for additional engineering and field services for the STOPR Group groundwater level monitoring, groundwater quality monitoring, environmental monitoring, data management, compliance reporting and Central Florida Water Initiative-related services through June 30, 2022, all without increasing the approved budget; adjusting all prior applicable timeframes for engaging in identical work set out in the AMENDED AGREEMENT according to the terms set out in Exhibit G, attached to the Sixth Amendment; providing that Paragraphs II. C. 2. b) and c) of the Third Amendment shall apply to invoicing and payment/reimbursement of the scope of services described in Exhibit G and TOHO shall continue to serve as Contract Manager for said scope of services: and

WHEREAS, the PARTIES now wish to further amend the AMENDED AGREEMENT to: redefine the term "AMENDED AGREEMENT" to now include the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments; to authorize TOHO, as Contract Manager, to contract for additional engineering and field services for the STOPR Group groundwater level monitoring, groundwater quality monitoring, environmental monitoring, data management, compliance reporting, other services required to achieve compliance with their WUPs and Central Florida Water Initiative-related services (collectively "Further Monitoring Work"), as provided in Exhibit H; to establish a process for invoice review, payment and reimbursement for the approved scope of work and budget set forth in Exhibit H; and to extend the term of the AMENDED AGREEMENT to June 30, 2030; and

WHEREAS, the PARTIES have determined that it is in their best interests and in the public interest to amend the AMENDED AGREEMENT as provided herein,

NOW THEREFORE, in consideration of the foregoing premises which are made part of this Seventh Amendment, and the mutual covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES hereto, each intending to be legally bound, agree as follows:

1.0 **Recitals and Capitalized Terms.** The recitals set forth in the WHEREAS clauses above are incorporated by reference herein, provided, however, that the WHEREAS clauses above shall not act to amend the AMENDED AGREEMENT. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the AMENDED AGREEMENT.

2.0 The AMENDED AGREEMENT is hereby further amended as follows:

2.1 **AMENDED AGREEMENT Redefined.** The term "AMENDED AGREEMENT" is redefined to include the AGREEMENT, as amended by the First, Second, Third, Fourth, Fifth, Sixth and this Seventh Amendment.

2.2 **Delegation.** Paragraph 3 of the Fifth Amendment is modified by replacing it in toto with the following:

Delegation. For purposes of Article VIII. B. of the AMENDED AGREEMENT, regarding future amendments, each PARTY set forth below individually hereby delegates to the following persons full authority to execute on behalf of, and to bind, each respective PARTY to further amendments to the AMENDED AGREEMENT, provided that such amendments are strictly limited to the scope of services and provided further that such amendments do not result in any increase in the approved budget or commit any PARTY to further expenditure of funds beyond that heretofore approved in the AMENDED AGREEMENT. The following representatives of each respective PARTY shall have the authority to

amend the AMENDED AGREEMENT, as provided by this paragraph on behalf of the PARTY such person represents:

City of St. Cloud:	City Manager
Toho Water Authority:	Executive Director
Orange County:	Utilities Director
Reedy Creek Improvement District:	District Administrator

Polk County elects not to provide a delegation. Any future amendments shall be approved by its Board of County Commissioners.

2.3. **Further Monitoring Work.** A new Paragraph XXI governing Further Monitoring Work, is added to the AMENDED AGREEMENT as follows:

XXI. Further Monitoring Work. Paragraph XXI governs Further Monitoring Work, as defined in the eighth WHEREAS clause. Paragraph XXI supersedes and replaces any provisions of the AMENDED AGREEMENT with respect to invoice review, payment and reimbursement for the approved scope of work and budget set forth in Exhibit H.

A. **Budget and Payment Schedule.** TOHO, as Contract Manager, is authorized to contract for Further Monitoring Work, with a budget not to exceed that set forth in Exhibit H. The Contract Manager shall assess the PARTIES and the PARTIES agree to reimburse TOHO for the contracted Further Monitoring Work in accordance with the following formula:

Party	Percent	Total
ST. CLOUD	10.8%	\$410,758
TOHO	26.7%	\$1,015,485
ORANGE COUNTY	34.1%	\$1,296,931
POLK COUNTY	10.2%	\$387,938
RCID	18.2%	\$692,204
GRAND TOTAL	100%	\$3,803,316

B. **Invoicing of Further Monitoring Work.** The Contract Manager is responsible for reviewing and paying invoices from the consultant(s)/contractor(s) consistent with the approved scope of work and the Florida Prompt Payment Act (Chapter 218, Florida Statutes). The Contract Manager will provide copies of approved invoices and proof of payment as back-up to the requests for reimbursement made to the PARTIES.

