
**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: First Amendment to the Agreement between the St. Johns River Water Management District and Seminole County for the Seminole County Midway Regional Stormwater and Recreational Facility, Phase I

DEPARTMENT: Public Works

DIVISION: Engineering

AUTHORIZED BY: Gary Johnson

CONTACT: Robert Walter

EXT: 5753

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a First Amendment to the Agreement (Contract #S1433AA) between the St. Johns River Water Management District and Seminole County for the Seminole County Midway Regional Stormwater and Recreational Facility, Phase I Project to extend the date of completion to August 18, 2009.

District 5 Brenda Carey

Jerry McCollum

BACKGROUND:

This project will construct a regional stormwater facility on the former Institute of Food and Agriculture Service site on Celery Avenue that will serve the Midway Drainage Basin and provide flood attenuation and water quality treatment prior to discharging to the St. Johns River. (Capital Improvement Project #00241701).

The funding for construction of Phase I will be provided by the Water Management District Cost-Share Agreements #SJ456AA for \$2,200,000 and #S1433AA for \$400,000. The primary agreement has a current expiration date of November 5, 2008. The smaller funding agreement was scheduled to expire on August 18, 2007. On August 15, 2007, the District executed an extension to August 18, 2009, which now needs to be executed by Seminole County.

STAFF RECOMMENDATION:

Staff recommends the Board approve and authorize the Chairman to execute a First Amendment to Agreement #S1433AA between the St. Johns River Water Management District and Seminole County for the Seminole County Midway Regional Stormwater and Recreational Facility, Phase I Project to extend the date of completion to August 18, 2009.

ATTACHMENTS:

1. Location Map
2. First Amendment-Midway Regional Stormwater & Recreational Facility Phase I
3. Cost Share Agreement - Contract #SJ456AA-Midway
4. Cost Share Agreement - Contract #SI433AA-Midway

Additionally Reviewed By:

County Attorney Review (Matthew Minter)



SCALE 1"=2000'

LAKE MONROE

MONROE CANAL

ST. JOHN'S RIVER

PROJECT AREA

MELLYNUE AVE

MOROUCHERED-TR.

CELERY AVE (CR-415)

SPES AVE

BEARDALL AVE

BRISSON AVE

SR-48

SANFORD MUNICIPAL AIRPORT



MIDWAY REGIONAL STORMWATER & RECREATIONAL FACILITY

LOCATION MAP

FIGURE D-3

Project No. 22001.10

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND SEMINOLE COUNTY FOR THE SEMINOLE COUNTY MIDWAY REGIONAL
STORMWATER AND RECREATIONAL FACILITY PHASE 1**

THIS AMENDMENT is entered into this _____ day of _____, 2007, 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 and SEMINOLE COUNTY ("County"), whose address is 520 West Lake Mary Boulevard, Suite 200, Sanford, FL 32773.

WHEREAS, the District and County entered into Agreement SI433AA on August 18, 2005, for the Seminole County Midway Regional Stormwater and Recreational Facility Phase 1; and

WHEREAS, the District and County desire to modify the Agreement.

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

1. **ARTICLE I – TERM, SCHEDULE AND TIME OF PERFORMANCE**: Paragraph A.2 shall be deleted and replaced with the following:

“2. **Completion Date.** The Completion Date of this Agreement shall be no later than August 18, 2009, unless extended by mutual written agreement of the parties. All Work under this Agreement shall be completed for use no later than the Completion Date.”

2. **ARTICLE III – COMPENSATION AND COST SHARE**: Paragraph A shall be deleted and replaced with the following:

“A. **District Funding.** The District agrees to reimburse County a sum in the amount not to exceed \$400,000 (the “Total Compensation”). If, at the completion of the project, County’s actual expenditure is less than the amount stated in the Project Budget, the District’s obligation shall be reduced proportionately. If County fails to satisfactorily implement the project, County shall return any funds reimbursed by the District.

Upon expenditure of at least \$800,000 by the County for work described in Exhibit A – County’s Program Application included in the original Agreement, County may, with prior approval of District’s Project Manager, submit an invoice for reimbursement of project costs not to exceed \$400,000 at the District’s discretion. Documentation may be submitted for expenditures prior to the effective date of this Agreement, but in no case shall the date of expenditure occur prior to November 9, 2004, the date the Governing Board approved the resolution to allow funds to be transferred to the Stormwater Cost Share Program. All required supporting

documentation shall be submitted in detail sufficient for a proper pre-audit and post-audit review.”

The District and County agree that all other terms and conditions of the original Agreement are hereby ratified and continue in full force and effect.

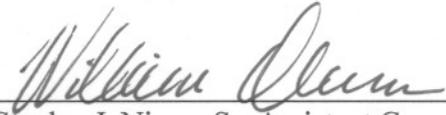
IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment on the date set forth below.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: 
Kirby B. Green III, Executive Director, or
Designee

Date: 8/15/07

APPROVED BY THE OFFICE
OF GENERAL COUNSEL


Stanley J. Niego, Sr. Assistant General Counsel
092304

SEMINOLE COUNTY

By: _____

Typed Name and Title

Date: _____

Attest: _____

Typed Name and Title

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY**

**MARYANNE MORSE, Clerk to the
Board of County Commissioners in
and for Seminole County, Florida.**

Carlton D. Henley, Chairman

Date: _____

As authorized for execution by the Board of
County Commissioners at their _____,
2007 regular meeting.

For Use and Reliance of Seminole County Only
Approved as to Legal Form and Sufficiency

County Attorney

**First Amendment to the Agreement between the
St. Johns River Water Management District and Seminole County
for the Seminole County Midway Regional Stormwater and Recreation Facility Phase I**

**COST SHARE AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND SEMINOLE COUNTY
FOR LAKE MONROE RESTORATION - MIDWAY REGIONAL STORMWATER FACILITY**

THIS COST SHARE 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 SEMINOLE COUNTY ("County"), a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, Florida 32771.

