

RESOLUTION NO. 2011- 162

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF THE FIRST AMENDMENT TO THE COST SHARE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, FOR THE REUSE AND TREATMENT INITIATIVE PREVIOUSLY APPROVED BY THE COUNTY BY RESOLUTION 2010-174, AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA TO EXECUTE THE FIRST AMENDMENT ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, St. Johns River Water Management District (District), and St. Johns County, Florida (County) entered in an cost share agreement (District Contract #26639) on September 2, 2010, for the St. Johns County Utility Department, Reuse and Treatment Initiative (Agreement); and

WHEREAS, subsequent to the execution of the Agreement, the District has been advised that the Governor of the State of Florida will require the District to reduce its ad valorem tax revenues by twenty-five percent (25%) for the Fiscal Year 2012 and 2013; and

WHEREAS, in order to meet this requirement, the District has re-evaluated all of its pending financial obligations and consequently opted to suspend this Agreement; and

WHEREAS, in lieu of terminating the Agreement for convenience as allowed by paragraph 11 (b) of the Agreement or for the lack of funding to paragraph 7 of the Agreement, the parties have determined that it would best serve the public if the Agreement remains in force and effect in the event funding should become available in future years; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of this First Amendment (attached hereto, and incorporated herein); and

WHEREAS, the County has determined that accepting the terms of the said First Amendment will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:


Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the First Amendment to the Cost Share Agreement previously approved by resolution 2010-174, between St. Johns County, Florida, and the St. Johns River Water Management District, and authorizes the Chairman of the Board of County Commissioners of St. Johns County, Florida to execute the said Amendment to the Agreement on behalf of St. Johns County.

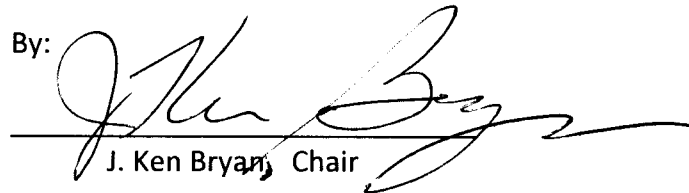
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of June, 2011.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest:


Deputy Clerk

By:


J. Ken Bryan, Chair

RENDITION DATE 6/23/2011

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND ST. JOHNS COUNTY UTILITY DEPARTMENT FOR THE
REUSE AND TREATMENT INITIATIVE**

THIS AMENDMENT is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("the District"), whose mailing address is 4049 Reid Street, Palatka, Florida 32177, and ST. JOHNS COUNTY UTILITY DEPARTMENT ("Recipient"), whose address is 1205 SR 16, P.O. Box 3006, St. Augustine, Florida 32085, and is effective on the date the last party has executed same.

WHEREAS, the parties entered into Contract No. 26639 on September 2, 2010, for the "St. Johns County Utility Department, Reuse and Treatment Initiative" ("Agreement"); and

WHEREAS, subsequent to execution of the Agreement, the District has been advised that the Governor of the State of Florida will require the District to reduce its ad valorem tax revenues by twenty-five percent (25%) for Fiscal Year 2012 and 2013; and

WHEREAS, in order to meet this requirement, the District has re-evaluated all of its pending financial obligations in order to reduce expenditures as expeditiously as possible so as to prepare for and implement the anticipated reduction in ad valorem tax revenues; and

WHEREAS, in lieu of termination of the Agreement for convenience pursuant to paragraph 11(b) or for lack of funding pursuant to paragraph 7, the parties have determined that it would best serve the public interest if the Agreement remains in force and effect in the event funding should become available in future years.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereby agree to the following amendments:

1. **ARTICLE 1 - TERM; WITHDRAWAL OF OFFER:** Paragraph 1(a) is hereby modified to extend the "Completion Date" to September 30, 2016.
2. **ARTICLE 4 - AMOUNT OF FUNDING:** Paragraph (a) shall be deleted and replaced with the following:
 - "(a) Due to significantly reduced revenues, the District has re-evaluated all of its current and pending financial obligations. Based on this evaluation, the parties have agreed to suspend the Agreement. This suspension removes all current funding from the Agreement; extends the Agreement two years to the year 2016; and adds paragraph 26 – **SUSPENSION OF AGREEMENT**, which allows for reimbursing the Recipient for qualified work accomplished during the period of suspension of the Agreement, entirely at the District's discretion."
3. The following is hereby inserted into the Agreement as paragraph 26:
 - "26. **SUSPENSION OF AGREEMENT.** Notwithstanding any other provision of this Agreement to the contrary, the provisions of this paragraph apply and supersede any such contrary provision. As of the effective date of the First Amendment to this Agreement, all work on the Project that is subject to cost-share pursuant to this Agreement is suspended. Recipient shall not incur any expenses for the Project that

