

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Water Protection & Sustainability Cost Share Agreement Between the SJRWMD and Seminole County for the Yankee Lake Surface Water Treatment/Reclaimed Water Augmentation (Contract #SK31012)

DEPARTMENT: Environmental Services **DIVISION:** Planning, Engineering & Inspections

AUTHORIZED BY: [Signature] **CONTACT:** J. Dennis Westrick, P.E. EXT. 2040
John Cirello, PhD, P.E. [Signature]

Agenda Date <u>1/9/2007</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Approve Cost Share Agreement between the St. Johns River Water Management District (District) and Seminole County for the District to fund up to 30% of the construction costs for the Yankee Lake Surface Water Treatment/Reclaimed Water Augmentation project in an amount not to exceed \$7,530,000 and authorize the Chairman to execute the Agreement. District 5 - Carey

BACKGROUND:

Execution of the attached Agreement represents a culmination of combined water supply permitting efforts by the County and District dating back to 1997. Funding at the State level became available during the 2005 state legislative session. The reclaimed water augmentation project is included in the current CIP projects as adopted by the BCC with funding defined from both the Series 2006 Bond proceeds and the District. The total project construction cost is estimated to be \$25,100,000 based upon the Cost Share Funding Proposal prepared in September 2005.

12-20-06

Reviewed by:	<u>[Signature]</u>
Co Atty:	<u>[Signature]</u>
DFS:	_____
Other:	<u>[Signature]</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>CESP02</u>

**WATER PROTECTIONS & SUSTAINABILITY COST SHARE AGREEMENT
BETWEEN THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND
SEMINOLE COUNTY**

For good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Purpose of Agreement.** This cost share agreement is authorized by the St. Johns River Water Management District (“the District”) from funding designated for construction of alternative water supplies pursuant to the Florida Water Protection & Sustainability Program (“the Program”), which is governed by sections 373.0831 and 373.1961 Fla. Stat. (2005). Funding received through this Agreement shall be used solely for the construction of the alternative water supply project identified in Exhibit A, Statement of Work and Exhibit B, Supplemental Information Package (“the Project”). Recipient hereby agrees that funding received from the District for the Project may not be used for any work associated with the research, design, and permitting aspects of the Project. This agreement consists of the following items: Exhibit A, Statement of Work, Exhibit B, Supplemental Information Package, Exhibit C, Cost Schedule, Attachment 1, District Supplemental Instruction, Attachment 2, Notice to Proceed, and all other attachments and exhibits.
2. **Execution of Agreement.** This cost share agreement shall constitute an offer until authorized, signed and returned to the District by Recipient. Failure to do within sixty (60) days of receipt shall result in a retraction of this offer by the District.
3. **Term of Agreement.** This Agreement shall extend from the Effective Date through December 30, 2008 (“Completion 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. Recipient shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the Effective Date.

4. **Scope of Project.** Recipient shall commence work funded hereunder (“the Work”) upon receipt of a fully executed Agreement from the District and perform the Work in accordance with the timeframe established in the Construction Contract award and as further specified in the specific milestones for “construction start”, and shall prosecute the Work diligently in accordance with Exhibit “A”, “Statement of Work” (attached), and Exhibit “B”, Supplemental Information Package (attached). Recipient shall not commence work in subsequent fiscal years, until the District issues a written Notice to Proceed, (Attachment 2).
5. **Permits.** Recipient is required to obtain any and all permits from governmental entities that are necessary for performance of the Work. Any Work not properly permitted prior to implementation or completed without proper permits shall not be considered in compliance with this Agreement, shall not constitute Work performed hereunder, and shall not be approved for payment by the District. Recipient shall be solely responsible for any fines or penalties associated therewith and the cost of removal of said unauthorized construction.
6. **Legislative Requirements.** The Florida Legislature requires recipients of funds granted through the Program to meet several specific conditions. The Recipient must provide the District with written assurance of its continued qualification under these requirements with submittal of its invoice in

order to continue to receive funding hereunder. Details concerning these requirements appear in subsections 373.1961(3)(c), (e) and (j), Fla. Stat.

A Recipient that receives funding through this Agreement and that operates a public water supply utility shall be required to develop a rate structure for water customers in the service area of the funded utility that will: (1) promote the conservation of water; and (2) promote the use of water from alternative water supplies.

