

**AMENDED AND RESTATED  
MEMORANDUM OF AGREEMENT BETWEEN THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, CITY OF DELAND, CITY  
OF LEESBURG, CITY OF PALM COAST, AND ST. JOHNS COUNTY FOR THE  
DEVELOPMENT OF A PRELIMINARY DESIGN REPORT  
AND ENCUMBRANCE OF FUNDING  
FOR THE COQUINA COAST SEAWATER DESALINATION  
ALTERNATIVE WATER SUPPLY PROJECT**

This Amended and Restated Memorandum of Agreement (“Agreement”) is made and entered into by and between the St. Johns River Water Management District (“SJRWMD”), and the City of Leesburg and the City of Palm Coast, collectively referred to herein as “Suppliers.” SJRWMD and the Suppliers are collectively referred to herein as “Parties.” The City of DeLand and St. Johns County are included and designated herein as “ex officio” non-voting participants in this Agreement, subject to the terms and conditions contained herein.

**WITNESSETH:**

WHEREAS, the Flagler County 2007 Water Supply Plan identifies the Coquina Coast Seawater Desalination Project (hereafter “the Project”) as a potential alternative water supply project of regional significance, which is expected to supplement the public water supply of the Suppliers and potentially others through the Suppliers, and

WHEREAS, the Suppliers desire to develop alternative water supply sources in a manner protective of the environmental resources of the central and east central Florida region, consistent with SJRWMD’S regional water supply plans, and agree that the Project can be developed in an environmentally sensitive and economically feasible manner, and

WHEREAS, the Parties desire to develop a Preliminary Design Report for the Project (hereafter “Report”), which analyzes technical data for a land-based option and an offshore ship-based option and develops the engineering design for the Project option selected by the Suppliers to the point that the Suppliers may proceed with final engineering design and construction of the Project pursuant to a subsequent agreement, and

WHEREAS, the Parties recognize the benefits of regional cooperation and have determined that cost-sharing the preparation and development of the Report is in the public interest and to the economic advantage of the Suppliers, and

WHEREAS, the Suppliers have the authority and established funding sources to cost-share the preparation and development of the Report, and

WHEREAS, SJRWMD is in support of the efforts of the Suppliers to address water supply planning on a regional basis and is committed to providing financial and technical assistance for the Report and Project, subject to availability of funding, as further described herein, and

WHEREAS, pursuant to sections 373.196, 373.1961(3) and 403.890, Florida Statutes, the Florida Legislature established the Water Protection and Sustainability Program (“WPSP”) to fund the construction of alternative water supply development projects, and established the Water Protection and Sustainability Trust Fund (“the Fund”), to be administered by the State of Florida Department of Environmental Protection (“FDEP”); and

WHEREAS, pursuant to subsection 373.1961(3)(e), Florida Statutes, WPSP recipients must pay at least 60 percent of construction costs, unless the project is sponsored by a financially disadvantaged small local government, and, pursuant to subsection 373.196(6)(a), Florida Statutes, it is the goal of the Legislature that SJRWMD provide an equal match for all funds appropriated from the Fund; and

WHEREAS, pursuant to subsection 373.1961(3)(l), Florida Statutes, all revenues made available from the Fund must be encumbered annually by the Governing Board of the SJRWMD when it approves projects for WPSP funding; and

WHEREAS, SJRWMD seeks to provide WPSP funding for construction of the Project upon completion of the Report, and encumber WPSP funds for such construction prior to completion of the Report and preparation of the Project for construction; and

WHEREAS, SJRWMD may decide to provide ad valorem funding for the preparation of the Report; and

WHEREAS, the Parties agree that they shall actively pursue federal funding for the Report and Project construction; and

WHEREAS, because the existence of federal funding is undetermined at this point, the Parties are currently planning to prepare a Report that incorporates an Environmental Information Document (EID) that is sufficient to meet federal funding requirements and support preparation of an Environmental Impact Statement (EIS) that meets the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), if necessary; and

WHEREAS, the EID may be modified or eliminated from the Report in the future if it is determined that NEPA is not applicable to the Project, and

WHEREAS, in order to encumber such funds it will be necessary for the Project to progress toward completion in accordance with the milestones set forth herein and for the Suppliers to establish the governance and funding mechanisms necessary for construction and operation of the Project in accordance with the milestones set forth herein; and

WHEREAS, the Suppliers retained the engineering firm of Malcolm Pirnie, Inc., to prepare the Report (“the Consultant”); and

WHEREAS, the Final Recommended Project Report (Phase 1) was delivered to the Parties on January 20, 2010, and the Parties desire to provide an adequate opportunity for each Party or other interested utility to make an informed decision regarding participation in Phase 2 of the Report; and

WHEREAS, the Parties agree that the Milestones in Paragraph 5 of the Agreement, which are necessary for the encumbrance of WPSP funds, should be adjusted to more accurately reflect the realistic expectations of all Parties.

