

RESOLUTION NO. 2014- 138

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A COST SHARE AGREEMENT ON BEHALF OF THE COUNTY WITH THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT RELATING TO THE ENGINEERING ALTERNATIVES ANALYSIS FOR PARKER CANAL IN THE ELKTON DRAINAGE DISTRICT AND AMENDING THE FISCAL YEAR 2014 ENGINEERING BUDGET IN ORDER TO RECEIVE UNANTICIPATED REVENUE AND AUTHORIZE ITS EXPENDITURE BY THE TRANSPORTATION CAPITAL PROJECTS DEPARTMENT.**

**RECITALS**

**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 has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the management of the water resources; 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"); and

**WHEREAS**, The project will include the completion of a basis of design memorandum that will provide information that will characterize the cost/benefit relationship distribution for a range of facility sizes to assist the District and County with determining an appropriate facility size relative to the project goals; and

**WHEREAS**, these revenues were not anticipated during preparation of the 2014 Fiscal Year budget; and

**WHEREAS**, the recognition of these funds as current year revenue is required to enable their appropriation to pay for the scope of work as identified in the Cost Share Agreement with the St. Johns River Water Management District:

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute the Subgrant Agreement on behalf of the County for the purposes mentioned above.

Section 3. The Clerk is instructed to have four (4) copies of the original Contract executed and mailed to The St. Johns River Water Management District, 4049 Reid Road, Palatka, Florida 32177, attention: Pam Livingston.

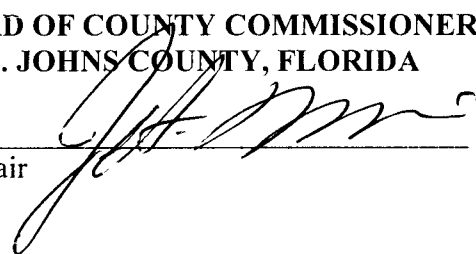
Section 4. The Transportation Trust Fund revenue and the Public Works Department expenditures shall be adjusted to account for unanticipated funds in the amount of \$78,215.78 from the St. Johns River Water Management District.

Section 5. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 20<sup>th</sup> day of May, 2014.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

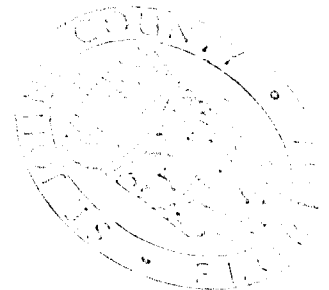
By: \_\_\_\_\_  
Chair



**ATTEST:** Cheryl Strickland, Clerk

By: Pam Halteman  
Deputy Clerk

**RENDITION DATE** 5/22/14



**AGENCY COST-SHARE AGREEMENT  
BY AND BETWEEN THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT  
AND ST. JOHNS COUNTY BOARD OF COMMISSIONERS FOR  
ENGINEERING ALTERNATIVES ANALYSIS FOR PARKER CANAL  
IN THE ELKTON DRAINAGE DISTRICT OF ST. JOHNS 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 ST. JOHNS COUNTY BOARD OF COMMISSIONERS, whose address is Engineering Division, 2740 Industry Center Road, St. Augustine, Florida 32084 ("Recipient"). 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 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 District has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the management of the water resources.

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

The District is committed to ensuring adequate water supplies and protecting groundwater-dependent natural systems in partnership with key stakeholders. The District endeavors to support the development of water resource development and alternative water supply projects with the purpose of ensuring sustainable water supplies for Florida and its citizens. Often, these projects provide multiple benefits including improvement of surface water quality.

The Recipient is implementing projects to meet the majority of its nutrient-load-reduction obligations. Construction of a regional stormwater treatment facility to treat water from Parker Canal may cost-effectively meet the Recipient's final remaining obligations under the Lower St. Johns River Basin Management Action Plan. An initial analysis, based on currently available information, indicated that the potential reduction in nutrient load from Parker Canal should more than meet the Recipient's needs. The District is providing funding to assist the Recipient in the construction of an expanded regional stormwater treatment facility to achieve greater load reduction than the County's current obligations.

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 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 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. 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.
- (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. 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 Attachment A — Statement of Work. 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 49.5% of the total cost of the Project, but in no event shall the District cost-share exceed \$78,215.78. 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) **In-Kind Services.** Recipient agrees to provide \$79,973.22 in the form of in-kind services for the Project, as further described in the Statement of Work, which shall count toward Recipient's cost-share obligation.

5. **PAYMENT OF INVOICES**

- (a) Recipient shall submit one invoice upon successful completion of the Project 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. It shall include a copy of contractor and supplier invoices to Recipient and proof

- of payment. Recipient shall be reimbursed for approximately 49.5% of approved costs or the not-to-exceed sum of \$78,215.78, whichever is less. The District shall not withhold any retainage from this reimbursement. If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.
- (b) **As a part of the invoice, the District will also reimburse Recipient for costs incurred prior to the Effective Date in an amount equal to the contract amount upon submittal of supporting documentation.**
- (c) **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.
- (d) **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.**
- (e) 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); in addition, see Attachment B, "Contract Payment Requirements For State-Funded Cost Reimbursement Contracts;" (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 20 business days of receipt, stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice.
- (f) **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.
- (g) **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.

(h) **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. 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 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; (4) e-mail or, (5) fax. 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 or fax are deemed delivered on the date transmitted and received.

DISTRICT

Pam Livingston, Project Manager  
St. Johns River Water Management District  
4049 Reid Street  
Palatka, Florida 32177  
Phone: (386) 329-4426  
E-mail: [plivings@sjrwmd.com](mailto:plivings@sjrwmd.com)

RECIPIENT

Greg Caldwell, Project Manager  
St. Johns County, Engineering Division  
2740 Industry Center Road  
St. Augustine, Florida 32084  
Phone: (904) 209-0132  
E-mail: [gcaldwell@sjcfl.us](mailto:gcaldwell@sjcfl.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. The District's Project Manager may issue a District Supplemental Instruction (DSI) form, Attachment C, to authorize minor changes in the Project that the parties agree are not inconsistent with the purpose of the Project, 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 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. Reports may be submitted in any form agreed to by District's Project Manager and Recipient, and may include emails, memos, and letters.
- (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. **TERMINATION.** 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 30 days 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 and this Agreement shall be terminated upon receipt of said 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 any of material misrepresentations in the Project Proposal.

**ADDITIONAL PROVISIONS (Alphabetical)**

11. **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.

**12. 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 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 one 100% contributions through cumulative public agency cost-share funding.

13. **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.
14. **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.
15. **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.
16. **FLORIDA SINGLE AUDIT ACT**
  - (a) **Applicability.** The Florida Single Audit Act (FSAA), section 215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in section 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 \$500,000 in any fiscal year of such Recipient, Recipient must have a state single or project-specific audit for such fiscal year in accordance with section 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 \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of section 215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with section 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 state of Florida, Department of Environmental Protection, in the amount of \$78,215.78. Funding is provided under the state of Florida Ecosystems Management Trust Fund. The Florida Catalog of Financial Assistance (CSFA) number for this program is CSFA No. 37.039. The District is providing a funding match of \$0.00.
  - (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>, Division 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 section 215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by section 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, Mr. Greg Rockwell, Director, Division of Financial Management, 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 section 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.

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 CONTRACTOR.** The Recipient is an independent contractor. Neither Recipient nor Recipient's employees are employees or agents of the District. Recipient controls and directs the means and methods by which the Work 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 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.
22. **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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
23. **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.
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.

**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  
BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
Hans G. Tanzler III, Executive Director or Designee

By: \_\_\_\_\_  
\_\_\_\_\_  
Typed Name and Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legality

Attest: \_\_\_\_\_

\_\_\_\_\_  
Assistant General Counsel  
SJRWMD

\_\_\_\_\_  
Typed Name and Title

**ATTACHMENTS**

- Attachment A — Statement of Work
- Attachment B — Contract Payment Requirements for State-Funded Cost Reimbursement Contracts
- Attachment C — District Supplemental Instruction Form

Cost-share: Agency general  
Last updated: 10-25-13

**ATTACHMENT A — STATEMENT OF WORK**  
**ENVIRONMENTAL ALTERNATIVES ANALYSIS**  
**FOR PARKER CANAL IN THE ELKTON**  
**DRAINAGE DISTRICT OF ST. JOHNS COUNTY**

**I. Introduction/Background**

The District is committed to ensuring adequate water supplies and protecting groundwater-dependent natural systems in partnership with key stakeholders. The District endeavors to support the development of water resource development and alternative water supply projects with the purpose of ensuring sustainable water supplies for Florida and its citizens. Often, these projects provide multiple benefits including improvement of surface water quality.

The District has established Lower St. Johns River (LSJR) pollutant load reduction goals and the Florida Department of Environmental Protection (FDEP) has adopted 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 TMDL levels will help assure the sustainable future health of the LSJR.

This project is a preliminary investigation to determine project feasibility of a water supply project located on the Parker Canal in the Elkton Drainage District and to develop and evaluate alternatives for a water supply project that will also reduce nitrogen and phosphorous loadings to the LSJR.

**II. Objectives**

- Develop and evaluate four water supply project alternatives within the 3,700- acre drainage area of the Parker Canal.
- Evaluate the potential of these four alternatives for treating agricultural runoff entering the LSJR from Parker Canal that will assist St. Johns County in meeting nutrient reduction requirements associated with the LSJR TMDL. (One alternative will be for the minimum pond needed to meet the County's TMDL requirement.)

**III. Scope**

St. Johns County is implementing projects to meet the majority of its nutrient-load-reduction obligations. Construction of a regional stormwater treatment facility (RST) to treat water from Parker Canal may cost-effectively meet the County's final remaining obligations under the LSJR Basin Management Action Plan (BMAP). An initial analysis based on currently available information indicated that the potential reduction in nutrient load from Parker Canal could more than meet the County's needs. Further work is under way to evaluate stormwater design sizing and cost to meet nutrient reduction obligations. The County has contracted with Jones Edmunds and Associates to perform this work.

