



Interoffice Memorandum

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

September 2, 2016

BCC Mtg. Date: September 20, 2016

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P.E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM" field.

**SUBJECT: BCC Agenda Item – Discussion Agenda
September 20, 2016 BCC Meeting
Second Amendment and Renewal to the Contract for Operation,
Maintenance and Engineering Services for the Water Conserv II
Reclaimed Water System Joint Facilities and Orange County/City of
Orlando Water Conserv II Joint Facilities Annual Target Budget
Contact Person: Larry G Tunnell, P. E., P. G., Manager
Water Reclamation Division
Utilities Department
(407) 254-9685**

The Water Conserv II project, which is jointly owned by the City of Orlando and Orange County, provides over 30 million gallons of reclaimed water daily for citrus irrigation, rapid infiltration basins (RIBs), nurseries/tree farms, golf courses and residential irrigation within the Horizon West development. The existing Water Conserv II Contract for Operation Services, with Woodard & Curran, Inc., has a five year term of service that expires on September 30, 2016. The contract provides for subsequent renewal with a five year term at the discretion of the City and County. The operating budget for the facility is negotiated annually and must be approved each year by the Board of County Commissioners and the Orlando City Council. Renewal of the contract with Woodard and Curran is needed in conjunction with approval of the 2017 project budget authorization to Woodard & Curran, Inc.

Second Amendment and Renewal to the Contract for Operations

The County and City have negotiated with Woodard and Curran to amend the terms and renew the contract for an additional five years. The proposed second amendment will provide cost savings benefits to the City and County while maintaining the level of services provided. The contract describes the scope of services, compensation for services, the rights and responsibilities of the parties and other requirements necessary for the administration of the contract.

Water Conserv II Joint Facilities Annual Target Budget

The Water Conserv II operations annual target budget includes the cost of labor, equipment, chemicals, repairs, professional services, and general maintenance necessary to operate and maintain the jointly owned facility. The County's and the City's share of the operation and maintenance cost are based on metered flow from the County's South Water Reclamation Facility (Approximately 68%) and the City's McLeod Road Water Reclamation Facility (approximately 32%). The cost for all capital improvements is shared equally. The total project budget for 2017 is \$8,536,424. The



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September 20, 2016 BCC Agenda – Conserv II Amendment and Renewal/Annual Target Budget
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City's share of the estimated 2017 project budget is \$3,670,918.29. The County's share is \$4,865,505.71. Sufficient funds are available in account numbers 4420-038-1352-3135, 4420-038-1352-3820, 4420-038-1352-6310, and 4420-038-1445-6350.

The proposed Water Conserv II 2017 budget of \$8,536,424 is a 56.6% increase from the 2016 budget of \$5,449,716. The 2017 operations and maintenance budget increased 19.3% from the previous year with \$3,318,300 proposed for 2017 and \$2,781,000 approved for 2016. The capital and renewal portion of the proposed 2017 budget represents an increase of 95.5% from the previous year with \$5,218,124 proposed for 2017 and \$2,668,725 approved in 2016.

The primary increase in the O&M budget is for the addition of the consulting services of WSP/PB for \$447,250. In previous years, these services were paid out of the Orange County Water Resources Program (WRP) contract and the City reimbursed the County for their share of the fees. This year, the WRP contract was up for renewal and the Water Conserv II Partners wanted to ensure the services that WSP/PB provided would not be interrupted if they were not selected again under the County's WRP contract.

The CIP budget increases were due to several new items that were not in the previous year's budget. The largest increase of \$1,798,300 is for repair of the 54-inch pipeline along the Florida Turnpike. This pipeline appears to have experienced a significant sag after a sinkhole event late last year. The second largest increase of \$750,000 is to install 2 new connections on the 54-inch pipeline for a new booster pump station that is currently under design.

The County Attorney's Office and Risk Management staffs have reviewed the contract and find it acceptable as to form. Utilities Department staff has reviewed the contract and budget and recommends approval.

Action Requested: **Approval and execution of Second Amendment and Renewal to the Contract for Operation, Maintenance and Engineering Services for the Water Conserv II Reclaimed Water System Joint Facilities by and between the City of Orlando, Florida, Orange County, Florida and Woodard & Curran, Inc.**
-and-
Approval of funding for the Orange County/City of Orlando Water Conserv II Joint Facilities Annual Target Budget with Woodard & Curran, Inc. The County's share of the estimated project budget is \$4,865,505.71.

All Districts.