7. **Project Management.** The parties shall designate Project Managers, who 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

John Wester, Project Manager
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177
(386) 329-4457
E-mail: jwester@sjrwmd.com

RECIPIENT

Carol L. Hunter, P.E., Project Manager
Seminole County
500 West Lake Mary Blvd.
Sanford, Florida 32773-7441
Phone# (386) 665-2021
E-mail: chunter@seminolecountyfl.gov

8. **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.
9. **Notices.** All notices to each party shall be in writing and shall be either sent via email, fax, 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.
10. **Quarterly Progress Reports.** Recipient shall provide to the District regular project update/status reports by September 1st, December 1st, March 1st and June 1st of each year. Reports will provide detail on progress of the Project and outline any potential issues affecting project completion or the overall schedule. Status reports may be submitted in any form agreed to by District's Project Manager and the Recipient, and may include emails, memos, and letters.
11. **Annual Update.** In accordance with section 373.0361 (7) (b), Fla. Stat., the Recipient shall provide an annual update to the District detailing the progress of the project.
12. **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 Project performance.
13. **Liability and Insurance.** 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. The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties 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.

14. **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. To this end, as requested, the District will assist the Recipient by sharing information on W/MBEs to encourage their participation.
15. **Amount of Funding.** For satisfactory performance of the "Work", the District agrees to pay the Recipient a sum in the amount not to exceed \$7,530,000 or up to thirty percent (30%) of the total construction costs, whichever is less. The Recipient shall provide at least sixty percent (60%) of the construction costs, unless a different amount is authorized pursuant to section 373.1961(3)(e), Fla. Stat. The Recipient shall notify the District's Project Manager in writing upon receipt of additional State funding for the completion of the Project.

Multi-Year Funding Allocation. The following represents the anticipated amount of funding the District may authorize for each fiscal year. This information is provided for planning purposes only, and does not represent a commitment on the part of the District. The District reserves the right to revise these amounts annually, prior to the beginning of each Fiscal Year.

Fiscal Year 2007: \$4,300,000

Fiscal Year 2008: \$3,230,000

16. **Funding Contingency:** Funding for each applicable fiscal year of 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 beyond the current Fiscal 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 Recipient and this Agreement shall be deemed terminated five (5) days after receipt of such notice, or within such additional time as the District may allow.
17. **Fiscal Year.** For the purpose of this Agreement, Fiscal Year is defined as the period beginning October 1 and ending September 30.
18. **Payment of Funds.** All invoices shall reference the contract number shown on the first page of this Agreement, and shall be submitted to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177, or may be emailed to acctpay@sjrwmd.com. Recipient shall transmit invoice using only one of the above two methods, but shall not use both. Recipient shall submit itemized quarterly invoices for reimbursement based upon the actual Work performed and shall bill as per Exhibit C, Cost Schedule. The District will reimburse the Recipient up to thirty percent (30%) of actual construction costs, but in no event shall the amount exceed \$7,530,000. The invoice shall include receipts from contractors and/or suppliers for the specified construction expenditures and proof of payment (check number or copy of cancelled check), and verification of the Project complying with local and state building requirements, including verification of any required permits. The District may request supporting information to document invoices as needed. All

documentation required for verification of invoices shall be received and approved by the District prior to release of payment. Invoices that do not correspond to the Cost Schedule or other requirements of this paragraph will be returned to Recipient without action within twenty (20) business days of receipt and shall state the basis for rejection of the invoice. Payments shall be made within forty-five (45) days of receipt of an invoice that conforms to this paragraph. The provisions in this paragraph relating to payment of funds shall supersede any other provisions or attachments contained in this Agreement.

19. **Final Payment.** The final invoice to the District must be received not later than 90 days after the Completion Date.
20. **Price Escalation.** No price adjustments will be approved during the term of this Agreement. This includes, but is not limited to, adjustments due to cost of living increases and/or unforeseen site conditions.
21. **Repayment of Funds.** Funds shall be subject to repayment by Recipient after expiration of this Agreement if, upon a post-project audit examination, the District finds that: (1) Recipient has spent funds for purposes other than those provided for herein, (2) Recipient has received duplicate funds from the District for the same purpose, and/or (3) Recipient has received more than one hundred percent (100%) contributions for the project through cumulative public agency cost-sharing funding.
22. **Termination of Agreement.** The District reserves the right to terminate the Agreement in the event any of the representations contained in the Project Proposal are found to be false. In such event the District shall provide written notice thereof to Recipient and afford Recipient ten (10) days to clarify the alleged misrepresentation. The District may thereafter terminate the Agreement if it continues to believe that a misrepresentation has occurred.