The District desires to examine the possibility of collaboratively funding an alternative water supply project in this area that can also assist the County with achieving greater load reductions than the County's current obligations. The project would assist the state with meeting agricultural load-reduction requirements in the BMAP and may provide additional load reductions beyond the TMDL requirements as well as possibly serving as a stormwater harvesting system. The District and County shall jointly negotiate the BMAP/TMDL credits prior to the initiation of construction on the Parker Canal RST.

The following 303(d) water bodies are affected by this project:

- Lower St. Johns River (WBID 2213 A, B, C, D, E, F, G, H, and I), impaired for Dissolved Oxygen and Nutrients
- The County will prepare a Basis of Design Memorandum (BDM). The BDM will provide estimates of the potential water yield and construction costs for up to four stormwater harvesting scenarios. This information will characterize the cost/benefit relationship distribution for a range of facility sizes to assist the District with determining an appropriate facility size relative to water supply goals. While data do not currently exist to support an optimization analysis, the BDM will present estimates of potential demands based on existing data or literature values. Potential uses for the harvested water include row crop irrigation, silvicultural irrigation, and utility consumption for operations. Additionally, the BDM will provide a provide conceptual level design information, estimated costs, and estimated load reductions for an RST system designed to meet St. Johns County's nutrient-load-reduction
- Summary of investigation efforts
- Description of each project component
- Summary of modeling performed to support the BDM for each component
- Summary of the water quality data used for estimating project nutrient loading to support the BDM for each project component
- Basis of design to be applied in detailed design of each project component
- Conceptual layout for each project component
- Discussion of the water supply potential of the RST
- Opinion of probable project costs, which will be based on the best information available at the time of preparing the BDM and costs for similar projects completed in St. Johns County over the last five years — approximate costs for stormwater harvesting and chemical treatment systems will be estimated from similar systems installed in Florida. Given the uncertainty in project location and final project goals, the uncertainty in opinion of probable costs could range from 30% to 50%.
- Discussion of potential issues that may occur during the preliminary engineering and recommendations for resolving these unforeseen issues

#### *Assumptions and Exclusions*

- The RST Evaluation will be based on a single site selected by the County to be towards the downstream end of Parker Canal and agreed to by the District. Assumptions based on this site may not be valid if another site is eventually purchased for the RST.
- Limited topographic survey of Parker Canal is included in this Statement of Work
- No geotechnical analysis is included in this Statement of Work
- No wetland surveys are included in this Statement of Work
- Development of design drawings and specifications is not included in this Statement of Work
- Archaeological studies are not included in this Statement of Work
- Stormwater harvesting demands will be estimated. Actual stormwater harvesting demands may vary from the estimate.

#### **IV. Project Budget and Schedule**

The District acknowledges that the County is currently working on its BDM. The District's cooperative funding contribution provided through this Agreement is associated with its involvement as a stakeholder in this project and is contingent on the County's completion of the BDM with the District's input.

The District will provide \$78,215.78 toward the completion of the BDM as defined by this Statement of Work. Preliminary RST sizing and cost estimates will be provided to the District for evaluation. District staff will work with County staff to evaluate preliminary scenarios of RST sizing and cost. The County must submit the completed draft BDM (in electronic form) to the District by June 30, 2014, unless extended by the District. District staff will review the draft BDM and provide comment. The County must submit the completed final BDM to the District by July 30, 2014, unless extended by the District. A one time final payment will be made to the County after the final deliverables have been received by the District.

##### *Deliverables:*

- The County shall submit five (paper) copies of the BDM Final Report to the District along with their final invoice.

#### **V. Milestones**

Note: Milestones may shift due to weather.

- Milestone 1: Draft BDM — June 30, 2014
- Milestone 2: Final BDM — July 30, 2014

**ATTACHMENT B — 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 section 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, Fla. Admin. Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in section 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](http://www.fldfs.com/aadir/reference_guide.htm)

**ATTACHMENT C — DISTRICT'S SUPPLEMENTAL INSTRUCTIONS (sample)  
DISTRICT SUPPLEMENTAL INSTRUCTIONS#**

DATE:

TO:

FROM: Pam Livingston, Project Manager

CONTRACT NUMBER: 27918

CONTRACT TITLE: Engineering Alternatives Analysis for Parker Canal in the Elkton Drainage District of St. Johns County

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 changes to the work as consistent with the Contract Documents and return to the District's Project Manager.

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

**Contractor's approval: (choose one of the items below):**

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
St. Johns County

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

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

(Contractor 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: \_\_\_\_\_  
Pam Livingston, District Project Manager

Acknowledged: \_\_\_\_\_ Date: \_\_\_\_\_  
Madeline Northcutt, District Contracts Administrator

c: Contract file  
Financial Management