BCC Mtg. Date: September 20, 2016

SECOND AMENDMENT AND RENEWAL

TO THE

CONTRACT FOR OPERATION, MAINTENANCE AND ENGINEERING SERVICES

FOR THE

WATER CONSERV II RECLAIMED WATER SYSTEM JOINT FACILITIES

THIS SECOND AMENDMENT AND RENEWAL (the "SECOND AMENDMENT") is made and entered into this _____ day of ~~SEP 20 2016~~ 2016 by and between the **City of Orlando, Florida**, a municipal corporation existing under the laws of the State of Florida, 400 S. Orange Avenue, Orlando, Florida 32801 (CITY), **Orange County, Florida**, a charter county and political subdivision of the State of Florida, 201 South Rosalind Avenue, Orlando, Florida 32801 (COUNTY), hereinafter jointly referred to as the "CITY/COUNTY," and **Woodard & Curran Inc.**, a Maine corporation with a principal place of business located at 41 Hutchins Drive, Portland, Maine, 04102, (hereinafter "CONTRACT OPERATOR").

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR have previously entered into a Contract for Operation, Maintenance and Engineering Services (hereinafter the "CONTRACT") dated September 21, 2006, for the Water Conserv II Reclaimed Water System Joint Facilities, which initial term expired on September 30, 2011; and

WHEREAS, Section 19.2 of the CONTRACT allows for renewal for succeeding terms of five (5) years based upon negotiation of the Scope of Services and Reimbursable Costs; and

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR have previously entered into an amendment and renewal to the CONTRACT (hereinafter the "FIRST AMENDMENT") dated September 21, 2011, which expires September 30, 2016; and

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR now desire to extend the term of the CONTRACT, amend certain provisions of the CONTRACT, including certain provisions set forth in the FIRST AMENDMENT, and add certain new conditions; and

WHEREAS, the parties agree that except as specifically amended herein, the other terms and provisions of the CONTRACT, as amended by the FIRST AMENDMENT, remain in full force and effect.

City Council Meeting: 8-29-16
Item: 7-1 Documentary: 160879101

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and given one to the other, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. RECITALS; DEFINED TERMS

All of the recitals contained herein are true and correct, and are incorporated herein by reference. Capitalized terms used herein shall have the meanings ascribed to them in the CONTRACT unless defined in this SECOND AMENDMENT.

II. TERM

As specifically allowed in Section 19.2 of the CONTRACT, this SECOND AMENDMENT shall extend the term of the CONTRACT for an additional five (5) year term to and including September 30, 2021.

III. BILLING OF REIMBURSABLE ITEMS

Section 3 of the CONTRACT, as amended by the FIRST AMENDMENT, provides that the COUNTY will directly pay for certain specified services including an item identified as “PB Americas, Inc. Annual O&M Services to Orange County -- (Refers to consulting services that had formerly been paid directly by the COUNTY in support of the operations and maintenance of the Water Conserv II Reclaimed Water Joint Facilities)”. Section 3 of the CONTRACT is hereby amended to include the item described as:

WSP | Parsons Brinckerhoff Annual O&M Services to Orange County – (Refers to consulting services that had formerly been paid directly by the COUNTY in support of the operations and maintenance of the Water Conserv II Reclaimed Water Joint Facilities)

As an item that CONTRACT OPERATOR will be responsible for direct payment of on a Cost-Plus-Fixed-Fee method.

IV. SECTION 8 CLAIMS AND DISPUTES/REMEDIES

Section 8.2.1 of the Contract is hereby deleted and replaced with the following:

8.2.1 Except as provided in Section 8.1 herein, all claims, disputes and/or matters in question between CITY/COUNTY and the CONTRACT OPERATOR arising out of or relating to this CONTRACT, or breach of it, will be decided by arbitration if the parties hereto mutually agree, or if they do not agree, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division). The parties consent and submit to the exclusive jurisdiction of any such court and expressly waive all rights to trial by jury for any matters arising under this Agreement. Neither party shall be liable to the other party in any legal matter, dispute, action or proceeding arising out

of or related to this CONTRACT for the expense of the other party's attorneys' fees and court costs, including those incurred on appeal or in bankruptcy.

V. SECTION 9 BONDS, INDEMNITY AND INSURANCE

Section 9.1 of the CONTRACT is hereby deleted and replaced with the following:

9.1 Indemnity

To the fullest extent permitted by law, the CONTRACT OPERATOR shall indemnify and hold harmless the CITY/COUNTY, their officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses, including attorney's fees for personal injury and property damage to the extent resulting from any negligent act or omission of CONTRACT OPERATOR or its sub-contractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the negligence of the CITY/COUNTY. To the extent that the CITY/COUNTY incurs defense costs that are covered by CONTRACT OPERATOR's indemnity obligations under this paragraph, CONTRACT OPERATOR shall reimburse CITY/COUNTY for such defense costs at the conclusion of the legal proceeding.