WITNESSETH THAT:

WHEREAS, the District is a special taxing district created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Fla. Stat., whose geographical boundaries encompass Seminole County; and

WHEREAS, the District has determined that its needs will be best served by entering into a Cost Share Agreement for services that can be provided by County (hereafter "the Work").

NOW THEREFORE, in consideration of the payments herein specified, and which the District agrees to make, County agrees to furnish and deliver all materials, to do and perform all work and labor required to be furnished and delivered, done and performed for Lake Monroe Restoration - Midway Regional Stormwater Facility, Contract #SJ456AA. County agrees to complete the Work in conformity with this Agreement and all attachments and other items specifically incorporated by reference are part of this Agreement as fully and with the same effect as if set forth herein.

This Agreement consists of the following documents, including all modifications incorporated therein before their execution: Agreement; Exhibit "A" - Statement of Work; Exhibit "B" - Comptroller's Memorandum; and all attachments hereto.

ARTICLE I - TERM, SCHEDULE AND TIME OF PERFORMANCE

- A. **Term.** The term of this Agreement shall be from the Effective Date to the Completion Date.
1. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last party to this Agreement has dated and executed the same; provided, however, that in the event a date other than the aforesaid is set forth below in this section, that date shall be the Effective Date.
 2. **Completion Date.** The Completion Date of this Agreement shall be no later than twenty-eight (28) months from the Effective Date hereof, unless extended by mutual written agreement of the parties. All Work under this Agreement shall be completed for use no later than the Completion Date.
- B. **Schedule of Work.** County shall commence the Work:
- Within fifteen (15) days after the Effective Date; or
 - Upon the issuance of a Notice to Proceed by the District; or
 - Within fourteen (14) days of issuance of a Work Order by the District; or

Within three (3) months after execution of the lease with the Florida Department of Environmental Protection for the Midway Regional Stormwater Facility site; or

On _____ (insert specific date).

This date shall be known as the "Commencement Date." County shall prosecute the Work regularly, diligently, and uninterruptedly so as to complete the Work ready for use in accordance with the Statement of Work and the time stated for completion therein. The time stated for completion shall include the final cleanup of the premises, as applicable. A fifteen (15) day period has been included in the allotted time for completion to allow for mailing of this Agreement and County's submission of any required submittals. County will not be allowed to commence the Work until any required submittals are received and approved.

- C. **Time is of the Essence.** The Commencement Date and Completion Date are essential conditions hereof. In addition, time is of the essence for each and every aspect of this Agreement. Where additional time is allowed for the completion of the Work, the new time limit shall also be of the essence.

ARTICLE II - STATEMENT OF WORK AND DELIVERABLES

- A. **Deliverables.** The Work is specified in the attached Statement of Work. County shall deliver all products and deliverables as stated therein. County is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. County shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, County shall provide and pay for all materials, labor, and other facilities and equipment as are necessary for the performance of the Work. The District's Project Manager shall make a final acceptance inspection of the deliverables when they are completed and finished in all respects in accordance herewith. The parties may at any time agree in the form of a written amendment to make changes within the general scope of this Agreement to the Work to be provided hereunder. Neither party shall unreasonably withhold consent to any such amendment.
- B. **Progress Reports.** County shall submit monthly progress reports to the District's Project Manager in a form approved by the project manager. The progress report shall provide an updated progress schedule, taking into account all delays, changes in the nature of the Work, etc. In addition to hard copies, all written deliverables (reports, papers, analyses, etc.) shall be submitted in machine-readable form in formats consistent with the District's standard software products. The District's standard office automation products include the Microsoft® Office Suite (Word, Excel, Access, and PowerPoint). Other formats may be accepted if mutually agreed upon by the District's Project Manager and chief information officer. Timely submittal of progress reports shall be a condition precedent to payment of invoices.
- C. **Ownership.** All deliverables are the property of the District, including Work that has not been accepted by the District, when County has received compensation, in whole or in part, for the performance of the Work. All specifications and copies thereof furnished by the District are District property. They shall not be used on other work and, with the exception of the original plans and specifications, shall be returned to the District upon request after expiration or termination of this Agreement. Any source documents or other documents, materials, reports, or accompanying data developed, secured, or used in the performance of this Agreement are District property and shall be safeguarded by County. The original documents or materials, excluding proprietary materials, as outlined in the Statement of Work, shall be provided to the District upon

the expiration or termination of this Agreement, or upon request. County shall include language in all subcontracts that so provides.

- D. **County Computer Codes.** If the existing computer codes required for the development of a model selected by County and necessary for use in completing the Work are deemed proprietary by the County, then County grants to the District and its assignees a non-exclusive license to use the proprietary computer model codes and agrees to indemnify and hold the District harmless from all costs, damages, and expenses, including attorney's fees, arising from any claim, right, or suit over the proprietary interests in the computer codes developed for the Work. Documentation of County's proprietary rights shall be provided to the District upon request. County's computer codes may be public records subject to the provisions of Section 119.07, Fla. Stat. If a third party seeks access to this proprietary information, the District shall notify County in writing of the request in order to give County the right to protect its proprietary interest. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto, and each party is subject to the provisions of Section 768.28, Fla. Stat., as amended.
- E. **District Computer Codes.** County shall not be entitled to claim any proprietary right to computer codes that are developed by County in fulfilling the requirements of the Work, which shall be considered "work for hire" under applicable copyright and/or patent law. Such computer codes, which constitute a Deliverable hereunder, are the sole and exclusive property of the District. The District may copyright or patent such computer codes in its own name to the full extent authorized by law.

ARTICLE III - COMPENSATION

- A. **Amount of Funding.** For satisfactory performance of the Work, the District agrees to pay County a sum in the amount not to exceed \$2,200,000 (the "Total Compensation").
- B. **In-Kind Services.** Through this Cost Share Agreement, County agrees to provide \$1,081,485 in the form of matching funds and in-kind services for this project. In the event project costs exceed this amount, County shall be responsible for providing and/or securing from other sources any additional funding required to complete the project.
- C. **Invoicing Procedure.** All invoices shall be submitted to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177. County shall submit quarterly itemized invoices based upon the actual portion of the Work performed and shall bill as per the budget contained in Exhibit A, attached hereto and by reference made a part hereof. The invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit review and shall comply with the document requirements described in the Comptroller's Memorandum, dated October 7, 1997, attached hereto and made a part hereof as Exhibit B to this Agreement.

