

**COST SHARE AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND CITY OF GAINESVILLE, PUBLIC WORKS DEPARTMENT
FOR PAYNES PRAIRIE TREATMENT WETLAND**

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 the CITY OF GAINESVILLE, PUBLIC WORKS DEPARTMENT (“the City”), whose address is Mail Station 58, P. O. Box 490, 306 NE 6 Avenue, Gainesville, Florida 32602.

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 18 counties; 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 the City (hereafter “the Work”).

NOW THEREFORE, in consideration of the payments herein specified, and which the District agrees to make, City 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 Paynes Prairie Treatment Wetland, Contract #SK915AA. City 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; 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 July 1, 2007.
 2. **Completion Date.** The Completion Date of this Agreement shall be no later than June 30, 2010, 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.** City 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
 - On _____ (insert specific date).

This date shall be known as the "Commencement Date." City 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 the City's submission of any required submittals. City 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. City shall deliver all products and deliverables as stated therein. City is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. City shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, the City 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.** When requested, the City shall submit quarterly 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.
- C. **Ownership.** All deliverables are the property of the District, including Work that has not been accepted by the District, when the City 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 the City. 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. The City shall include language in all subcontracts that so provides.

ARTICLE III - COMPENSATION

- A. **Amount of Funding.** For satisfactory performance of the Work, the District agrees to pay the City a sum in the amount not to exceed \$850,000 (the “Total Compensation”).
- B. **In-Kind Services.** Through this Cost Share Agreement, the City agrees to provide the balance of the cost of the Work in the form of funds and in-kind services for this project. Funds committed to this project by funding partners under separate agreements with the City may be used as part of the City’s matching fund source. The City’s funding partners may include the Florida Department of Transportation and the Florida Department of Environmental Protection. In the event project costs exceed the design estimate of \$1,468,000, City shall be responsible for providing any additional funding required to complete the project.
- C. **Invoicing Procedure.** I The invoice shall be submitted either by mail to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177 or by email to acctpay@sjrwm.com. **City shall transmit invoice using only one of the above two methods, but not both.** City shall submit one itemized invoice at completion of construction based upon the actual portion of the Work performed and shall bill as per Exhibit A – Statement of Work, attached hereto and by reference made a part hereof. Payment request submitted by the Contractor shall include the following information:
- D. Payment request submitted by the City shall include the following information:
1. Contract number SK915AA
 2. City’s name and address (include remit address if necessary)
 3. Name of District’s Project Manager
 4. Name of the City’s Project Manager
 5. Cost data
 - (a) Supporting documentation and copies of invoices if cost reimbursable
 - (b) Deliverables submitted and approved
 - (c) Project completion documentation
 6. Progress Report (as per contract requirements)
 7. Diversity Report (The report shall include company names for all Women and Minority 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 the City 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 City 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.

- E. **Payments.** The District shall pay City one hundred percent (100%) of each approved invoice.
- F. **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 the City 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.

- G. **Forfeiture of Final Payment.** City shall submit the final invoice to the District not later than 90 days after the Completion Date. CITY'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.
- H. **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 the City 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.
- I. **Release.** Upon the satisfactory completion of the Work, the District will provide a written statement to the City 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 contingent upon funding in succeeding years, which may include a single source or multiple sources, including, but not limited to: (1) revenues appropriated by the District's Governing Board in its sole discretion and judgment for each succeeding year; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Should the Work provided for hereunder not be approved, in whole or in part, for funding in succeeding years, the District shall so notify City, and this Agreement shall be deemed terminated for convenience in accordance with GC – 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

Maurice Sterling, Project Manager
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177
386-329-4320
E-mail: msterling@sjrwmd.com

CITY

Alice Rankeillor, Project Manager
City of Gainesville, Public Works Department
Mail Station 58
P. O. Box 490
306 NE 6 Avenue
Gainesville, Florida 32602
352-334-5070
E-mail: rankeillai@cityofgainesville.org

- 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. The District's Project Manager and, as appropriate, other District employees, shall meet with the City 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 the City 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.** City 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 the City 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 the City's default is effected by the District, any payment due to the City at the time of termination shall be adjusted to cover any additional costs to the District because of the City's default. If termination for the District's default is effected by the City, 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 the City, up to the termination date.
- D. Upon receipt of a termination action under paragraphs "A" or "B" above, the City 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 the City 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. City's shall provide the District with any licenses to enter real property interests owned by the City necessary for completion of the Work.
- F. If, after termination for failure of the City to fulfill contractual obligations, it is determined that the City 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.** City shall not assign this Agreement, or any monies due hereunder, without the prior written consent of the District. City shall be responsible for the fulfillment of all work elements included in any subcontracts and shall be responsible for the payment of all monies due under any subcontract. City 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. City shall hold the District harmless from any liability or damages arising under or from any subcontract to the extent allowed by law.
- B. **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.
- C. **Audit: Access to Records.** City agrees that the District or its duly authorized representatives shall, until the expiration of three (3) years after expenditure of funds hereunder, have access to examine any of the City's books, documents, papers, and other records involving transactions related to this Agreement. City 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. City 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. City will provide proper facilities for access to and inspection of all required records.
- D. **Civil Rights.** Pursuant to chapter 760, Fla. Stat., the City shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.

- E. **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.
- F. **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.
- G. **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.
- H. **Entire Agreement.** This Agreement, upon execution by the City 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. City agrees that no representations have been made by the District to induce the City 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.
- I. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the state of Florida.
- J. **Independent Contractor.** City is an independent contractor. Neither the City nor the City's employees are employees of the District. City shall have the right to control and direct the means and methods by which the Work is accomplished. City may perform services for others, which solely utilize its facilities and do not violate any confidentiality requirements of this Agreement. City 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. City'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 the City 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 the City's duties hereunder or alter the City's status as an independent contractor.
- K. **Interest of City.** City 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 the

City to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.

- L. **Non Lobbying.** Pursuant to section 216.347, Fla. Stat., as amended, the City 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.
- M. **Release of Information.** Records of the City 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 City receives a request for any such records, the City shall notify the District's Project Manager within three (3) workdays of receipt of such request and prior to the release of any information. Nor shall the City publish or release any information related to performance of this Agreement, or prepare, publish, or release any news or press release in any way related to this Agreement, without prior District review and the District's written consent. 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.
- N. **Royalties and Patents.** Unless expressly provided otherwise herein, the City 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 the City 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. City 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.
- O. **Separate Counterparts.** This Agreement may be executed in separate counterparts, which shall not affect its validity.
- P. **Venue.** In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings shall be in Duval County, Florida.
- Q. **Waiver of Right to Jury Trial.** In the event of any civil proceedings arising from or related to this Agreement, the City 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.

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 the City 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

CITY OF GAINESVILLE

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

By: _____
Russ Blackburn, City Manager

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

Documents attached:

- Exhibit A — Statement of Work
- Attachment 1 – District Supplemental Instruction Form (sample)

EXHIBIT “A” – STATEMENT OF WORK

PAYNES PRAIRIE TREATMENT WETLAND

I. INTRODUCTION/BACKGROUND

The St. Johns River Water Management District (the District) and the City of Gainesville Public Works Department (City) are sharing the cost of constructing a 125-acre treatment wetland to reduce pollutants flowing into Paynes Prairie Preserve State Park from downtown Gainesville via Sweetwater Branch. It is part of a treatment train that will significantly reduce nutrient loading into the park, an Outstanding Florida Water. This constructed wetland is designed to reduce total nitrogen by 66% and total phosphorus by 32%.

This project will allow the City to meet its Total Maximum Daily Load (TMDL) requirement for Alachua Sink, an impaired surface water in the park. It will also permit restoration of sheetflow of clean water onto 1,300 acres of degraded wetlands downstream of Sweetwater Branch.

This water-quality improvement project is the culmination of a decade of cooperation by the Orange Creek Basin Partnership, which includes the District, the City, Gainesville Regional Utilities, and Department of Environmental Protection Division of State Parks. The District has already provided \$1,065,500 to the City through a stormwater grant and a legislative appropriation for two stormwater management projects in the Sweetwater Branch watershed (Depot Park west ponds and interceptor pipe) that are part of this treatment train.

II. OBJECTIVE

This cost-share project will provide \$850,000 from two legislative appropriations as reimbursement to the City of Gainesville for design of a 125-acre treatment wetland that will remove pollutants from Sweetwater Branch before it flows into Paynes Prairie Preserve State Park. This cost-share is about 58% of the estimated \$1,468,000 total design cost for the treatment wetland. The total construction cost of the treatment wetland is estimated to be \$8,637,650.

III. STATEMENT OF WORK

The City will design the treatment wetland to reduce total nitrogen and total phosphorus to concentrations sufficient to allow for restoration of sheetflow into an Outstanding Florida Water and state park.

IV. TASK IDENTIFICATION

The City of Gainesville Public Works Department shall design the treatment wetland. The District will reimburse the City for \$850,000 of the cost of treatment wetland design after receipt and review of final deliverables.

V. TIME FRAMES AND DELIVERABLES

City shall provide brief quarterly progress reports to the District Project Manager. The City shall provide the District Project Manager with a single deliverable for reimbursement purposes that shall consist of a copy of the final 100% design plans for the constructed treatment wetland certified by a Professional Engineer.

VI. BUDGET

The total contract amount shall not exceed \$850,000.

ATTACHMENT 1 — DISTRICT’S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO:

FROM: _____, Project Manager

CONTRACT/PURCHASE ORDER NUMBER:

CONTRACT TITLE:

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor changes to the work as consistent with the Contract Documents and return to the District’s Project Manager.

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

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

Approved: _____ Date: _____

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

Approved: _____ Date: _____

(Contractor agrees to implement the Supplemental Instructions as requested, but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____

_____, District Project Manager

cc: Contract/Purchasing file
Financial Management

031606