are subject to cost-share pursuant to this Agreement prior to being notified in writing by the District that work in furtherance of the Project pursuant to this Agreement is reinstated. This paragraph shall not be interpreted to preclude Recipient from continuing with the Project without cost-share from the District. In the event Recipient continues with the Project without District cost-share, the District may, upon reinstatement of work pursuant to this Agreement, in its sole judgment and discretion, elect to reimburse Recipient in accordance with this Agreement for work on the Project while cost-sharing was suspended. This paragraph shall not be construed to prevent the District from terminating this Agreement for convenience or for lack of funding after the effective date of the First Amendment in the event the District determines, in its sole judgment and discretion, that funding is not likely to become available or for any other reason whatsoever.”

4. All other terms and conditions of the Agreement are hereby ratified and continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment on the date set forth below.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

ST. JOHNS COUNTY UTILITY DEPTMENT

By: _____
Kirby B. Green III, Executive Director

By: _____

Typed Name and Title

Date: _____

Date: _____

APPROVED BY THE OFFICE
OF GENERAL COUNSEL

Attest: _____

Stanley J. Niego, Sr. Assistant General Counsel

Typed Name and Title

091207

RESOLUTION NO. 2010-174

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A COST SHARE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, FOR THE LOWER ST. JOHNS RIVER BASIN REUSE AND TREATMENT PROGRAM, AND AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA TO EXECUTE THE AGREEMENT ON BEHALF OF AT. JOHNS COUNTY

WHEREAS, St. Johns River Water Management District (District), and St. Johns County, Florida (County) desire to enter into a Cost Share Agreement, in order to achieve the following objectives: 1) reduce Total Nitrogen discharged to the St. Johns River, and 2) maximize opportunity to reduce withdrawals of Floridian Aquifer Ground Water by substituting reclaimed water where it is cost effectively feasible; and

WHEREAS, 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; and

WHEREAS, the District's Governing Board has established the Lower St. Johns River Basin Reuse and Treatment Program ("the Program") to support efforts that contribute toward the improvement of water quality by achieving pollutant load reduction goals (PLRGs) or total maximum daily load (TMDL) allocations for identified priority pollutants; and

WHEREAS, wastewater reuse reduces the flow of wastewater effluent into the St. Johns River, while also meeting the District's water supply planning objectives relating to the development of alternative water supplies that reduce the need for groundwater withdrawals; and

WHEREAS, the District has submitted a proposed Cost Share Agreement for the County to execute; and

WHEREAS, the Cost Share Agreement between the County, and the District establishes the rights, duties, and responsibilities of both the County and the District with respect to conducting the Scope of Work noted in the Agreement; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Cost Share Agreement (attached hereto, and incorporated herein); and

WHEREAS, the County has determined that accepting the terms of the Cost Share Agreement, and entering into said Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of a Cost Share Agreement between St. Johns County, Florida, and the St. Johns River Water Management District, and authorizes the Chairman of the Board of County Commissioners of St. Johns County, Florida to execute the Cost Share Agreement on behalf of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 17th day of August, 2010.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

By: Ron Sanchez
Ron Sanchez, Chair

RENDITION DATE 8/19/10

**COST-SHARING AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND ST. JOHNS COUNTY UTILITY DEPARTMENT
FOR THE LOWER ST. JOHNS RIVER BASIN
REUSE AND TREATMENT PROGRAM**

THIS 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 the ST. JOHNS COUNTY UTILITY DEPARTMENT ("Recipient"), whose address is P.O. Box 3006, St. Augustine, Florida 32085. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

WHEREAS, 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; and

WHEREAS, pursuant to chapter 373, Fla. Stat., the District is responsible for the management of water resources within its geographical area; and

WHEREAS, the District's Governing Board has established the Lower St. Johns River Basin Reuse and Treatment Program ("the Program") to support efforts that contribute toward the improvement of water quality by achieving pollutant load reduction goals (PLRGs) or total maximum daily load (TMDL) allocations for identified priority pollutants; and

WHEREAS, the District may also consider projects that protect or preserve water quality in designated Surface Water Improvement and Management (SWIM) water bodies; and