All payment requests submitted by County shall include the following information:

1. Contract number
2. County's name and address (include remit address if necessary)
3. Name of District's Project Manager
4. Name of County's Project Manager
5. Cost data (utilize the appropriate method for payment request per the contract)
 - (a) Supporting documentation and copies of invoices if cost reimbursable
 - (b) Deliverables submitted and approved
 - (c) Project completion documentation
 - (d) Summary Sheet of all quarterly invoice costs and associated explanation for the costs

6. Progress Report (as per contract requirements)
7. Diversity Report (The report shall include company names for all women and minority-owned business enterprises (W/MBEs) and amounts spent with each at all levels. The report will also denote if there were no W/MBE expenditures.)

The above information and reports shall be submitted by County and approved by the District as a condition precedent to payment. Payment requests that do not correspond to the Project Budget or other requirements of this paragraph will be returned to County without action within twenty (20) business days of receipt and shall state the basis for rejection of the invoice. Payments for construction contracts shall be made within twenty-five (25) business days of receipt of an invoice that conforms to this Article. Payments for all other contracts shall be made within forty-five (45) days of receipt of an invoice that conforms to this Article.

- D. **Payments.** The District shall pay County one hundred percent (100%) of each approved invoice.
- E. **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 of County to make payments when due to subcontractors or suppliers for materials or labor; (3) the District's determination that the Work cannot be completed for the remaining or unpaid funds; (4) failure to maintain adequate progress in the Work; (5) damage to another contractor; or (6) 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.
- F. **Forfeiture of Final Payment.** County shall submit the final invoice to the District not later than 90 days after the District provides a written statement to County accepting all deliverables. COUNTY'S FAILURE TO SUBMIT THE FINAL INVOICE TO THE DISTRICT WITHIN THE TIME FRAME ESTABLISHED HEREIN SHALL BE A FORFEITURE OF ANY REMAINING AMOUNT DUE UNDER THE AGREEMENT.
- G. **Travel.** In the event the cost schedule for the Work includes travel costs, travel expenses must be submitted on District or State of Florida travel forms. The District shall pay County all travel expenses pursuant to the District's Administrative Directive 2000-02. Travel expenses shall not be considered additional compensation, but shall be drawn from the amount provided in the project budget.
- H. **Release.** Upon the satisfactory completion of the Work, the District will provide a written statement to County accepting all deliverables. Acceptance of the final payment shall be considered as a release in full of all claims against the District, or any of its members, agents, and employees, arising from or by reason of the Work done and materials furnished hereunder.

ARTICLE IV - LIABILITY AND INSURANCE

- A. Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof. In addition, each party is subject to the provisions of Section 768.28, Fla. Stat., as amended. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto.
- B. Each party shall also acquire and maintain throughout the term of this Agreement such general liability, automobile insurance, and workers' compensation insurance as required by their current rules and regulations.

ARTICLE V - FUNDING CONTINGENCY

This Agreement is at all times contingent upon funding, 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 (1) year are subject to annual appropriation of funds, in the sole discretion and judgment of the District's Governing Board, for each succeeding year. Should the Work provided for hereunder not be approved, in whole or in part, for funding by an external funding source, or the Governing Board in succeeding years, the District shall so notify the County, and this Agreement shall be deemed terminated for convenience in accordance with **TERMINATION FOR CONVENIENCE** five (5) days after receipt of such notice, or within such additional time as the District may allow.

ARTICLE VI - PROJECT MANAGEMENT

- A. **Project Managers.** The Project Managers shall be responsible for overall coordination, oversight, and management of the Work. The parties agree to the following persons being designated as Project Manager:

DISTRICT

Regina Lovings, Project Manager
 St. Johns River Water Management District
 4049 Reid Street
 Palatka, Florida 32177
 386-329-4819
 E-mail: rlovings@sjrwmd.com

COUNTY

Mark Flomerfelt, Project Manager
 Seminole County Public Works Division
 177 Bush Loop
 Sanford, Florida 32773
 407-665-5569
 E-mail: mflomerfelt@seminolecountyfl.gov

- B. **District Project Manager.** The District's Project Manager shall have sole and complete responsibility to transmit instructions, receive information, and communicate District policies and decisions regarding all matters pertinent to performance of the Work. The District's Project Manager shall have the authority to approve minor deviations in the Work that do not affect the Total Compensation or the Completion Date. County shall not make changes authorized by the District's Project Manager without issuance of a Change Order or a District's Supplemental Instructions (DSI) form (see Attachment 1) and approval by County. All supplemental instructions shall be incorporated into the Agreement. The District's Project Manager and, as appropriate, other District employees, shall meet with County when necessary in the District's judgment to provide decisions regarding performance of the Work, as well as to review and comment on reports.
- C. **Change in Project Manager.** Either party to this Agreement may change its project manager by providing not less than three (3) working days prior written notice of the change to the other party. The District reserves the right to request County to replace its project manager if said manager is unable to carry the Work forward in a competent manner or fails to follow instructions or the specifications, or for other reasonable cause.
- D. **Supervision.** County shall provide efficient supervision of the Work, using its best skill and attention.
- E. **Notices.** All notices to each party shall be in writing and shall be either hand-delivered or sent via U.S. certified mail to the respective party's project manager at the names and addresses specified

above. All notices shall be considered delivered upon receipt. Should either party change its address, written notice of the new address shall be sent to the other parties within five (5) business days. Except as otherwise provided herein, notices may be sent via e-mail or fax, which shall be deemed delivered on the date transmitted and received.