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby made a part of this Agreement, and the mutual covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties, each intending to be legally bound, agree to the following:

**1. AUTHORITY.** This Agreement is entered under the following authorities:

- (a) SJRWMD enters into this Agreement pursuant to Section 373.083, Florida Statutes, which authorizes each water management district governing board to enter into agreements with other public agencies and private corporations to accomplish the directives and goals of Chapter 373, Florida Statutes.
- (b) St. Johns County enters into this Agreement under the authority of its home rule powers, as well as Sections 125.01(1)(k)1, 125.01(1)(p), 125.01(3)(a), and 153.03(6), Florida Statutes, which authorize counties to enter into agreements with other public agencies and private corporations to accomplish goals for providing water to their customers.
- (c) The municipalities enter into this Agreement under the authority of Sections 166.021(1), 180.02, and 180.06(3), Florida Statutes, which authorize municipalities to enter into agreements to further their efforts to provide water to their residents and customers.

**2. REPORT SCOPE OF WORK**

- (a) The Report shall be prepared to accomplish the objectives generally set forth in the Summary Scope of Work, attached hereto as Exhibit 1. For Phase 2, the Parties shall develop a “Negotiated Scope of Work” to accomplish the objectives of the Summary Scope of Work, which shall be approved by a majority of the Suppliers. The term “Negotiated Scope of Work” means the final Scope of Work that will be negotiated with the Consultant for the development of Phase 2 of the Report. Phase 1, which has been completed, primarily consisted of an evaluation/comparison of land-based versus ship-based treatment and a determination of land-based treatment as the alternative to pursue in Phase 2. Phase 2 will take the Project to a 35% design stage and will be divided into Phases 2A and 2B. A revised Summary Scope of Work for Phases 2A and 2B is

attached hereto as Exhibit 2. Phase 2B may include Environmental Information Document (EID) and/or Environmental Impact Statement (EIS) tasks if such work is necessary, either to secure federal funds or because of some other federal permit requirement.

- (b) The final Scope of Work for Phase 1 provided that, upon completion of Phase 1, participating Suppliers could opt out and not participate in Phase 2. In addition, it permitted other water suppliers not participating in Phase 1, upon payment of an appropriate cost share, to participate in Phase 2. In addition, ex officio participants in Phase 1 are entitled to opt into Phase 2 upon payment of the full amount that would have been required to become a Supplier in Phase 1, less Phase 1 ex officio payments made.
- (c) The above-stated provisions of the final Scope of Work for Phase I are incorporated in this Agreement. Every Supplier, except ex officio participants, must agree to add a new Supplier to Phase 2.
- (d) Upon completion of Phase 2A, participating Suppliers may opt out and not participate in Phase 2B. In addition, other water suppliers not participating in Phase 2A shall be permitted to opt into Phase 2B upon payment of an appropriate cost share. Ex officio participants in Phase 2A shall be entitled to opt into Phase 2B upon payment of the full amount that would have been required to become a Supplier less Phase 2 ex officio payments made.

### **3. GOVERNANCE AND MANAGEMENT OF REPORT PREPARATION**

- (a) All decisions concerning the Report shall be made by the representatives of the Suppliers.
- (b) Regular meetings of the Parties shall be held on a schedule set by the Parties at a place to be determined by the Parties, with an agenda to be provided to the Parties and ex officio members prior to the meetings. Special meetings may be called at any time by a majority of the Suppliers, with reasonable notice of not less than ten (10) days to all Parties and ex officio members of the matters to be considered at the meeting.
- (c) A majority of the Suppliers' representatives must be present in order to conduct a meeting. All decisions shall be taken by a vote of the Suppliers' representatives present at the meeting. Each Supplier shall have one vote. All decisions shall be made by consensus. "Consensus" means that no Supplier present objects to or opposes the issue under consideration. In the event consensus cannot be reached on an issue, the votes on that issue shall be calculated on a weighted basis, with each Supplier's vote weighted in accordance with the percentage contribution of each Supplier, as set forth in paragraph 4. Ex officio members shall not be entitled to vote, but may participate in discussions at the meetings.

