




Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
MAY 13 2014 KHINP

AGENDA ITEM

April 28, 2014

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Community, Environmental and Development
Services Department

**CONTACT PERSON: Lori Cunniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department
(407) 836-1405**

SUBJECT: May 13, 2014 — Consent Item
South Florida Water Management District Local Governmental
Agreement No. 4600003022 (Lake Down Filter Baskets)

The Environmental Protection Division (EPD) is requesting approval of the South Florida Water Management District (SFWMD) Local Governmental Agreement No. 4600003022 (Lake Down Filter Baskets - \$50,000.00 for installations); the total cost is estimated to be \$90,000. The matching funding for the project has been approved by and will come from the Windermere Water and Navigation Control District (WWNCD MSTU).

Lakes Down and Tibet are part of the Butler Chain of Lakes, an Outstanding Florida Water. In order to reduce the pollutant loading and improve water quality, 70 catch basin inserts (CBIs) (filter baskets) will be installed to address 2,000 acres of selected drainage area that currently discharges into the lakes without treatment. The CBIs, which are designed for multistage filtration, will remove trash, organic materials (grass clippings and leaves) and sediments, thus reducing the existing stormwater pollutant contributions into the lakes.

The SFWMD Local Governmental Agreement No. 4600003022 (Lake Down Filter Baskets) was reviewed by the County Attorney's Office and approved as to form.

ACTION REQUESTED: Approval of South Florida Water Management District Local Governmental Agreement, Agreement No. 4600003022 between the South Florida Water Management District and Orange County (Lake Down Filter Baskets) in the amount of \$50,000 with a \$40,000 match for a total project cost of \$90,000. District 1

JWW/LC: mg

Attachments

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

MAY 13 2014 KH/NP

ORIGINAL

INVOICE REFERENCE NO. 9500006007



SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. 4600003022

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

ORANGE COUNTY

THIS AGREEMENT is entered into as of JUN 02 2014 by and between the South Florida Water Management District (**DISTRICT**) and Orange County Florida, a charter county and political subdivision of the State of Florida (**COUNTY**).

WHEREAS, the **DISTRICT** is a government entity created by Chapter 373, Florida Statutes; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **COUNTY** to construct stormwater systems that will reduce pollutant loadings within Lakes Down and Tibet; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**;

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of one year (the expiration date).
3. The total **DISTRICT** contribution shall not exceed the amount of \$50,000. The **DISTRICT** shall make payment upon completion and acceptance of the deliverables as described in the Payment and Deliverable Schedule set forth in Exhibit "B", which is

attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** payment is a reimbursement of actual expenditures and therefore is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$50,000. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. In the event the **COUNTY** is providing a cost sharing contribution as provided for in paragraph 5 below, the **COUNTY** shall provide evidence that its minimum cost share has been met for each invoice submitted. The subject cost share documentation shall be included with each invoice.

The **DISTRICT'S** cost-share is being funded through Ad Valorem funding. The total funding consideration for this **AGREEMENT** is subject to a single-year funding allocation, for Fiscal Year 2014. This **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT**.

4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **DISTRICT** anticipates a total project cost of \$90,000, with the balance of matching funds and/or in-kind services to be obtained from the **COUNTY**. In the event such **COUNTY** matching funding and/or in-kind services becomes unavailable, that shall be good and sufficient cause for the **DISTRICT** to terminate the **AGREEMENT** pursuant to Paragraph 14 below.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager; said consent will not be unreasonably withheld. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A",

Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party.

9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY'S** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY'S** subcontract.
10. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.
12. The parties to this **AGREEMENT** 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**.
13. The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.

15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.

16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:

A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.

B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.

C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.

17. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Attn: Nestor Garrido, Project Manager
Attn: Marilyn Ivory, Contract Specialist
3301 Gun Club Road
West Palm Beach, FL 33406
Telephone No. (561) 682-6381
Email: mivory@afwmd.gov

Orange County

Attn: Sergio Duarte
Address: 800 Mercy Drive Suite 4
Orlando, FL 32808
Telephone No. (407) 836-1605
Email: Sergio.Duarte@ocfl.net

18. Invoices, clearly marked "ORIGINAL", shall be sent to the attention of Accounts Payable at the **DISTRICT's** address specified below. All invoices shall reference the **AGREEMENT** and Invoice Reference Numbers specified on page one of this **AGREEMENT**. In addition, a copy of the invoice shall be sent to the attention of the **DISTRICT's** Project Manager either at the address specified in paragraph 18 above or via Email using the Email address number also specified above.