ARTICLE VII - TERMINATIONS

- A. **Termination for Default.** This Agreement may be terminated in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days written notice delivered by certified mail, return receipt requested, and (2) an opportunity to consult with the other party prior to termination and remedy the default.
- B. **Termination for Convenience.** This Agreement may be terminated in whole or in part in writing by the District, provided County is given: (1) not less than thirty (30) calendar days written notice by certified mail, return receipt requested, of intent to terminate, and (2) an opportunity for consultation prior to termination.
- C. If termination for County's default is effected by the District, any payment due to County at the time of termination shall be adjusted to cover all services, materials, and costs, including prior commitment incurred by the District, up to the termination date. If termination for the District's default is effected by County, or if termination for convenience is effected by the District, an equitable adjustment shall provide for payment of all services, materials, and costs, including prior commitment incurred by County, up to the termination date.
- D. Upon receipt of a termination action under paragraphs "A" or "B" above, County shall:
1. Promptly discontinue all affected work (unless the notice directs otherwise), and
 2. deliver or otherwise make available all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by County in performing this Agreement, whether completed or in process.
- E. Upon termination under Paragraphs "A" or "B" above, the District may take over the Work or may award another party a contract to complete the Work. County's shall provide the District with any licenses to enter real property interests owned by County necessary for completion of the Work.
- F. If, after termination for failure of County to fulfill contractual obligations, it is determined that County had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of District. In such event, the adjustment of compensation shall be made as provided in Paragraph "C" of this section.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

- A. **Assignment and Subcontracts.** County shall not sublet, assign, or transfer any Work, in whole or in part, or assign any moneys due or to become due hereunder, which involves more than fifteen percent (15%) of the total cost of the Work, to any one contractor, without the prior written consent of the District. As soon as practicable after signing this Agreement, but in no event not less than ten (10) calendar days prior to the effective date of any such subcontracts, County shall notify the District's Project Manager in writing of the names of such subcontractors. County shall not employ any such subcontractors until they are approved in writing by the

District, which approval shall not be unreasonably withheld. Upon receipt of such consent, when a written work product is involved, County shall cause the names of the firm(s) responsible for such portions of the Work to appear thereon. County shall provide the District with an executed copy of any such subcontracts within ten (10) calendar days after the effective date of the subcontract. Neither District approval of a subcontractor nor any other provision of this Agreement shall create a contractual relationship between any subcontractor and the District.

County shall be responsible for the fulfillment of all Work elements included in the subcontracts and shall be responsible for the payment of all monies due under any subcontract. County shall be as fully responsible to the District for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for its own acts and omissions. County shall hold the District harmless from any liability or damages arising under or from any subcontract to the extent allowed by law. Nothing herein shall create any contractual relationship between any subcontractor and the District. Further, nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto, and each party is subject to the provisions of Section 768.28, Fla. Stat, as amended.

- B. **Interest of County.** County 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 County to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
- C. **Independent Contractor.** County is an independent contractor. Neither County nor County's employees are employees of the District. County shall have the right to control and direct the means and methods by which the Work is accomplished. County may perform services for others, which solely utilize its facilities and do not violate any confidentiality requirements of this Agreement. County is solely responsible for compliance with all labor and tax laws pertaining to it, its officers, agents, and employees, and shall indemnify and hold the District harmless from any failure to comply with such laws. County's duties with respect to itself, its officers, agents, and employees, shall include, but not be limited to: (1) providing Workers' Compensation coverage for employees as required by law; (2) hiring of any employees, assistants, or subcontractors necessary for performance of the Work; (3) providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits, and disability insurance; (4) payment of all federal, state and local taxes income or employment taxes, and, if County is not a corporation, self-employment (Social Security) taxes; (5) compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., including payment of overtime in accordance with the requirements of said Act; (6) providing any necessary employee training for performance of the Work; (7) providing equipment and materials necessary to the performance of the Work; and (8) providing office or other facilities for the performance of the Work. In the event the District provides training, equipment, materials, or facilities to meet specific District needs or otherwise facilitate performance of the Work, this shall not affect any of County's duties hereunder or alter County's status as an independent contractor. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto, and each party is subject to the provisions of Section 768.28, Fla. Stat., as amended.
- D. **Non Lobbying.** Pursuant to Section 216.347, Fla. Stat., as amended, County hereby agrees that monies received from the District pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other state agency.
- E. **Civil Rights.** Pursuant to Chapter 760, Fla. Stat., County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.

- F. **Audit: Access to Records.** County agrees that the District or its duly authorized representatives shall, until the expiration of three (3) years after final expenditure of funds hereunder, have access to examine any of County's books, documents, papers, and other records involving transactions related to this Agreement. County shall preserve all such records for a period of not less than three (3) years. Payment(s) made hereunder shall be reduced for amounts charged that are found on the basis of audit examination not to constitute allowable costs. County shall refund any such reduction of payments. All required records shall be maintained until any audit, commenced within three (3) years of final expenditure of funds hereunder, has been completed and all questions arising from it are resolved. County will provide proper facilities for access to and inspection of all required records.
- G. **Release of Information.** Records of County that are made or received in the course of performance of the Work may be public records that are subject to the requirements of Chapter 119, Fla. Stat. In the event the County receives a request for any such records, County shall notify the District's Project Manager within three (3) workdays of receipt of such request. 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.
- H. **Royalties and Patents.** Unless expressly provided otherwise herein, County shall pay all royalties and patent and license fees necessary for performance of the Work and shall defend all suits or claims for infringement of any patent rights and save and hold the District harmless from loss on account thereof, provided, however, that the District shall be responsible for all such loss when the utilization of a particular process or the product of a particular manufacturer is specified by the District. If County at any time has information that the process or article so specified is an infringement of a patent, it shall be responsible for such loss unless it promptly provides such information to the District. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto, and each party is subject to the provisions of Section 768.28, Fla. Stat., as amended.
- I. **Diversity.** The District is committed to the opportunity for diversity in the performance of all procurements, and encourages its prime vendors (contractors and suppliers) to make good faith efforts to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation, as the second- and lower-tier participants. The District will assist its vendors (contractors and suppliers) by sharing information on W/MBEs to encourage their participation.
- J. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the state of Florida.
- K. **Venue.** In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings, if in state court, shall be in Duval County, Florida, and if in federal court, shall be in the Middle District of Florida, Jacksonville Division.
- L. **Attorney's Fees.** In the event of any legal or administrative proceedings arising from or related to this Agreement, including appeals, each party shall bear its own attorney's fees.
- M. **Conflicting Provisions.** If any provision hereof is found to be in conflict with the General Conditions, Special Conditions, or any attachments hereto, the terms in the body of this Agreement shall prevail.