- (d) The Representatives and alternates shall be professional staff employed by the Party or ex officio member. Each Party and ex officio member shall designate its Representative and its alternate by providing written notification to the other Parties and ex officio members. At any time and in its sole discretion, a Party or ex officio member may designate a new Representative or alternate by providing a written notification to the other Parties and ex officio members.
- (e) The City of Palm Coast shall serve as Project Administrator, and shall have overall administrative responsibility for implementing this Agreement. The Project Administrator shall designate a staff member to serve as the Administrative Manager, who shall:
  - (1) Implement the Negotiated Scope of Work under the direction of the Suppliers' representatives;
  - (2) Provide the Parties' and ex officio members' representatives and alternates a monthly report as to the status of each task;
  - (3) Notify the Parties' and ex officio members' Representatives and alternates of the completion of each task within thirty (30) calendar days of completion; and
  - (4) Provide notices, minutes or summaries, and reports to the Parties' and ex officio members' representatives and alternates.
  - (5) Advise SJRWMD of the purpose, time and location of any meetings or coordination activities involving any other state or federal agency.
- (f) Each Representative shall have the responsibility to keep his or her Supplier informed of the work being undertaken on the Report.
- (g) All payments pursuant to this Agreement shall be submitted to the Project Administrator and shall reference this Agreement.
- (h) Ex officio participants shall be entitled to all of the rights and responsibilities of Suppliers under this Agreement, except that an ex officio participant shall not be entitled to vote.

#### **4. FUNDING**

- (a) The Suppliers, ex officio members and SJRWMD shall participate financially in the preparation and development of the Report as stated in Exhibit 3. SJRWMD shall contribute thirty percent of costs not specifically prohibited from SJRWMD participation or funding by this paragraph, based upon the total cost negotiated with the Consultant, but not to exceed \$2,518,481. SJRWMD shall pay its

proportionate share of the cost of the Report on a cost reimbursable basis, as more particularly described in Paragraph (7)(i). The funds shall be utilized exclusively for payment to the Consultant to implement the Negotiated Scope of Work for Phase 2 of the Report; provided, however, that SJRWMD funding shall not be utilized to cost-share in any work performed by the Consultant in direct preparation of the consumptive use permit application, including any subsequent work, in obtaining the consumptive use permit. In accordance with section 216.347, Florida Statutes, no funds may be used for lobbying the Florida Legislature, the judicial branch, or a state agency. For the purpose of this Agreement, lobbying includes any activity to influence or attempt to influence legislative or governmental decision-making or funding through written or oral communication. This also includes any support to individuals or firms who directly or indirectly support lobbyists or lobbying-like activities as related to this Agreement, including, but not limited to, administrative, technical and public information materials.

- (b) The Suppliers and ex officio members shall fund the remainder of the costs necessary to prepare the Report. The amount of funding by each Supplier will be based upon: (1) the number of Suppliers, (2) the amount of public supply water each participating Supplier used in 2006, and (3) the amount of public supply water (annual average) from the Project the Supplier reasonably projects to need pursuant to the formula provided in Exhibit 3. Ex officio members shall contribute \$21,300 to participate in the activities set forth in this Agreement for Phase 2A, payable upon receipt of an invoice from the Project Administrator. An ex officio member may pay its invoice in full during either FY 09-10 or FY 10-11, or may elect to split its payment such that a portion is paid in each of those fiscal years. The amount for ex officio participation is calculated based upon maintaining the same ratio to the Suppliers' estimated cost of Phase 2A as the Ten Thousand Dollar (\$10,000) Phase 1 ex officio cost was to the Suppliers' Phase 1 cost. If an ex officio member terminates its participation in the Project, no refund of monies paid shall be due.
- (c) The Suppliers agree to the following estimated contributions (Expected Cost plus 5% Contingency):

<u>Suppliers</u>	<u>Maximum Cost (expected cost plus 5% contingency)</u>	
	<u>Phase 2A</u>	<u>Total Cost (Phase 2A plus Phase 2B)</u>
City of Leesburg	\$483,200	\$1,800,148
City of Palm Coast	\$1,042,591	\$3,884,142
<b>TOTALS:</b>	<b>\$1,525,791</b>	<b>\$5,684,291</b>