WHEREAS, wastewater reuse reduces the flow of wastewater effluent into the St. Johns River, while also meeting the District's water supply planning objectives relating to the development of alternative water supplies that reduce the need for groundwater withdrawals; and

WHEREAS, the parties have agreed to jointly fund the following project to benefit the water resources in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter "the Project"):

This project shall produce and reuse an estimated 1.0 million gallons per day (mgd) of new reclaimed water by the end of Fiscal Year (FY) 2020, as well as reduce the amount of Total Nitrogen (TN) discharged to the St. Johns River by an estimated 10,000 pounds per year. Depending on growth, the capacity of the system at build out is expected to be about 2.0 mgd and be able to reduce loadings by 20,000 pounds per year. The project will also reduce use of Floridian Aquifer Ground Water by approximately 0.5 mgd per day by the end of FY 2020. Additionally, this project will help the County Utility to achieve their "zero effluent discharge" goal from the Northwest Facility faster than originally planned. The proposed project allows the County to further enhance their reclaimed water transmission to new customers and limit effluent discharges to the St. Johns River well below the 30% allowed by the APRICOT permit provided for in the BMAP.

NOW, THEREFORE, in consideration of the aforesaid premises, and the funding assistance hereinafter specified, 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 attachments, if any. The parties hereby agree to the following terms and conditions.

1. **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, 2014 ("Completion Date"). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance within fifteen (15) days after the Effective Date and shall complete performance in accordance with the time for completion stated in the Statement of Work. Time is of the essence for every aspect of this Agreement, including any time extensions. All provisions of this Agreement that by their nature extend beyond the Completion Date shall survive the termination or expiration of this Agreement.
- (b) This Agreement constitutes an offer until authorized, signed and returned to the District by Recipient. This offer terminates sixty (60) days after receipt by Recipient.

2. **DELIVERABLES.** Recipient shall fully implement the Project, as described 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 no more than fifty percent (50%) of the total cost of the Project, but in no event shall the District cost-share exceed \$3,000,000. 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. If Recipient's cost share for the Work exceeds 100% of the estimated cost, Recipient may elect to complete the Project at its expense or discontinue the Project and return all funds provided hereunder to the District. 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) Funding may be only used for construction costs associated with the Project. It may not be used for the research, design, engineering, and permitting aspects of the Project.

5. PAYMENT OF INVOICES

- (a) Recipient shall submit Quarterly itemized invoices based upon the actual portion of the work performed by one of the following two methods: (1) by mail to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177, or (2) by e-mail to acctpay@sjrwmd.com. The invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. Recipient shall be reimbursed for fifty percent (50%) of approved costs until the not-to-exceed amount of the District's cost-share has been expended. Approved costs are those costs that do not exceed 50% of actual expenditures for the reuse portion of the project. 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 10 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 (10) 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) District encumbrance number; (3) Recipient's name and address (include remit address, if necessary); (4) Recipient's invoice number and date of invoice; (5) District Project Manager; (6) Recipient's Project Manager; (7) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work; (8) Progress Report (if required); (9) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action within twenty (20) business days of receipt, stating the basis for rejection. Payments shall be made within forty-five (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.

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. 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 section 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 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 succeeding Fiscal Years, the District shall so notify Recipient and this Agreement shall be deemed terminated for convenience five (5) 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 (3) business days prior written notice to the other party. Written notice of change of address shall be provided within five (5) 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; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

DISTRICT

Derek Busby, Project Manager
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177
(386) 329-4459
E-mail: dbusby@sjrwmd.com

RECIPIENT

Neal Shinkre, Project Manager
St. Johns County Utility Department
P.O. Box 3006
St. Augustine, Florida 32085
(904) 209-2709
E-mail: nshinkre@co.st-johns.fl.us

- (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, and may approve minor deviations in the Project that do not affect the District cost-share or Completion Date or otherwise significantly modify the terms of the Agreement.