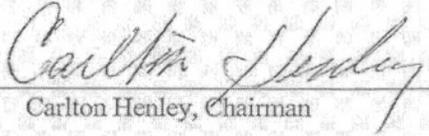
- N. **Waiver of Right to Jury Trial.** In the event of any civil proceedings arising from or related to this Agreement, County hereby consents to trial by the court and waives its right to seek a jury trial in such proceedings, provided, however, that the parties may mutually agree to a jury trial.
- O. **Construction of Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, have contributed substantially and materially to the preparation hereof.
- P. **Entire Agreement.** This Agreement, upon execution by County and the District, constitutes the entire agreement of the parties. The parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. County agrees that no representations have been made by the District to induce County to enter into this Agreement other than as expressly stated herein. This Agreement cannot be changed orally or by any means other than written amendments referencing this Agreement and signed by all parties.
- Q. **Separate Counterparts.** This Agreement may be executed in separate counterparts, which shall not affect its validity.

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 County 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.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

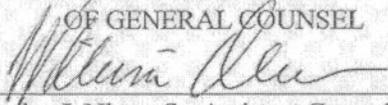
By: 
Kirby B. Green III, Executive Director

By: 
Carlton Henley, Chairman

Date: 7/5/06

Date: 6-27-06

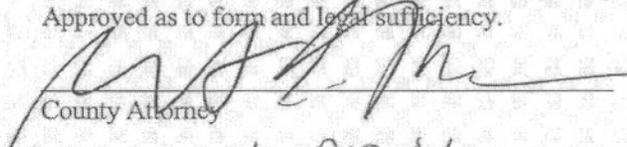
APPROVED BY THE OFFICE
OF GENERAL COUNSEL


for Stanley J. Niego, Sr. Assistant General Counsel

As authorized for execution by the Board of County Commissioners at their June 27, 2006 regular meeting.

Attest: 
Maryanne Morse, Clerk to the Board of County Commissioners of Seminole County, Florida

For the use and reliance Seminole County only.
Approved as to form and legal sufficiency.


County Attorney
Date: 6-27-06

- Documents attached:
Exhibit A — Statement of Work
Exhibit B — Comptroller's Memorandum
Attachment 1 — District's Supplemental Instructions Form (sample)

EXHIBIT "A" – STATEMENT OF WORK
THE MIDDLE BASIN INITIATIVE:
Lake Monroe Watershed Plan Implementation

Lake Monroe Restoration – Midway Regional Stormwater Facility

I. Introduction/ Background

Water quality and flooding problems are inherent within the Lake Monroe sub-basin. Much of the basin was developed before current stormwater regulations and requirements and there is direct discharge of untreated stormwater to Lake Monroe, and thus, the St. Johns River. Seminole County Master Planning efforts resulted in targeting areas for treatment of flows to the lake and river. Seminole County in coordination with the St. Johns River Water Management District completed the Final Design for the Construction of the Midway Regional Stormwater Facility in 2005. Based on the Master Plan, the final design will result in retrofit and improvement in the surface water quality and quantity issues of the watershed.

The project area watershed currently drains into Lake Monroe, which is included on the Section 303(d) list of impaired water bodies for nutrients and dissolved oxygen. Records indicate that total nitrogen and total phosphorus concentrations in the lake have been increasing in recent years. The objective of the proposed project is to reduce the pollutant load to the lake including nutrients, suspended solids, organic matter, and metals and contribute to the improvement of the receiving waters in Lake Monroe and downstream in the St. Johns River.

II. Project Description

A 22-acre regional stormwater facility consisting of two to four wet detention ponds will be constructed to reduce pollutant loads to Lake Monroe and reduce flooding along Celery Avenue. The Midway Regional Stormwater Facility will remove pollutants through a series of meandering interconnected wet detention ponds. Currently, the farm ditches serve as the stormwater conveyance system and discharge directly into wetlands adjacent to Lake Monroe. This facility will divert the existing ditches into the stormwater pond system treating the water prior to entering the wetlands and Lake Monroe. The project is to construct the stormwater facility including the ponds, control and diversion structures, berms, and culverts. A future, unfunded phase could include a recreational aspect, with a park, trail, and trailhead. It is also envisioned to include an educational/environmental aspect that would be several educational kiosks with explanations of stormwater pollution and removal.

III. Objectives

Objective 1: Provide stormwater treatment to a 22-acre site along Celery Avenue by constructing two to four wet detention ponds to serve as a Regional Stormwater Facility.

Objective 2: Retrofit the existing drainage infrastructure in the vicinity of the project area and construct facility to accommodate additional drainage areas for future retrofits and provide treatment for areas without any existing forms of treatment facilities.

IV. Scope of Work

Construction of two to four wet detention ponds are to be completed with associated infrastructure on the 22-acre site owned by the state of Florida. The major tasks include material testing, construction engineering and inspection, and construction of the ponds.

V. Task Identification

1. Material testing
2. Construction Engineering and Inspection
3. Construction

VI. Time Frames and Deliverables

1. Project construction to be completed in accordance with Article I, A.2 of the Cost Share Agreement.
2. Provide monthly Progress Reports (the first week of each month).
3. Submit quarterly invoice with a Summary Sheet describing basis for costs (submittal the last week of each quarter).
4. Provide at least three (3) days advance notification to District's Project Manager of project related meetings.

VII. Budget

Total Budget By Task

Task	District Funding	Matching Funds	Source of Funds
1 Material testing	\$5,000*	See below	SJRWMD
2 Engineering and Inspection	\$75,000*		SJRWMD
3 Construction	\$2,120,000*		SJRWMD
Total	\$2,200,000		
Project Total	\$2,200,000		

1) * Funding can be transferred between tasks as needed and agreed upon between SJRWMD and Seminole County.

Project matching funds

Amount	Source	Description Status
\$2,500,000	FDEP	Site Cleanup - complete
\$265,485	Seminole Co.	Design & Permitting -Complete
\$250,000	Seminole Co.	Building Demolition - pending lease
\$50,000	Seminole Co.	Monitoring
\$166,000	Seminole Co.	Project Administration - In-kind
\$250,000 (estimate)	Seminole Co.	Site O & M (5 years)
\$100,000 (estimate)	Seminole Co.	Midway Basin Study - Complete
\$3,581,485	Total	

Contract Amount: \$2,200,000

Note: Originally \$1,000,000 was set aside in planning the current budget to construct this project. Seminole County Schools planned to use part of the 22-acre parcel to construct an elementary school. The school construction plans included one of the treatment ponds. Due to concerns with contaminated soils at the site, the school construction site was relocated. As a result, costs for the entire project increased and \$2,200,000 is now needed for this project.

Pursuant to reference note (1) to the project budget above, any internal funding transfers between tasks shall require the issuance of a District Supplemental Instructions Form (DSI) (see Attachment 1) which shall be approved by the District and County.

EXHIBIT "B"

Comptroller Contract Payment Requirements
Department of Banking and Finance, Bureau of Auditing Manual (10/07/97)
Cost Reimbursement Contracts

Invoices for 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 should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

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

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) 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.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on 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, Florida Administrative 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, Florida Statutes, for subsequent transfer to the State.
- (5) 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.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.
- Pursuant to 216.346, Florida Statutes, a contract between state agencies including any contract involving the State University system or the State Community College system, the agency receiving the contract or grant moneys shall charge no more than 5 percent of the total cost of the contract or grant for overhead or indirect cost or any other cost not required for the payment of direct costs.

ATTACHMENT 1 — DISTRICT'S SUPPLEMENTAL INSTRUCTIONS (sample)

Date: _____; Contract Number: SJ456AA

Contract name: Lake Monroe Restoration – Midway Regional Stormwater Facility

To: _____

From: _____; Project Manager

The Work shall be carried out in accordance with the following Supplemental Instructions, issued in accordance with the Agreement. The District's Project Manager, by issuance of these instructions, has determined that they will not result in a change in the Total Compensation or the Completion Date. Prior to proceeding in accordance with these instructions, please indicate your acceptance hereof as provided below 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:

Approved: _____ Date: _____
 District Project Manager

Contractor approval: (choose one of the items below):

Approved: _____ Date: _____

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

Approved: _____ Date: _____
 (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.)

Acknowledged: _____ Date: _____
 Madeline Northcutt, Contracts Administrator

cc: Financial Management

**STORMWATER MANAGEMENT COST-SHARING AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND SEMINOLE COUNTY FOR THE SEMINOLE COUNTY MIDWAY REGIONAL
STORMWATER AND RECREATIONAL FACILITY - PHASE 1**

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 SEMINOLE COUNTY ("County"), whose address is 520 West Lake Mary Boulevard, Suite 200, Sanford, Florida 32773.

WITNESSETH THAT:

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, Florida Statutes, the District is responsible for the management of water resources within its geographical area, and proper management of stormwater is necessary to protect the public health, safety and welfare and extend the life of surface and ground water resources; and

WHEREAS, the District's Governing Board has established the Stormwater Management Projects Cost-Share Program ("the Program") to support stormwater management 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. The District may also consider projects that protect or preserve water quality in designated Surface Water Improvement and Management (SWIM) water bodies; and

WHEREAS, County has applied for and is qualified to participate in the Program, and the parties have agreed to jointly fund the stormwater management project ("the Project"), which is described as follows:

The project watershed currently drains to Lake Monroe, which is included on the Section 303(d) list of impaired water bodies for nutrients and dissolved oxygen. The Midway Regional Stormwater Facility will remove pollutants through a series of meandering interconnected wet detention ponds prior to reaching Lake Monroe. The design will incorporate a recreational component including a trailhead connecting to a future trail project in the area. Pollutant load reduction will therefore also be encouraged by educating the local public through the use of educational kiosks along the pedestrian/bike trail around the facility. It is expected that this project will serve as a component of the future TMDL Implementation Plan.

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby made a part of this Agreement, and the payments herein specified, which the District agrees to make, County agrees to furnish and deliver all materials, to do and perform all work and labor required to be furnished and delivered, done and performed for the Seminole County Midway Regional Stormwater and Recreational Facility - Phase 1, Contract #SI433AA ("the Work"). County agrees to complete the Work in conformity with this Agreement. This Agreement consists of the following documents, including all modifications incorporated therein before their execution: Agreement; EXHIBIT "A" - County's Program Application.

ARTICLE I - TERM, SCHEDULE AND TIME OF PERFORMANCE

- A. **Term.** The term of this Agreement shall be from the Effective Date to the Completion Date.
1. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the last party to this Agreement has dated and executed the same; provided, however, that in the event a date other than the aforesaid is set forth below in this section, that date shall be the Effective Date.

In lieu of the aforesaid Effective Date, the Effective Date of this Agreement shall be N/A
 2. **Completion Date.** The Completion Date of this Agreement shall be upon satisfactory completion of the stormwater management project and subsequent cost reimbursement to County; or twenty-four (24) months from the Effective Date, whichever comes first, unless extended by mutual written agreement of the parties. All Work under this Agreement shall be completed for use no later than the Completion Date.
 3. **Time is of the Essence.** The Commencement Date and Completion Date are essential conditions hereof. In addition, time is of the essence in execution of this Agreement by County. If County fails to execute this Agreement within sixty (60) days of receipt, the Project shall be removed from the District's list of approved cost-share projects and the District shall seek to provide funding to other stormwater management projects that have been approved by the Governing Board.

ARTICLE II - STATEMENT OF WORK AND DELIVERABLES

- A. **Deliverables.** County shall fully implement the Project, as described in County's Program Application, attached as Exhibit "A." County 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, County shall provide and pay for all materials, labor, and other facilities and equipment as are necessary for the completion of the Project. The District shall provide the professional and technical support necessary to properly address all aspects of the Agreement. The District's project manager shall make a final acceptance inspection of the Project when completed. The parties may at any time agree in the form of a written amendment to make changes to the Project within the general scope of this Agreement.
- B. **Progress Reports.** When requested, County shall submit progress reports to the District's project manager in a form approved by the project manager. The progress report shall provide an updated progress schedule with each payment request, taking into account all delays, changes in the nature of the Work, etc. In addition to hard copies, all written deliverables (reports, papers, analyses, etc.) shall be submitted in machine readable form in formats consistent with the District's standard software products. The District's standard office automation products include the Microsoft® Office Suite (Word, Excel, Access, and PowerPoint). Other formats may be accepted if mutually agreed upon by the District's Project Manager and chief information officer. Timely submittal of progress reports shall be a condition precedent to payment of invoices.

ARTICLE III - COMPENSATION AND COST-SHARE

- A. **District Funding.** For satisfactory completion of the Project, the District agrees to reimburse County a sum in the amount not to exceed \$400,000 (the "Total Compensation"). Work eligible for reimbursement must have started after execution of this Agreement. If, at the completion of the Project, County's actual expenditure is less than the amount stated in the Project Budget, the District's obligation shall be reduced proportionately. Reimbursement shall be made no later than 30 days after receipt of an invoice, as provided below. If County fails to satisfactorily implement the Project, County shall not be eligible for any reimbursement.
- B. **County Funding.** County shall obligate monies to fund the Project. County shall be responsible for any additional funding in excess of the anticipated total project cost of \$4,266,485.
- C. **Invoicing Procedure.** One invoice shall be submitted to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177. County shall submit one invoices based upon the actual portion of the Work performed and shall bill as per the Project Budget included in Exhibit "A" County's Program Application, attached hereto and by reference made a part hereof.

All payment requests submitted by the County shall include the following information:

1. Contract number, SI433AA.
2. County's name and address (include remit address if necessary)
3. Name of District's Project Manager
4. Name of County's Project Manager
5. Cost data (utilize the appropriate method for payment request per the contract)
 - (a) Supporting documentation and copies of invoices if cost reimbursable; or
6. Progress Report (as per contract requirements)
7. Diversity Report (The report shall include company names for all W/MBEs and amounts spent with each at all levels. The report will also denote if there were no W/MBE expenditures.)

The above information and reports shall be submitted by the County and approved by the District as a condition precedent to payment. Payment requests that do not correspond to the Project Budget or other requirements of this paragraph will be returned to the County without action within twenty (20) business days of receipt and shall state the basis for rejection of the invoice. Payments for construction (design-build) contracts shall be made within twenty-five (25) business days of receipt of an invoice that conforms to this Article. Payments for all other contracts shall be made within forty-five (45) days of receipt of an invoice that conforms to this Article.

- D. **Forfeiture of Final Payment.** County shall submit the final invoice to the District not later than 90 days after the Completion Date. COUNTY'S FAILURE TO SUBMIT THE FINAL INVOICE TO THE DISTRICT WITHIN THE TIME FRAME ESTABLISHED HEREIN SHALL BE A FORFEITURE OF ANY REMAINING AMOUNT DUE UNDER THE AGREEMENT.
- E. **Release.** Upon the satisfactory completion of the Work, the District will provide a written statement to County accepting all deliverables. Acceptance of the final payment shall be considered as a release in full of all claims against the District pursuant to this Agreement.

ARTICLE IV - LIABILITY AND INSURANCE

- A. Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof. In addition, each party is subject to the provisions of Section 768.28, Fla. Stat., as amended. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by any party hereto.
- B. Each party shall also acquire and maintain throughout the term of this Agreement such general liability, automobile insurance, and workers' compensation insurance as required by their current rules and regulations.

ARTICLE V - FUNDING CONTINGENCY

- A. This Agreement is at all times contingent upon availability of funding in future years, which may include a single source or multiple sources. Agreements extending for more than one fiscal year are subject to annual appropriation of funds, in the sole discretion and judgment of the parties for each succeeding year. Should the Project not be approved for funding in succeeding years, the party not approving the Project shall so notify the other party, and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the notifying party may allow.
- B. In the event the District is notified at any time that funds from an external funding source will not be available, or are no longer available, in whole or in part, the District shall so notify County and this Agreement, upon the election of the District, shall be deemed terminated for convenience five days after receipt of such notice or within such additional time as the District may allow.

ARTICLE VI - PROJECT MANAGEMENT

- A. **Project Managers.** The project managers shall be responsible for overall coordination, oversight, and management of the Work. The parties agree to the following persons being designated as project manager:

DISTRICT

David Watt, Project Manager
 St. Johns River Water Management District
 4049 Reid Street
 Palatka, Florida 32177
 (386) 329-4435
 E-mail: dwatt@sjrwmd.com

COUNTY

Ed Torres Project Manager
 Seminole County
 520 West Lake Mary Boulevard, Suite 200
 Sanford, FL 32773
 (407) 665-5715
 E-mail: etorres@seminolecountyfl.gov

- B. **District Project Manager.** The District's Project Manager shall have sole and complete responsibility to transmit instructions, receive information, and communicate District policies and decisions regarding all matters pertinent to performance of the Project. The District's project manager shall have the authority to approve minor deviations in the Project that do not affect the Total Compensation or the Completion Date. The District's Project Manager and, as appropriate, other District employees, shall meet with County when necessary in the District's judgment to provide decisions regarding performance of the Work, as well as to review and comment on reports.