- (d) The Project Administrator may receive a credit against its pro rata share of five percent (5%) of the amount of the contract awarded to the Consultant, but not to exceed Twenty-five Thousand Dollars (\$25,000) per year for carrying out its responsibilities hereunder. This maximum credit is incorporated in the overall project budget and the calculation of the financial contribution for all Suppliers. The Project Administrator shall also receive a credit not to exceed \$91,200 annually toward its share for retaining a qualified professional to provide additional administrative and technical support for the Project. This support includes, but is not limited to, meeting notification, preparing meeting agendas, preparing meeting summaries, securing meeting locations, reviewing invoices from the Consultant, making recommendations for payment, and other Project-related tasks, as determined by the Project Administrator.
- (e) The Parties' commitments under this Agreement, either collectively or individually, are contingent upon an availability of funds and annual appropriation by the governing body of each respective Party.
- (f) Upon completion of negotiations with Consultant and determination of the cost of Phase 2A and the total cost of the Phase 2 of the Report, and prior to execution of a contract with Consultant, the Administrative Manager shall advise each Supplier of its share of the cost of Phase 2A of the Report based upon the formula in Exhibit 3, and shall notify SJRWMD of its 30 percent share. Each Supplier shall then request authorization from its governing body to contract for the full amount of its share of the total cost of Phase 2A of the Report. Within sixty (60) days of execution of a contract with Consultant, each Supplier shall remit its cost-share for Phase 2A to the Project Administrator. SJRWMD shall remit its cost-share in accordance with Paragraph 7(i).
- (g) Changes in the Negotiated Scope of Work that will cause Phase 2A or the final cost of Phase 2 of the Report to increase above the estimates in paragraph 4(b) must be approved by consensus or a weighted majority vote of the Suppliers and shall not be undertaken by the Consultant until each Supplier receives authorization from its governing body to pay the increased cost.
- (h) If the estimated cost of the Phase 2A of the Report exceeds the actual cost, each Supplier and SJRWMD shall be reimbursed in proportion to its contribution. If the estimated cost is less than the actual cost, the deficit shall be allocated pro rata to each Supplier in accordance with the formula in Exhibit 2 and a notice of deficit shall be prepared and sent to each Supplier. Each Supplier shall remit its share of the deficit to the Project Administrator no more than ninety (90) days from receipt of notice of deficit from the Administrator Manager.
- (i) The cost of Phase 2A of the Report is estimated not to exceed \$1,903,035. The total cost of the Phase 2 of the Report to the Suppliers and SJRWMD is estimated not to exceed \$7,456,415. The Suppliers' liability to contribute to the Report

shall not exceed their proportionate share of said amounts plus a 5% contingency, as provided in paragraph 4(b), unless the amounts are increased by formal action of the governing body of a majority of the Suppliers. If funds from other sources are received for Phase 2A of the Report, said funds shall be applied to the cost of Phase 2B of the Report to reduce the amounts due from the Suppliers and SJRWMD, and each Supplier and SJRWMD will either be reimbursed in proportion to its contribution or have its remaining contribution balance proportionately reduced.

- (j) Prior to commencement of Phase 2A, each Supplier has the right to terminate its participation in the Report after providing notice by May 28, 2010, to each Supplier, confirmed by a signed acknowledgement of receipt.
- (k) If an ex officio participant in Phase 2A becomes a Supplier in Phase 2B, the difference in the cost between the two levels of participation shall be paid by the ex officio participant and shall be applied to reduce the costs of the remaining Suppliers who participated in Phase 1 and Phase 2A.

**5. WSPF FUNDING; ENCUMBRANCE OF FUNDS**

- (a) The Suppliers contemplate that work under this Agreement will lead to a further agreement to fund implementation of the Project throughout its duration. The Suppliers intend to seek WSPF funding for the Project, and will cooperate with each other and SJRWMD in order to allow the Suppliers to seek WSPF funds for Fiscal Year (FY) 2007 and future years. In order to set aside WSPF funds in advance of construction, the Suppliers must meet specific milestones (hereafter “Milestones”) for completion of the Report, governance for the Project, construction design and engineering, construction contracting, and commencement of construction, and make satisfactory progress toward achieving the Milestones.
- (b) Subject to the conditions and contingencies provided herein, the Suppliers agree to proceed with the design, permitting, construction, and operation of the Project in accordance with the following Milestones:

1/20/10	Consultant to complete Phase 1 of PDR portion of Report
5/28/10	Utilities formally declare to participate in Phase 2A as Suppliers
7/22/10	Suppliers execute Amended and Restated MOA to accomplish Phase 2A.
8/27/10	Suppliers negotiate and execute contract for Phase 2A of Report
10/31/11	Consultant completes Phase 2A of the Report