C. **Reimbursement of Further Monitoring Work.** The PARTIES shall reimburse the Contract Manager for the Further Monitoring Work in accordance with the schedule set out in Paragraph XXI. A. above. The PARTIES shall pay their proportional amounts to the Contract Manager by the date indicated on the invoice. Payments shall be considered delinquent if not received within thirty days of the date of the invoice. Any late payments shall accrue interest as defined in Chapter 218, Florida Statutes. Under no circumstances may a PARTY withhold payment to the Contract Manager.

D. **Effect of Seventh Amendment on existing contract with WSP.** The Further Monitoring Work authorized under this Seventh Amendment shall commence on July 1, 2022, which is the day after completion of services rendered by WSP pursuant to the Sixth Amendment.

E. **Termination of Contract for Further Monitoring Work.** The scope of services/budget set forth in Exhibit H will terminate June 30, 2029, but the contract for Further Monitoring Work is subject to earlier termination at the sole discretion of the PARTIES, whether for cause or for convenience, upon ten days' written notice.

2.4 **Term.** Paragraph VII. A. of the AMENDED AGREEMENT is amended by replacing the existing text *in toto* with the following:

A. The term of this AMENDED AGREEMENT shall commence upon its complete execution by all PARTIES and recordation of same as provided in Paragraph XX. Unless earlier terminated pursuant to the terms hereof, this AMENDED AGREEMENT shall remain in effect until June 30, 2030.

3.0. **Effective Date.** This Seventh Amendment shall become effective on the last date that the same is recorded in the public records of Orange, Osceola and Polk counties (the "Effective Date").

4.0. **All Other Provisions.** All other provisions of the AMENDED AGREEMENT remain unchanged, except as modified herein.

THE BALANCE OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.
SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed and entered into as of the Effective Date.

CITY OF ST. CLOUD, FLORIDA

By: *Nathan Blackwell*
Nathan Blackwell, Mayor

Attest: *Linda P. Jaworski*
Linda Jaworski, City Clerk

Date: _____

Approved by: *[Signature]*
City Attorney

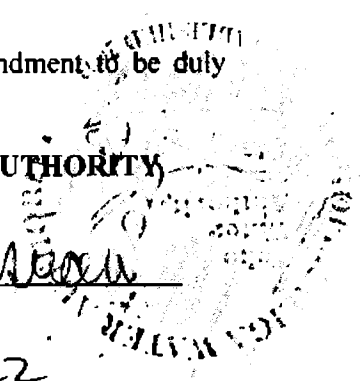
Daniel Montenegro

IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed and entered into as of the Effective Date.

TOHOPEKALIGA WATER AUTHORITY

By: Hector Lisazuain
Hector Lisazuain, Chair

Date: June 8, 2022



IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed and entered into as of the Effective Date.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

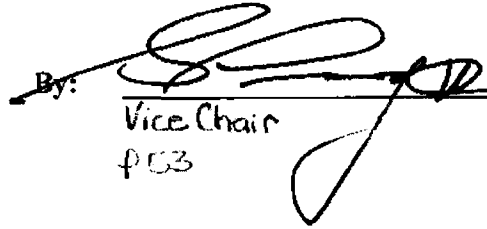
Attest: Phil Diamond, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Date: June 21, 2022

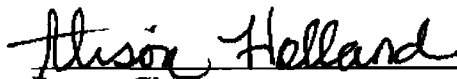
IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed and entered into as of the Effective Date.

POLK COUNTY, FLORIDA
By: Board of County Commissioners

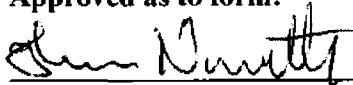
By: 
Vice Chair
p53



Attest: Stacy M. Butterfield
Clerk of the Board


Deputy Clerk

Date: 6/21/22

Approved as to form:

Attorney

IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed and entered into as of the Effective Date.

REEDY CREEK IMPROVEMENT DISTRICT

By:



John Classe, District Administrator

Attest:



Clerk, Board of Supervisors

Date:

5/25/22

Exhibit H

Task	Description	Compensation Basis	Budget
1.0	Project Coordination	Direct Labor Costs	\$ 84,623
2.0	Hydrologic Monitoring	Direct Labor Costs	\$ 1,010,755
3.0	Water Quality Monitoring	Direct Labor Costs	\$ 206,089
4.0	Vegetative and Photo-Station Monitoring	Direct Labor Costs	\$ 429,999
5.0	Data Management	Direct Labor Costs	\$ 452,986
6.0	Reporting	Direct Labor Costs	\$ 302,579
7.0	Regulatory Advisory Support	Direct Labor Costs	\$ 702,956
8.0	Field Equipment installation and Survey	Direct Labor Costs	\$ 117,245
TOTAL			\$ 3,307,231
CONTINGENCY 15%			\$.....496,085
GRAND TOTAL			\$ 3,803,316