In addition, if the Recipient materially fails to fulfill its obligations under this Agreement, including failure to complete the construction and performance of all work items described in Exhibit A, Statement of Work, in accordance with the specific milestones established in the Agreement, and such failure is not excused pursuant to Paragraph 23, Failure to Complete Project, the District shall provide written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the material breach. The Recipient shall have thirty (30) days to cure the breach. If the Recipient fails to cure the breach within the thirty (30) day period, the District shall issue a Termination for Default Notice. Should the District terminate for default in accordance with this provision, the District shall be entitled to recover procurement costs in addition to all other remedies under law and/or equity.

23. **Failure to Complete Project.** In the event Recipient fails to complete the Project, Recipient shall refund to the District all funds that have been provided to Recipient pursuant to this Agreement; provided, however, that the District, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible, in which event the District may excuse Recipient from the obligation to return the funds provided hereunder. If the Project has not been completed within thirty (30) days after the Completion Date, Recipient shall provide the District with notice regarding its intention as to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the Completion Date or the scope of the Project. Failure to complete the Project within 180 days of the then-current Completion Date shall constitute failure to complete the Project for the purposes of this provision.

24. **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.
25. **Independent Contractor.** Recipient is an independent contractor. Neither Recipient nor Recipient's employees are employees of the District. Recipient shall have the right to control and direct the means and methods by which the Work is accomplished. Recipient is solely responsible for compliance with all labor and tax laws pertaining to it, its officers, agents, and employees.
26. **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.
27. **Release of Information.** Records of Recipient 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. 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.
28. **Audit; Access to Records.** Recipient agrees that the District or its duly authorized representatives shall, until the expiration of five (5) years after expenditure of funds hereunder, have access to examine any of Recipient's books, documents, papers, and other records involving transactions related to this Agreement. Recipient shall preserve all such records for a period of not less than five (5) 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. Recipient 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. Recipient will provide proper facilities for access to and inspection of all required records. In addition, state and/or federal funds have been utilized by the District, in whole or in part, to fund this Agreement. As a result, the District may be subject to state audit under the Florida Single Audit Act, section 215.97, Florida Statutes, or federal audit, regarding the expenditure of these funds. Recipient shall fully cooperate with any state or federal audit in the same manner as a District audit, as provided above.
29. **Florida Single Audit Act.** The Florida Single Audit Act (FSAA), section 215.97, Florida Statutes, applies to all sub-recipients of state financial assistance, as defined in section 215.97(1)(q), Florida Statutes, that is awarded by the District through a project or program that is funded, in whole or in part, through state financial assistance to the District. This Agreement involves the disbursement of state funding in the amount of \$2,150,000. If any state funding is involved, the Recipient is potentially subject to the FSAA. In such event, if Recipient receives more than \$500,000 of state financial assistance during the course of its fiscal year, which includes assistance derived from District and non-District programs, Recipient is subject to compliance with the FSAA. In such event, not later than 20 days after preparation, Recipient shall provide the District with a copy of the audit it prepares in compliance with the FSAA, as it pertains to the Work performed under this Agreement. 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 32117. Recipient has the sole and complete duty of ensuring compliance with the FSAA.

30. **Royalties and Patents.** Recipient 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 due to Recipient's negligence or intentional action to the extent permitted by Florida law.
31. **Governing Law.** This Agreement shall be construed according to the laws of the State of Florida.
32. **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 Orange County, Florida, and if in federal court, shall be in the Middle District of Florida, Orlando Division.
33. **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.
34. **Waiver of Right to Jury Trial.** In the event of any civil proceedings arising from or related to this Agreement, Recipient 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.
35. **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.
36. **Entire Agreement.** This Agreement, upon execution by Recipient 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. Recipient agrees that no representations have been made by the District to induce Recipient 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.
37. **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 contract to be executed this _____ day of _____, 2006, in its name by its Executive Director, and the 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.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

SEMINOLE COUNTY

By: _____
Kirby B. Green III, Executive Director

By: _____

Typed Name and Title

Date: _____

Date: _____

APPROVED BY THE OFFICE
OF GENERAL COUNSEL

Attest: _____

Stanley J. Niego, Sr. Assistant General Counsel

Typed Name and Title

**EXHIBIT A
STATEMENT OF WORK
WATER PROTECTION AND SUSTAINABILITY PROGRAM**

I. INTRODUCTION/BACKGROUND

The Florida Water Protection and Sustainability Program (WPSP) was created through passage of Senate bills 360 and 444 during the 2005 legislative session and were subsequently signed into law by Governor Jeb Bush. The purpose of this program is to provide cost-share funding for construction of alternative water supply projects. The St. Johns River Water Management District will implement the program within its region as described below.

To be considered eligible for this cost-share funding program, projects must first be identified in the District Water Supply Plan (DWSP). After projects are incorporated into the DWSP, they are further evaluated as to their suitability for this funding program. The identification of water supply development projects in the DWSP does not guarantee funding assistance through this funding program. For the purpose of this program, cost sharing is identified as reimbursement by the District for construction costs of alternative water supply development projects.