- 1/31/12 Utilities formally declare to participate in Phase 2B as Suppliers
  - 3/31/12 Suppliers execute Amendment to Amended and Restated MOA to accomplish Phase 2B.
  - 4/30/12 Suppliers negotiate and execute contract for Phase 2B of PDR portion of Report
  - 4/30/14 Consultant completes Phase 2B of PDR Report
  - 5/1/14 Suppliers apply for Consumptive Use Permit(s)
  - 8/1/14 Suppliers solicit for contracts(s), which may be a design-bid-build, design-build, design-build-operate, design-build-own-operate, design-build-own-operate and transfer, or other type of contract(s)
  - 10/1/14 Suppliers receive proposals
  - 11/1/14 Interviews (assuming they are necessary)
  - 1/1/15 Begin Design
  - 5/1/15 Consultant completes consultation with federal agency and NEPA portion of Report, if NEPA applies to project and federal agency issues FONSI
  - 1/1/16 Acquisition of Construction Phase Permits and Begin Construction
- (c) The following Milestones apply toward completion of the Suppliers' governance agreement regarding the construction, ownership, operation and maintenance of the Project (hereafter "Governance Agreement"):
- 1/31/10: Suppliers initiate negotiations for development of the Governance Agreement
  - 4/16/14: Suppliers execute and record Governance Agreement
- (d) It is anticipated under the current schedule that construction will be completed in 2018. The Parties recognize that circumstances may change and affect the above schedule for completion of the Project. A subsequent cost-sharing agreement for the disbursement of the encumbered funds will be executed by the Parties regarding the construction phase of the Project prior to start of construction.

- (e) Subject to funding availability and annual appropriation by the SJRWMD Governing Board, SJRWMD intends to encumber both WPSP and SJRWMD funds adequate to meet SJRWMD's goal of cost-sharing in Project construction prior to the commencement of construction, and to maintain the encumbrance of said funds until the commencement of construction in accordance with the then-current "Procedure for Release of Appropriation and Disbursement of Funds" established by FDEP. A copy of the procedure as of April 19, 2006 is attached hereto as Exhibit 4.
- (f) SJRWMD has begun encumbrance of WPSP and SJRWMD funds, and intends to encumber additional WPSP and SJRWMD funds in subsequent years so as to increase its cost-share participation in the Project; provided, however, that nothing herein shall be construed as creating an obligation for SJRWMD to encumber any such funds. This Agreement shall apply to any WPSP and SJRWMD funds that are encumbered by SJRWMD in 2010 and future years without further amendment, and such funds shall be committed for the purposes of this Agreement, subject to the provisions hereof. In the event of encumbrance of any such funds, SJRWMD shall provide the Suppliers with notice thereof, which shall become an attachment to this Agreement.
- (g) SJRWMD intends that any funds encumbered hereunder will remain encumbered, provided the Suppliers continue to meet the milestones set forth herein. Upon request from the Suppliers, SJRWMD may, in its sole judgment and discretion, agree to amend this Agreement to accommodate revised project Milestones, for good cause shown by the Suppliers. SJRWMD may terminate this Agreement, including any fund encumbrances provided for hereunder, if the Suppliers fail to meet the Milestones, as may be amended from time to time.
- (h) In the event the composition of the Suppliers should change as a result of the withdrawal of any Suppliers from this Agreement, addition of new Suppliers, or creation of a new entity to govern implementation of the Project pursuant to the Governance Agreement, SJRWMD shall maintain its funding commitment to the Project provided the remaining Suppliers or the new governance entity have adequate resources to meet the Milestones and successfully complete the Project. The determination in this regard shall be in the sole judgment and discretion of SJRWMD.

## **6. RESPONSIBILITIES OF SUPPLIERS**

Each Supplier, without limitation as to any other duties provided for herein, shall:

- (a) Designate, in writing, a representative to attend all meetings of the Suppliers and an alternate to attend such meetings when the representative is not available.