South Florida Water Management District
Attention: Accounts Payable
P.O. Box 24682
West Palm Beach, Florida 33416-4682

19. **COUNTY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This **AGREEMENT** may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, electronic or facsimile copy of this **AGREEMENT** and any signatory hereon shall be considered for all purposes as original.
21. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
22. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
23. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **COUNTY** or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
24. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
25. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
26. This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.
27. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:

- (a) Terms and Conditions outlined in preceding paragraphs 1 – 26
- (b) Exhibit "A" Statement of Work
- (c) Exhibit "B" Payment and Deliverable Schedule
- (d) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHERE OF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: *Dorothy A. Bradshaw*
 Dorothy A. Bradshaw, Procurement Bureau Chief *DM*

SFWMD OFFICE OF COUNSEL APPROVED

By: *[Signature]*
 Date: 04.7.14

SFWMD PROCUREMENT APPROVED

By: *[Signature]*
 Date: April 3, 2014 *DM*



ORANGE COUNTY

By: **BOARD OF COUNTY COMMISSIONERS**

By: *Teresa Jacobs*
 Teresa Jacobs
[Signature]
 Title: County Mayor

Attest: Martha O. Haynie, County Comptroller
 As Clerk of the Board of County Commissioners

By: *[Signature]*
 DEPUTY CLERK

EXHIBIT "A"

STATEMENT OF WORK

1.0 INTRODUCTION

The catch basin inserts (CBI) project for the Lakes Down and Tibet project, described in this Statement of Work is within the Butler Chain of Lakes, an Outstanding Florida Water (OFW). The CBI project for Lake Down and Lake Tibet will capture over 2,000 acres of selected drainage area that currently discharges directly into the Butler Chain of Lakes without treatment.

The proposed CBIs for Lakes Down and Tibet will be custom made by Suntree Technologies for 70 selected curb or grate inlets. The CBI designed for multistage filtration will remove trash, organic materials (grass clippings and leaves) and sediments, thus reducing the existing stormwater pollutant contributions into the lakes. According to research done by Orange County (**COUNTY**), the average performance of the CBI under monthly cleanings has shown that each unit removes 0.44 lbs/month of total nitrogen (TN) and 0.11 lbs/month of total phosphorus (TP). The 70 CBIs proposed for Lakes Down and Tibet is expected to remove approximately 369 lbs/year of TN and approximately 92.4 lbs/year of TP.

The project is part of a series of projects approved by the (**COUNTY**) and the Windermere Water and Navigation Control District - Windermere MSTU (WWNCD) for Fiscal years 2013-2014 and 2014-1015, to reduce pollutant loadings within Lakes Down and Tibet. Currently, stormwater runoff discharges sediment-laden water directly into Lakes Down and Tibet, without any means of abatement or treatment.

2.0 OBJECTIVE

The objective of the Project is to install 70 CBI filter baskets within the Lake Down and Lake Tibet watershed.

3.0 SCOPE OF WORK

To complete the scope of work, the **COUNTY** has contracted with a contractor to provide the services and specific responsibilities set forth in this Statement of Work. This Statement of Work will focus on the installation of filter baskets as described above.

The **COUNTY** is responsible for project management, budget management and quality control, and is responsible for reviewing and approving deliverables to ensure that the projects' objectives are met. The **COUNTY** shall provide all signage identifying the project at the project location. Such signage shall include references to the **DISTRICT** as a source of funding for the project and shall incorporate the **DISTRICT** logo.

The Project will meet the regulatory requirements of all government agencies with permitting jurisdiction.

4.0 WORK BREAKDOWN STRUCTURE

The project consists of the installation of 70 stormwater CBI filter baskets within the Lake Down and Lake Tibet watershed.

Task 1 - Install 45 stormwater CBIs in the following neighborhoods at Lake Down: Down Lake View Circle, Windermere Downs, Maywood and Midsummer, Lavill Court and Ron Den Lane.

Task 2 - Install 25 stormwater CBIs in the following neighborhoods at Lake Tibet: Bentley Lane Park, Lake Tibet Court and Point Cypress Drive.

5.0 DELIVERABLES

At the end of each task, the **COUNTY** shall submit the (1) hard copy and one (1) electronic copy of the following:

1. Certified As-Built and Record Drawings, if applicable
2. Transmittal Letter to the **DISTRICT** signifying **COUNTY** acceptance of the project.
3. Copies of invoices from contractors.
4. Final Invoice from the **COUNTY** to **SFWMD**.

EXHIBIT "B"
PAYMENT AND DELIVERABLES SCHEDULE
ORANGE COUNTY, FLORIDA (COUNTY)
STORMWATER CATCH BASIN INSERTS (CBI) AT LAKES DOWN AND TIBET

This is a cost-share project with funding coming from the South Florida Water Management District (**DISTRICT**) and Orange County, Florida (**COUNTY**). Total reimbursement by the **DISTRICT** shall not exceed the amount of **\$50,000** for this cooperative agreement. The total project cost is estimated to be \$90,000. Invoices shall be accompanied by adequate documentation to demonstrate the completion of each task in accordance with the Statement of Work requirements and the **COUNTY'S** cost share within the not-to-exceed amounts specified below in accordance with Article 3 of the Agreement. All deliverables submitted hereunder are subject to review and acceptance by the **DISTRICT**. Acceptability of all work will be based on the judgment of the **DISTRICT** that the work is technically complete and accurate.

The **COUNTY** is responsible for reviewing and approving deliverables to ensure that project objectives are met. The **COUNTY** is also responsible for project management, budget management, and quality control.

Deliverable	Due Date	DISTRICT Not-to-Exceed Payment
Installation of 70 Stormwater Catch Basin Inserts (CBI) in the Lakes Down and Tibet Watershed	August 29, 2014	\$50,000.00

The **DISTRICT** shall only be obligated to pay for documented actual expenditures within the not-to-exceed amounts of \$50,000. In no event shall the **DISTRICT'S** total obligation exceed \$50,000.00 as specified above. The **COUNTY** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources.