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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

1/17/2023

BCC MEETING DATE

TO: Hunter S. Conrad, County Administrator

DATE: December 22, 2022

FROM: Colin Groff, Utility Director

PHONE: 904 209-2703

SUBJECT OR TITLE: First Amendment to Cost Participation Agreement No. 2 for Construction and Operation and Maintenance of the Black Creek Water Resource Development Project.

AGENDA TYPE: Consent Agenda, Resolution

BACKGROUND INFORMATION:

The County entered into a Cost Participation Agreement with the St Johns River Water Management District (SJRWMD) to help fund Construction and Operation of the Black Creek Water Resource Development Project in exchange to meet requirements related to the Lake Brooklyn and Lake Geneva Minimum Flows and Levels regulations (Resolution 2021-293). The SJRWMD has proposed the attached First Amendment to this agreement to delay the second payment defined in this agreement (due 11/1/22) by one year (to 11/1/23) to allow the final construction costs to be accounted for with this payment. The County’s obligation to construction costs for this second payment are limited to \$712,111 according to Section 5 of the original agreement, however costs may be reduced pending final construction costs from the SJRWMD.

1. IS FUNDING REQUIRED? Yes

2. IF YES, INDICATE IF BUDGETED. Yes

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:

INDICATE FUNDING SOURCE: 4409-58100 (Utilities Admin-Aid to Govt Agencies) \$921,664 budgeted in FY23. If approved, funding will be carried forward into FY24.

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to adopt Resolution 2023-___, approving the terms, conditions, provisions, and requirements of the First Amendment to Cost Participation Agreement No. 2 for Construction and Operation and Maintenance of the Black Creek Water Resource Development Project between St. Johns County and the St. Johns River Water Management District; and authorizing the County Administrator, or designee, to execute the First Amendment on behalf of the County.

For Administration Use Only:

Legal: BB 12/22/2022

OMB: LF 12/28/2022

Admin: Brad Bradley 1/3/2023

RESOLUTION NO. 2023-_____

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE FIRST AMENDMENT TO COST PARTICIPATION AGREEMENT NO. 2 FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE BLACK CREEK WATER RESOURCE DEVELOPMENT PROJECT BETWEEN ST. JOHNS COUNTY AND THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT; AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE FIRST AMENDMENT ON BEHALF OF THE COUNTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the St. Johns River Water Management District (SJRWMD) and the Suwannee River Water Management District (SRWMD) are undertaking and continuing water supply planning processes using growth projections, groundwater and resource impact models, and other technical tools that will affect local governments and utilities throughout the region and specifically developing Minimum Flow Levels (MFL) Prevention and Recovery Plans that local governments and utilities may be a participant; and

WHEREAS, as approved by St. Johns County Resolution No. 2021-293, St. Johns County have executed a Cost Participation Agreement No. 2 with SJRWMD to address obligations associated to the Lake Brooklyn and Lake Geneva MFL Prevention and Recovery Plan; and;

WHEREAS, the SJRWMD has proposed the First Amendment to this Agreement, attached hereto as Exhibit A, to delay the defined second payment by one year to allow for the final true construction costs to be accounted; and

WHEREAS, the County has determined that executing the First Amendment to Cost Participation Agreement No. 2 serves 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, conditions, provisions, and requirements of the First Amendment to Cost Participation Agreement No. 2 for Construction and Operation and Maintenance of the Black Creek Water Resource Development Project between St. Johns County and the St. Johns River

Water Management District, and authorizes the County Administrator to execute the First Amendment in substantially the same form and format attached.

Section 3. To the extent that there are scrivener, typographical, 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 ___ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

By: _____
Christian Whitehurst, Chair

Attest: Brandon J. Patty,
Clerk of the Circuit Court & Comptroller

By: _____
Deputy Clerk

FIRST AMENDMENT TO COST PARTICIPATION AGREEMENT NO. 2
FOR CONSTRUCTION AND OPERATION AND
MAINTENANCE OF THE BLACK CREEK
WATER RESOURCE DEVELOPMENT PROJECT

THIS AMENDMENT is entered into as of this _____ day of January, 2023, by and between St. Johns County (COUNTY), whose address is 500 San Sebastian View, St. Augustine, Florida 32084-8686, and the St. Johns River Water Management District, a special taxing district created by Chapter 373, Florida Statutes, (the District), whose address is 4049 Reid Street, Palatka, Florida 32177-2529.

RECITALS

A. On July 28, 2021, the District and COUNTY entered into COST PARTICIPATION AGREEMENT NO. 2 FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE BLACK CREEK WATER RESOURCE DEVELOPMENT PROJECT (the Agreement).

B. Among other things, the Agreement contemplates that COUNTY would participate financially in the construction, operation, and maintenance of the Black Creek Water Resource Development Project (Black Creek WRD) and make payment in two parts. COUNTY has already completed the first part of its payment, which was due by November 1, 2021, for construction, operation, and maintenance. The Agreement currently requires the second payment by “no later than November 1, 2022.” However, the Agreement also contemplates that the District would first determine the final award for the construction bid for the Black Creek WRD, and based on that bid award, within 30 days thereafter, the District would notify COUNTY of the final construction cost per 0.1 feet of lift and notify COUNTY of the dollar amount of the remaining portion of the Black Creek WRD cost COUNTY must pay the Escrow Agent.

C. The District has been proceeding with the Project in three construction phases: (1) the pump station and intake structure at Black Creek, (2) the pipeline along State Roads 16 and 21, and (3) a treatment system/recharge location. At its July 2022 meeting, the Governing Board approved the Wharton-Smith bid of approximately \$15.9 million for the construction of the first phase of the Project (the pump station and intake structure at Black Creek). At its September 2022 meeting, the Governing Board approved the DBE Management LLC bid of \$38,813,100 for the second phase of the Project (construction of the pipeline). With the supplemental work and pipe escalation allowances, the awarded contract will have a total not-to-exceed amount of \$41,313,100, which came in below the District's construction cost estimate for the second phase.

D. Since the District still has one construction element left to bid, which will not be awarded until early 2023, and the second construction phase cost came in below the District's construction cost estimate, the District believes it would be in the best interests of both parties to delay the second payment for a year (until November 1, 2023), to allow the District to provide COUNTY with a more precise cost per 0.1 foot of recovery purchased.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the District and COUNTY agree as provided herein.

1. The recitals set forth above are incorporated herein by reference and made a part hereof as fully as if set forth herein verbatim.

Extension of Deadlines

2. Within 30 days after determining the cost of the third construction phase of the Project and by no later than October 1, 2023, the District will notify COUNTY of the final construction cost per 0.1 feet of lift and notify COUNTY of the dollar amount of the remaining portion of the Black Creek WRD cost COUNTY must pay the Escrow Agent.

3. By no later than November 1, 2023, COUNTY will pay, deposit, and deliver, in escrow, to the Escrow Agent, the remaining amount of COUNTY's construction cost payment. By no later than November 1, 2023, COUNTY will also pay to the escrow agent the remaining operation and maintenance payment amount of \$ 209,552.

4. These time extensions are not intended to change any substantive terms regarding cost methodologies.

5. Except as amended herein, the terms and conditions of the Agreement shall remain unchanged and will continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the dates set forth below.

[SIGNATURES ON FOLLOWING PAGES]

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

By: _____
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty, Clerk of the
Circuit Court and Comptroller

By: _____

Approved as to Form and Legality
St. Johns County Office of General Counsel

By: _____

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT**

By: _____
Michael A. Register, P.E.
Executive Director

Attest: _____
Erin H. Preston
Interim General Counsel

(SEAL)

Approved as to Legal Form and Content:

Thomas I. Mayton, Jr., Deputy General Counsel

FILED on this _____ day of January, 2023.

District Clerk