9. **PROGRESS REPORTS AND PERFORMANCE MONITORING**

- (a) **Progress Reports.** Recipient shall provide to the District quarterly project update/status reports by September 1st, December 1st, March 1st and June 1st of each year. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by District's Project Manager and Recipient, and may include emails, memos, and letters. In addition to quarterly reports, Recipient shall provide the District an annual report regarding the efforts being made and accomplishments in obtaining customer agreements to accept reclaimed water. The report shall include, at a minimum: (1) an overview of the status of the connection of new customers to the reclaimed water system being constructed as part of the Work; (2) the capacity of those connections; (3) the estimated amount of reclaimed water use by these customers; (4) the amount of nitrogen reduction accomplished as a result of this reclaimed water use; (5) any problems or issues encountered and what Recipient plans to do to resolve them; and (6) any significant changes in the Work as originally planned.
- (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. **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 Completion Date 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.
- (c) This paragraph shall survive the termination or expiration of this Agreement.

11. **TERMINATION**

- (a) **Termination for Default.** If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the District shall provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have thirty (30) days to cure the breach. If Recipient fails to cure the breach within the thirty (30) day period, the District shall issue a Termination for Default Notice and this Agreement shall be terminated upon receipt or said notice. In such event, Recipient shall refund to the District all funds provided to Recipient pursuant to this Agreement within thirty (30) days of such termination. The District may also terminate this Agreement upon ten (10) days written notice in the event any of material misrepresentations in the Project Proposal.
- (b) **Termination for Convenience.** The District may terminate this Agreement at any time for convenience upon sixty (60) calendar days prior written notice to Recipient. Upon receipt of notice, Recipient shall place no further orders for materials, equipment, services, or facilities, for which reimbursement would otherwise be sought. Recipient shall also make every reasonable effort to cancel, upon terms satisfactory to the District, all orders or subcontracts related to the Project for which reimbursement would otherwise be sought. In the event of such termination, Recipient shall be compensated for all work performed pursuant to this Agreement prior to the effective date of termination.

ADDITIONAL PROVISIONS (Alphabetical)

12. **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.
13. **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 three (3) 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; (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; and/or (4) Recipient has received more than 100% contributions through cumulative public agency cost-share funding.

14. **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.
15. ~~**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 (10) 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 (10) 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.~~
16. **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.
17. **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 Duval 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.
18. **INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent entities 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 and tax laws pertaining to Recipient, its officers, agents, and employees.
19. **INTEREST OF RECIPIENT.** Recipient certifies that no officer, agent, or employee of the District has any material interest, as defined in chapter 112, 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.
20. **NON-LOBBYING.** Pursuant to section 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.
21. **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 activities 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.

22. **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 material related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.
23. **RESERVATION OF REDUCTION CREDITS AND INELIGIBILITY FOR MEETING BMAP ALLOCATION(S)**
- (a) When District *ad valorem* funds are provided, it is understood that the District intends to reserve a percentage of the total Water Quality Trading Credits (WQTCs) achieved through efforts funded under this Agreement based on its prorated share of the project costs in order to further accomplish its objectives in improving the water quality of the Lower St. Johns River. The calculation of the District's share of the reduction amount is based on the District's relative *ad valorem* contribution to the total project cost. Total project costs include the sum of total construction and non-construction capital costs. Construction costs are the sum of construction costs, land or right-of-way acquisition costs, and excludes operation and maintenance costs. Non-construction capital costs include contingency, engineering design, permitting, and administration directly associated with the construction of the facilities.
 - (b) The WQTC reservation applies only to *ad valorem* funds. Such reduction credits will not accrue to the Recipient and shall not be available for TMDL compliance or for sale as water quality credits to other entities. Credits generated by portions of the Work supported by other state funds, e.g. legislative funding, shall be available to the Recipient according to conditions established by the Florida Department of Environmental Protection.
 - (c) Arbitration. The parties shall negotiate in good faith to develop a methodology for allocating WQTCs between the parties pursuant to the general principles described above. In the event the parties are unable to reach agreement within 90 days after a WQTC program becomes effective, the parties may elect to submit the matter to arbitration before the American Arbitration Association by a group of three arbitrators. Each party shall select one arbitrator and shall mutually agree upon a third arbitrator. In the event the parties cannot so agree, the arbitrators selected by the parties shall select the third arbitrator. The parties shall share equally in the costs of arbitration. The decision reached by the arbitrators shall be binding upon the parties and shall be enforceable in accordance with Florida law.
24. **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.

25. **WATER CONSERVATION**

- (a) **Water Conserving Rate Structure.** A Recipient receiving funding through this Agreement that operates a public water supply utility must develop a rate structure for water customers in its service area that will: (1) promote the conservation of water; and (2) promote the use of water from available alternative water supplies. Recipient, if operating a public water supply utility, acknowledges that it either has a water conserving rate structure in effect or will implement a water conserving rate structure within nine months after the Effective Date. Failure to comply with this paragraph constitutes a material breach that shall constitute a failure to complete the Project.
- (b) **Landscape Irrigation.** Within 180 days of the effective date of this Agreement, Recipient shall enact an amended landscape irrigation ordinance that fully implements the landscape irrigation provisions in District Rule 40C-2.042(2), Florida Administrative Code, including adequate enforcement mechanisms, and that does not in any other manner regulate the consumptive use of water. Within 270 days of the effective date of this Agreement, Recipient shall rescind any other ordinance provision that regulates or purports to regulate the consumptive use of water. The District may extend the applicable time periods upon a showing of good cause, which determination shall be made by the District in its sole discretion and judgment. In order to ensure that Recipient meets the requirements of this paragraph, Recipient shall submit the draft ordinance to the District's Project Manager for the District's review not less than 30 days prior to the first reading of the ordinance, with a copy to the District's Governmental Affairs Manager, Office of Communications and Governmental Affairs, 4049 Reid Street, Palatka, FL 32177-2529. Failure to comply with this provision shall constitute a material breach 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, 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

ST. JOHNS COUNTY UTILITY
DEPARTMENT

By: _____
Kirby B. Green III, Executive Director

By: _____

Typed Name and Title

Date: _____

Date: _____

APPROVED BY THE OFFICE
OF GENERAL COUNSEL

Attest: _____

Stanley J. Niego, Sr. Assistant General Counsel

Typed Name and Title

Attachments:

Attachment A - Statement of Work

Cost-share: LSJRB Reuse and Treatment
Last updated: 2-25-10

Attachment A Statement of Work
Cost Share Agreement with St. Johns County Utility Department for the Lower St. Johns River
Basin Reuse and Treatment Project – Reclaimed Water Project

I. Introduction/Background

The District has established Lower St. Johns River (LSJR) pollutant load reduction goals and the Florida Department of Environmental Protection has adopted nutrient Total Maximum Daily Loads (TMDLs). In response to these regulatory initiatives, the District has been working toward facilitating efficient and cost effective efforts to exceed the minimum nutrient reductions required by the TMDL allocations. Reducing nutrient discharges to below TMDLs levels will help assure the sustainable future health of the LSJR.

During project evaluations, the District established the LSJR Reuse and Treatment Project to create additional opportunities to significantly reduce nutrient loading to the LSJR from treated wastewater through District-based cost-share agreements to increase the reuse of reclaimed water. This comprehensive project shall reduce nitrogen loading to the LSJR while helping to meet long-term water supply needs.

II. Objectives

1. Replace a portion of the potable groundwater demand with reclaimed water to help meet long-term water supply needs.
2. Reduce wastewater effluent discharges to the LSJR to reduce nutrient loadings in excess of the TMDL allocations.
3. Improve reclaimed water quality treatment to achieve a nitrogen concentration below the minimum TMDL nitrogen allocation where reclaimed water cannot be fully reused.

III. Scope of Work

St. Johns County Utility Department (SJCUD) shall manage the engineering and construction of the reuse and treatment project scheduled for construction in Fiscal Year (FY) 2012. The design and permitting is scheduled to commence in FY 2011. This Scope of Work is to provide additional co-funding for enhancing the reuse system associated with the provision of reclaimed water from the Northwest Wastewater Treatment Facility (NWWWTF). The NWWWTF, located approximately one (1) mile north of International Golf Parkway (IGP) along the proposed CR 2209, is anticipated to start construction in FY 2011 and be completed by FY 2013. The proposed project shall consist of constructing a reclaimed water transmission line from the intersection of International Golf Parkway (IGP) and CR 2209, along IGP, to the Palencia Golf Course, located approximately one mile east of Highway U.S 1. The overall length of the reclaimed water main is approximately 6.5 miles.

The NWWWTF will be a state-of-the art advanced wastewater treatment plant (AWT) with a 5-stage bardenpho process capable of reducing total nitrogen and phosphorus below 3 mg/l and 1 mg/l, respectively. The facility is designed for a 100% reclaimed water provision including a 2 million gallon reclaimed water storage tank, high service reclaimed water pumps with variable frequency drives, high end filtration and UV disinfection. The facility is designed to provide 3.0 million gallon per day (mgd) average annual daily flow (AADF) of reclaimed water.