- (b) Develop solicitation and selection criteria for consultant(s) and participate in the selection process and development of the Negotiated Scope of Work in accordance with the Consultant Procurement Procedure set forth in Exhibit 5.
- (c) Participate as needed in preparation of the contract to retain the consultant(s).
- (d) On an as needed basis, and with reasonable notice, provide SJRWMD, all Parties, and the Consultant access to their lands, facilities, needed records, testing results, and other such cooperation as may be needed for completion of the Report.
- (e) Seek technical assistance, as necessary, from other appropriate sources.
- (f) Participate in meetings as necessary to successfully complete the Report.
- (g) Review, comment on, and approve interim and final deliverables for the Report within the time frame as specified therein.
- (h) Secure additional necessary funds and make their best efforts to obtain governing body approvals prior to approving increased costs for the Report.
- (i) Affirm their ongoing duties of mutual cooperation with each other and agree to assist each other in furtherance of the Agreement's goal of developing the Report.
- (j) Actively pursue federal funding such as is provided in Sec. 5061 of the 2007 Water Resource Development Act.

## **7. RESPONSIBILITIES OF PROJECT ADMINISTRATOR**

In addition to its responsibilities as a Supplier, and without limitation as to any other duties provided for herein, the Project Administrator ("PA") shall:

- (a) Designate, in writing, an Administrative Manager to coordinate its responsibilities under this Agreement.
- (b) At the direction of the Suppliers, procure the services of the consultant(s), utilizing the Project Administrator's procurement policies and procedures.
- (c) Prepare and execute contract(s) with consultant(s).
- (d) Manage the activities of the consultant(s) to assure that contract requirements are met.
- (e) Report on a quarterly basis to the Parties and ex officio members the status of the deliverables and expenditures, including projected schedules and expenditures for the next quarter.

- (f) Manage the review of interim and final deliverables.
- (g) Coordinate regularly with SJRWMD and the Suppliers and ex officio members.
- (h) At the direction of the Suppliers, initiate and process funding requests for the Project from revenue sources which have been made available to SJRWMD by the Florida Legislature, unless a Governance Agreement designates a legal entity capable of timely performing this responsibility. However, nothing herein shall preclude a Supplier or ex officio member from initiating or processing funding requests from revenue sources that have been made available to SJRWMD by the Florida Legislature.
- (i)
  - (1) Receive and account for funds from Suppliers, SJRWMD, and other sources. In submitting invoices to SJRWMD, the PA shall submit monthly itemized invoices by one of the following two methods: (1) by mail to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177, or (2) by e-mail to acctpay@sjrwmd.com. Each invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. If necessary for audit purposes, the District may require and the PA shall provide additional supporting information to document invoices.
  - (2) All invoices shall include the following information: (1) contract number; (2) District encumbrance number; (3) the PA's name and address (include remit address, if necessary); (4) SJRWMD Project Manager; (5) the PA's Project Manager; (6) supporting documentation as to cost and/or project completion. The PA shall bill SJRWMD in accordance with the cost schedule that shall be developed in the contract between the PA and the Consultant ("Cost Schedule"). The Cost Schedule shall require the submittal of itemized monthly or "percentage of task complete" invoices based upon the actual portion of the work performed. The PA shall separately account for the cost of the work performed by the Consultant and the cost of the administrative work performed by the PA. Billing for the PA's administrative expenses shall include adequate documentation as to the nature of the work performed and the time expended. Billing for outside legal services shall include an itemized statement of the nature of the work performed and the time expended. All documentation required for verification of invoices, including approval of payment to Consultant by the PA, shall be received and approved by SJRWMD prior to release of payment. Invoices that do not correspond to the Cost Schedule or other requirements of this paragraph will be returned to the PA without action within twenty (20) business days of receipt and shall state the basis for rejection of the invoice.

- (3) Final Invoice. The final invoice must be submitted no later than 45 days after receipt of the final invoice from the Consultant. **Final invoices submitted after this date are subject to a penalty of 10 percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. The PA must request approval for delayed submittal of the final invoice not later than ten (10) days prior to the due date and state the basis for the delay.**
- (4) End of District Fiscal Year Reporting. The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Contractor shall submit, prior to October 30, a description of the additional Work completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Contractor shall submit a description of the Work completed on the project through September 30 and a statement estimating the dollar value of that Work as of September 30.
- (5) SJRWMD 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 SJRWMD from loss as a result of defective Work performed by the Consultant and not remedied. Amounts withheld shall not be considered due and shall not be paid until the ground for withholding payment has been remedied.
- (j) Process and pay invoices from the Consultant.
- (k) Submit documentation to SJRWMD and/or other grant agencies as necessary to secure other funds for payment of invoices.
- (l) Maintain all of the paperwork relevant to this Agreement and provide copies of any and all paperwork requested by Suppliers.
- (m) Within sixty (60) days after the expiration or termination of this Agreement, provide SJRWMD and the Suppliers with an accounting of the expenditure of funds for the Report and reimburse the Suppliers any portion of the funds which have not been expended on the Report.