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- C. **Change in Project Manager.** Either party to this Agreement may change its project manager by providing not less than three working days prior written notice of the change to the other party.
- D. **Supervision.** County shall provide efficient supervision of the Project, using its best skill and attention.
- E. **Notices.** All notices to each party shall be in writing and shall be either hand-delivered or sent via U.S. certified mail to the respective party's project manager at the names and addresses specified above. All notices shall be considered delivered upon receipt. Should either party change its address, written notice of the new address shall be sent to the other parties within five business days. Except as otherwise provided herein, notices may be sent via e-mail or fax, which shall be deemed delivered on the date transmitted and received.

ARTICLE VII - MISCELLANEOUS PROVISIONS

- A. **Termination.** Either party may terminate this Agreement at any time by giving the other party 30 days written notice prior to the date of termination. Upon termination by the District, the District shall reimburse County for all allowable costs incurred prior to the date of termination.
- B. **Interest of County.** County 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 County to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
- C. **Independent Contractor.** County is an independent contractor. Neither County nor County's employees are employees of the District. County shall have the right to control and direct the means and methods by which the Work is accomplished. County may perform services for others, which solely utilize its facilities and do not violate any confidentiality requirements of this Agreement. County is solely responsible for compliance with all labor and tax laws pertaining to it, its officers, agents, and employees, and shall indemnify and hold the District harmless from any failure to comply with such laws. County's duties with respect to itself, its officers, agents, and employees, shall include, but not be limited to: (1) providing Workers' Compensation coverage for employees as required by law; (2) hiring of any employees, assistants, or subcontractors necessary for performance of the Work; (3) providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits, and disability insurance; (4) payment of all federal, state and local taxes income or employment taxes, and, if County is not a corporation, self-employment (Social Security) taxes; (5) compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., including payment of overtime in accordance with the requirements of said Act; (6) providing employee training for all functions necessary for performance of the Work; (7) providing equipment and materials necessary to the performance of the Work; and (8) providing office or other facilities for the performance of the Work. In the event the District provides training, equipment, materials, or facilities to meet specific District needs or otherwise facilitate performance of the Work, this shall not affect any of County's duties hereunder or alter County's status as an independent contractor.
- D. **Non Lobbying.** Pursuant to Section 216.347, Fla. Stat., as amended, the County hereby agrees that monies received from the District pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other state agency.

- E. **Civil Rights.** Pursuant to Chapter 760, Fla. Stat., County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
- F. **Audit: Access to Records.** County agrees that the District or its duly authorized representatives shall, until the expiration of three years after expenditure of funds hereunder, have access to examine any of County's books, documents, papers, and other records involving transactions related to this Agreement. County shall preserve all such records for a period of not less than three years. Payment(s) made hereunder shall be reduced for amounts charged that are found on the basis of audit examination not to constitute allowable costs. County shall refund any such reduction of payments. All required records shall be maintained until an audit has been completed and all questions arising from it are resolved. County will provide proper facilities for access to and inspection of all required records.
- G. **Release of Information.** Records of County that are made or received in the course of performance of the Work may be public records that are subject to the requirements of Chapter 119, Fla. Stat. In the event County receives a request for any such records, County shall notify the District's project manager within three workdays of receipt of such request. 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.
- H. **Royalties and Patents.** Unless expressly provided otherwise herein, County 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 on account thereof, provided, however, that the District shall be responsible for all such loss when the utilization of a particular process or the product of a particular manufacturer is specified by the District. If County at any time has information that the process or article so specified is an infringement of a patent, it shall be responsible for such loss unless it promptly provides such information to the District. County hereby certifies to the District that the Work to be performed pursuant to this Agreement does not and will not infringe on any patent rights.
- I. **Diversity.** The District is committed to the opportunity for diversity in the performance of all procurements, and expects its prime vendors (contractors and suppliers) to make good faith efforts to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation, as the prime, second- and lower-tier participants. The District will assist its vendors (contractors and suppliers) by sharing information on W/MBEs to encourage their participation.
- J. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the state of Florida.
- K. **Venue.** In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings, if in state court, shall be in Duval County, Florida, and if in federal court, shall be in the Middle District of Florida, Duval Division.
- L. **Attorney's Fees.** In the event of any legal or administrative proceedings arising from or related to this Agreement, including appeals, each party shall bear its own attorney's fees.
- M. **Waiver of Right to Jury Trial.** In the event of any civil proceedings arising from or related to this Agreement, County hereby consents to trial by the court and waives its right to seek a jury trial in such proceedings, provided, however, that the parties may mutually agree to a jury trial.

- N. **Construction of Agreement.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, have contributed substantially and materially to the preparation hereof.
- O. **Entire Agreement.** This Agreement, upon execution by County and the District, constitutes the entire agreement of the parties. The parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. County agrees that no representations have been made by the District to induce County to enter into this Agreement other than as expressly stated herein. This Agreement cannot be changed orally or by any means other than written amendments referencing this Agreement and signed by all parties.
- P. **Separate Counterparts.** This Agreement may be executed in separate counterparts, which shall not affect its validity.

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 County 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.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

SEMINOLE COUNTY

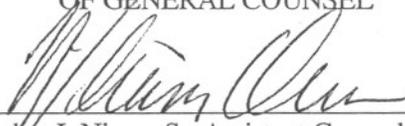
By: 
Kirby B. Green III, Executive Director

By: _____

Date: 8/18/05

Date: _____
Typed Name and Title

APPROVED BY THE OFFICE
OF GENERAL COUNSEL


Stanley J. Niego, Sr. Assistant General Counsel

Attest: _____

Typed Name and Title

Attachment: Exhibit "A" – County's Program Application

Accepted By:

ATTEST

Maryanne Morse

MARYANNE MORSE
Clerk to the Board of County
Commissioners of Seminole County, Florida

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: *Carlton Henley*

Carlton Henley, Chairman
Board of County Commissioners

Date: *8/11/05*

As authorized for execution by the
Board of County Commissioners at their
8-9, 2005 regular meeting.

Agreement Between
The St. Johns River Water Management District
And Seminole County
For the Seminole County Midway Regional Stormwater and Recreational Facility – Phase I
Contract #SI433AA