Staff evaluated the projects based on the 12 factors described in 373.1961(3)(f) and (g), Florida Statute (2005), four additional evaluation factors added by the District's Governing Board, and the supplemental information provided by the sponsors. The results of the evaluations and proposed funding levels were presented at a public meeting held at the District on July 12, 2006. On August 8, 2006, the District's Governing Board gave final approval of the projects and funding levels.

The Seminole County Yankee Lake Reclaimed Water System Augmentation Project was approved. Seminole County (County) is the lead agency on this project.

II. OBJECTIVES:

The project will achieve the following objective:

- Provide for the construction of a 10 MGD surface water treatment plant to generate reclaimed water from Yankee Lake.

III. SCOPE OF WORK:

County shall manage the construction of a surface water treatment plant to treat water from the St. Johns River for removal of color and total suspended solids (TSS). The treatment process will include chemical coagulation, high-rate clarification, and high-level disinfection and provide water treated to public access reclaimed water standards and will supplement existing reuse supplies. This project will reduce the demand for fresh groundwater. The treatment plant will be located at the County's Yankee Lake Water Reclamation Facility near Lake Monroe. Initial design capacity is 10 MGD with surface water intake and infrastructure expandable to 20 MGD.

IV. TASK IDENTIFICATION:

The County shall be responsible for the following:

- Obtaining project final design, construction plans and specifications

- Providing a copy of County's executed construction contract documents to the District's project manager
- Providing copies of any subsequent change orders to the contract to the District's project manager
- Obtaining all required permits, including right of access to the project site, related to project construction and subsequent operation of the facility
- Compliance with all permits
- Procurement for project construction
- Supervision and inspection of construction
- Construction contract administration
- Timely submittal of invoices for actual construction costs in accordance with this Agreement (i.e. quarterly, with appropriate substantiation) to enable proper review by the District's Project Manager prior to payment authorization.
- Progress reports to the District's project manager identifying project progress to date, key milestones reached, overall project schedule versus time for project completion, key issues to be resolved, project time and projected costs versus actual cost to date.
- Certification of construction phase completion by a Professional Engineer registered in the State of Florida
- Compliance with cost accounting practices and procedures required for reimbursement of funds expended for the Florida Water Protection and Sustainability Program.

V. TIMEFRAMES AND DELIVERABLES

- County shall commence work under the Agreement within fifteen (15) calendar days after the effective date of the Agreement
- County shall provide District copies of the construction contract bid documents and the Cost Schedule for the awarded construction contract within thirty (30) days of contract award. The Cost Schedule, and the reimbursement percentage calculation, described in Section VI, below, shall be incorporated into this Agreement as Exhibit C.
- County shall provide certification of construction completion within thirty (30) days of project completion.
- County shall complete the project, including all tasks defined in this Agreement no later than December 30, 2008.

VI. CONTRACT BUDGET

The estimated total project construction cost is \$25,100,000. The project cost share from the WSP is as follows:

FY 07: \$4,300,000

FY 08: \$3,320,000

Total not-to-exceed WSP funds: \$7,530,000

District shall reimburse County up to thirty percent (30%) of construction costs eligible in accordance with the WSP, limited to an amount not to exceed \$7,530,000.

District's quarterly reimbursement to County shall be a percentage of the amount paid the contractor during the reimbursement period. The percentage shall be calculated based on the amount allocated by District divided by the amount of the construction contract represented by the Cost Schedule. In the event the project is completed below the contracted price, District shall reimburse County the amount of the remaining funds provided for in this Agreement up to an amount not exceeding thirty percent (30%) of the total project cost or the total value of that portion of the as-built project that is eligible for WPSP funding, whichever is less.

Contract #SK31012

**EXHIBIT B
SUPPLEMENTAL INFORMATION PACKAGE**

**EXHIBIT C
COST SCHEDULE**

To be incorporated into the Agreement as Exhibit C upon execution of the construction contract.

ATTACHMENT 2
NOTICE TO PROCEED

DATE:

TO:

FROM: Connie Rozier, Contracts Administrator

RE: Notice to Proceed Work: Contract No. ,

By receipt of this Notice, the Executive Director of the District authorizes work to begin on the above-referenced project for a total not to exceed amount of .

Date of Commencement shall begin on and substantial completion achieved by . Final completion shall be .

Kirby B. Green, III, Executive Director Date

Harold A. Wilkening III, P.E., Director,
Department of Resource Management

Date

Date

cc:Financial Management