## **8. SJRWMD RESPONSIBILITIES**

SJRWMD shall, without limitation as to any other duties provided for herein:

- (a) Subject to annual appropriation of funds by the SJRWMD Governing Board, provide technical support and peer review services, if requested by the Suppliers.
- (b) Designate, in writing, a Representative to attend all meetings of the Suppliers and communicate SJRWMD's position on issues, and designate an alternate to attend such meetings when the representative is not available.
- (c) Identify any potential SJRWMD real property which could be utilized for the Project.
- (d) Actively pursue federal funding such as is provided in Sec. 5061 of the 2007 Water Resources Development Act.

## **9. TERM, AMENDMENT, TERMINATION**

- (a) The term of this Agreement shall commence upon its execution by the last of the Parties. Unless earlier terminated pursuant to the terms hereof, this Agreement shall remain in effect until completion of the Milestones.
- (b) This Agreement shall be reviewed annually by the Parties and may be amended upon written agreement of all Parties.
- (c) Any Supplier may terminate its participation in this Agreement with or without cause by giving ninety (90) days written notice to the other Parties. Upon termination of its participation, a Supplier shall be relieved of all obligations and covenants under this Agreement; provided, however, that the obligation of a Supplier to participate in the funding of the Report pursuant to the formula set forth in Exhibit 2 shall survive its termination if a contract for said services has been executed at the time the Supplier gives its written notice of termination. During the period of the Notice of Termination, the terminating party shall not be entitled to vote in any manner.
- (d) A Supplier's participation may be terminated in whole or in part by majority vote of the remaining Suppliers in the event of substantial failure by a Supplier to fulfill its obligations under this Agreement through no fault of the terminating Suppliers, provided that no termination may be effected unless the alleged defaulting Supplier is given: (1) not less than ninety (90) calendar days written notice, delivered by certified mail, return receipt requested, and (2) an opportunity to consult with the other Suppliers and remedy the default prior to termination. If a Supplier's participation in this Agreement is terminated by the other Suppliers, the terminated Supplier shall be relieved of all obligations and covenants

contained in this Agreement, except for the funding obligations, which survive termination as set forth in sub-paragraph (c), above.

- (e) Upon termination of a Supplier pursuant to sub-paragraph (d), above, the remaining Parties may complete the Report without the assistance of the terminated Supplier. The Suppliers completing the Report may fully utilize existing work products in pursuing its completion.
- (f) SJRWMD may terminate its participation in this Agreement, with or without cause, at any time upon ninety (90) calendar days prior written notice to the other Parties. Any such termination shall be effected by delivery to the other Parties of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. Notwithstanding the aforesaid, in the event a contract has been entered into with the Consultant, the obligation of SJRWMD to participate in funding the services for which it has, by execution of this Agreement, affirmatively agreed to participate in pursuant to paragraph 4(a), above, shall survive its termination as to all funds appropriated by its Governing Board prior to the effective date of termination.
- (g) In the event of: (1) termination by SJRWMD or one or more Suppliers, and (2) the remaining Parties determine not to complete the Report, the Project Administrator shall conduct an accounting of all actual and outstanding contract payment obligations made or owed by the Project Administrator to the Consultant as of the effective date of termination, and shall return any funding provided by the Parties on a pro rata basis for work which the Project Administrator is not obligated to pay the Consultant.
- (h) Any ex officio member may terminate its participation in this Agreement with or without cause by giving thirty (30) days written notice to the Parties.

## **10. LIABILITY AND INSURANCE**

- (a) Neither this provision nor any other provision in this Agreement shall be construed as a waiver of sovereign immunity by any of the Parties.
- (b) All contracts and subcontracts for any work described in the Negotiated Scope of Work shall require Consultant and subcontractors to include insurance, hold harmless and indemnification provisions to protect all of the Parties in a form acceptable to the Parties. Prior to commencement of work, the Consultant and subcontractors shall provide evidence of insurance acceptable to the Project Administrator.

## **11. CONSTRUCTION OF AGREEMENT**

Nothing in this Agreement shall be construed to:

- (a) Preclude any Supplier from continuing to operate its existing water supply facilities or restrict in any way the ability of a Supplier to retain its existing water supply facilities, expand existing facilities, or develop new water supply facilities in order to meet the existing and future water needs of its water wholesale and retail customers from a dependable, adequate and cost-effective water supply.
- (b) Affect the utility service area of a Supplier, the rights of a Supplier to provide service within its utility service area, or any right or obligation a Supplier may have pursuant to its certificate of authorization or comparable local enabling law.
- (c) Affect, change or modify any existing agreement among the Suppliers or among one or more Suppliers and SJRWMD.
- (d) Impede, interfere with, modify, construe, or waive the private property rights or land ownership rights of SJRWMD, Suppliers, and any entity not a party to this Agreement.
- (e) Impede, interfere with, or supersede the exclusive authority of SJRWMD under Part II, Chapter 373, Florida Statutes, to permit the consumptive use of water. No rights are created as a result of this Agreement, the expenditure of funds provided herein, or any work performed hereunder through which the Suppliers may claim any entitlement or rights to the consumptive use of water.
- (f) Requiring or compel any Supplier to develop the water supply facilities identified in the Report.

## **12. OWNERSHIP OF DOCUMENTS**

Ownership and copyright to all reports and all accompanying data (in all formats) produced pursuant to work done under this Agreement shall be vested in all the Parties. Any source documents or any other documents or materials developed, secured or used in the performance of this Agreement shall be considered property of the Party from which such documents or materials originated.

## **13. ENTIRE AGREEMENT**

This Agreement, including exhibits, constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements in connection with the subject matter hereof, except as specifically set forth herein.



**14. SEVERABILITY**

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions. However, this provision shall not apply to the voting mechanism, the funding cap applicable to Suppliers, and the Summary Scope of Work attached as Exhibit 1.

**15. ASSIGNMENT**

No assignment, delegation, transfer or novation of this Agreement or any part hereof shall be made unless approved in writing by the Parties.

**16. DISCLAIMER OF THIRD PARTY BENEFICIARIES**

This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or corporation other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representation, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties.

**17. INTENT REGARDING FUTURE DEVELOPMENT OF WATER SUPPLY SOURCE**

Acknowledging that no specific quantity of water is guaranteed by funding and participating in the development of the Report, the Suppliers express their intent that their funding and participation in the Report allows each Supplier the opportunity to participate in the development of water from one or more water supply sources arising out of the Project as determined by one or more agreements of the Suppliers entered into subsequent to this Agreement, which each Supplier agrees to negotiate in good faith. The Suppliers acknowledge that the development of water resources arising out of the Project is subject to the permitting authority of SJRWMD as described in paragraph 11 (e).

**18. CONFLICTS OF INTEREST**

Nothing herein shall prevent a Supplier from raising conflict of interest issues in other matters.

**19. MISCELLANEOUS PROVISIONS**

- (a) This Agreement and the rights and obligations of the parties are to be governed by, construed and interpreted in accordance with the laws of the State of Florida. In the event of any legal proceedings arising from this Agreement, venue for such proceedings, if in state court, shall be in Flagler County, Florida, and if in federal

court, shall be in the Middle District of Florida, Orlando Division. In any such legal proceedings the Parties hereby consent to trial by the court and waive the right to seek a jury trial as to any issues so triable. As used herein, "shall" is always mandatory.

- (b) The Parties, their employees, subcontractors and assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.
- (c) The Parties shall allow public access to all project documents and materials that are subject to the provisions of Chapter 119, Florida Statutes. Should any Party assert any exemption to the requirements of Chapter 119 and related statutes, the burden of establishing such an exemption, by way of injunctive or other relief as provided by law, shall be upon that Party.
- (d) Pursuant to Section 216.347, Florida Statutes, the Parties shall not expend any funds under this Agreement to lobby the Legislature, the judicial branch, or any state agency.
- (e) The Parties hereby assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this Agreement. The Parties shall take all measures necessary to effectuate these assurances.

IN WITNESS WHEREOF, the following authorized representatives of the Parties have executed this Agreement on the date signed by each.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

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

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

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

Approved by: \_\_\_\_\_  
Attorney

CITY OF LEESBURG (SUPPLIER)

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

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

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

Approved by: \_\_\_\_\_  
City Attorney

CITY OF PALM COAST (SUPPLIER)

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

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

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

Approved by: \_\_\_\_\_  
City Attorney

CITY OF DELAND (EX OFFICIO)

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

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

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

Approved by: \_\_\_\_\_  
City Attorney

ST. JOHNS COUNTY (EX OFFICIO)

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

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

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

Approved by: \_\_\_\_\_  
County Attorney