The implementation of the reclaimed water projects is a long-term investment and it may take years for customers to use the full capacity of the system. The project in this Statement of Work (SOW) shall produce and reuse an estimated 1.0 mgd of new reclaimed water by the end of FY 2020, as well as reduce the amount of Total Nitrogen (TN) discharged to the St. Johns River by an estimated 10,000 pounds per

year. Depending on growth, the capacity of the system at build out is expected to be about 2.0 mgd and be able to reduce loadings by 20,000 pounds per year. The project will also reduce use of Floridian Aquifer Ground Water by approximately 0.5 mgd per day by the end of FY 2020. Additionally, this project will help the SJCUD achieve their "zero effluent discharge" goal from the Northwest Facility faster than originally planned. The proposed project allows the County to further enhance their reclaimed water transmission to new customers and limit effluent discharges to the St. Johns River well below that provided for in the Basin Management Action Plan.

This Statement of Work is for the projects listed above. Additional projects and/or phases may be funded in future years and will be initiated by a contract amendment or a separate agreement. The components of these projects shall include the installation of reclaimed water mains, treatment systems (directly associated with reclaimed water, such as UV, filtration, augmentation, etc.), storage, pumping and associated improvements.

IV. Task Identification, Project Time Frames and Deliverables

SJCUD shall be responsible for the following: (this is pretty standard language but if you see anything that warrants discussion please let me know.)

- Obtaining project final design, construction plans and specifications
- Providing a copy of SJCUD's executed construction contract documents to the District's project manager
- Scheduled construction implementation of projects described in Scope of Work
- Providing copies of any subsequent change orders to the contract to the District's project manager
- Obtaining all required permits, including right of access to the project sites, related to project construction and subsequent operation of the systems
- Compliance with all permits
- Procurement for project construction
- Supervision and inspection of construction
- Construction contract administration
- Timely submittal of invoices in accordance with this Agreement to enable proper review by the District's Project Manager prior to payment authorization.
- Progress reports to the District's project manager identifying project progress to date, key milestones reached, overall project schedule versus time for project completion, key issues to be resolved, project time and projected costs versus actual cost to date.
- Certification of construction completion by a Professional Engineer registered in the State of Florida
- Compliance with cost accounting practices and procedures required for reimbursement of funds expended for the District's Lower St. Johns River Basin Reuse and Treatment Project.

V. Project Budget

Construction is scheduled to start in FY 2012 and projected to be completed by FY 2014. The Agreement is subject to annual modifications agreed upon by both the SJRWMD and Recipient. Total Project cost for this SOW is estimated to be \$ 44,000,000. The total estimated reuse related project costs are \$8,300,000. The District contribution shall not exceed \$3,000,000 or 50% of the actual construction costs, whichever is less.

VI. Milestones

Progress shall be measured by the percent of construction completed on each project and the amount of reclaimed water in use.

1. Milestone 1- Request of Qualifications for Engineering Services for the project shall be advertised by Oct 2010 and completed by Dec 2010. By Dec 2011 survey and engineering design will be complete.
2. Milestone 2- by July 2012 project will be bid and notice to proceed for award of construction will be by Dec 2012
3. Milestone 3- by June 2014, project will be constructed. Approximately 0.75 mgd or 37% of the reclaimed water from the project will be utilized.
4. Milestone 4- by December 2020 approximately 1 mgd or 50% of the reclaimed water will be utilized.
5. Milestone 5- December 2025 100% of the reclaimed water will be utilized.

The goals set forth for project completion and removal of reclaimed water and nutrients from the St. Johns River are based on Recipient's best good faith estimate. Should it be shown that Recipient's inability to meet said goals is beyond its control, then Recipient is under no obligation to pursue any other action to achieve said goals.

VII. Construction Cost Estimate

A construction cost estimate for the various sub-projects included in the St. Johns County Utility Department portion of the Lower St. Johns River Reuse and Treatment Project:

Sub-Projects	Construction Cost Estimate	
	SJCUD	SJRWMD
NWWWTF construction to AWT	\$32,700,000	0
Reclaimed Water Project Survey & Engineering	\$750,000	0
Filtration & high end disinfection at WWTP	\$1,000,000	0
MG reclaimed water tank & Pumping Station	\$2,300,000	0
24" reclaimed water main from WWTP to IGP	\$1,000,000	0
Construction Management	\$250,000	0
Approximately 6.5 miles of Reclaimed Water Main	\$3,000,000	\$3,000,000
TOTAL	\$41,000,000	\$3,000,000