Provided, however, to the extent that this CONTRACT is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the CONTRACT OPERATOR to indemnify or hold harmless the CITY/COUNTY, its officers and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the CONTRACT OPERATOR and persons employed or utilized by the CONTRACT OPERATOR in the performance of the CONTRACT; and the aggregate liability of CONTRACT OPERATOR under this CONTRACT shall not exceed the total value of the construction project paid to CONTRACT OPERATOR, or one million dollars (\$1,000,000), whichever is greater.

Section 9.1.2 of the CONTRACT is hereby deleted and replaced with the following:

9.1.2 Hold Harmless

CITY/COUNTY agree to indemnify and hold harmless the CONTRACT OPERATOR, its elected officers and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses including attorney's fees for personal injury and property damage to the extent attributable to CITY/COUNTY's negligent acts or omissions, or those of its officials and employees acting within the scope of their employment. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by CITY/COUNTY to assume any liability for the negligence of the CONTRACT OPERATOR. CITY/COUNTY shall not assume any liability for consequential damages, including though not exclusively, loss of revenue and loss of use of equipment.

Section 9.1.3 of the CONTRACT is hereby deleted and replaced with the following:

9.1.3 Hazardous Substances, Claims by Third Parties

CONTRACT OPERATOR agrees to indemnify and hold harmless CITY/COUNTY from any and all claims, by third party persons or legal entities, for losses, damages, costs or other claims and liabilities arising from CONTRACT OPERATOR's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to CONTRACT OPERATOR's operations herein but only to the extent caused by the negligence of the CONTRACT OPERATOR. To the extent that the CITY/COUNTY incurs defense costs that are covered by CONTRACT OPERATOR's indemnity obligations under this paragraph, CONTRACT OPERATOR shall reimburse CITY/COUNTY for such defense costs at the conclusion of the legal proceeding. CONTRACT OPERATOR agrees that it shall dispose of all Materials in strict compliance with local, state and federal statutes, laws, ordinances, codes, rules, regulations, orders or decrees and shall provide evidence of such disposal satisfactorily to CITY/COUNTY's designated representative. In the event of CONTRACT OPERATOR's failure to comply with this paragraph, CONTRACT OPERATOR shall, at its sole cost and expense, promptly commence and diligently pursue any required investigation, assessment, cleanup, remediation, restoration, and monitoring of any waters and lands affected by CONTRACT OPERATOR's failure to comply and to restore the damaged water and/or land to the condition existing immediately prior to the occurrence which caused the damage. Upon discovery of a failure or violation related to its disposal operations, CONTRACT OPERATOR shall immediately notify such failure or violation to all applicable governmental agencies having jurisdiction and to the CITY/COUNTY. CITY/COUNTY acknowledges that, in seeking the services of CONTRACT OPERATOR under this CONTRACT, CITY/COUNTY are requesting CONTRACT OPERATOR to undertake environmental and other operational obligations for CITY/COUNTY'S benefit which may be uninsurable. Therefore, notwithstanding anything contained in this CONTRACT to the contrary, CITY/COUNTY agrees that CONTRACT OPERATOR'S indemnity of CITY/COUNTY set forth above shall not apply to and CONTRACT OPERATOR shall not be liable to the CITY/COUNTY for and, to the extent permitted by Section 768.28, Florida Statutes, CITY/COUNTY shall indemnify and hold harmless CONTRACT OPERATOR, its directors, officers, employees and agents from and against, any and all claims, by persons or legal entities other than CITY/COUNTY for losses, damages, costs or other claims and liabilities, including (without limitation of the type or kind of claims or liabilities covered) those arising under local, state or federal laws (including but not limited to the Clean Water Act, CERCLA or RCRA) or common law theories of strict liability, which are directly or indirectly connected with or caused by or arise on account of the presence, discharge, release, disposal or escape of hazardous or toxic substances, waste, pollutants or contaminants of any kind (hereinafter collectively "Hazardous Substances"), whether at CITY/COUNTY'S Water Reclamation Facilities or at any other location, which hazardous substances (i) are contained in the influent to the JOINT FACILITIES, or (ii) are not added by CONTRACT OPERATOR (hereinafter collectively "Indemnified Substances"). It is expressly understood and agreed that CONTRACT OPERATOR is not and shall not be responsible or liable for, and that CITY/COUNTY'S indemnity of CONTRACT OPERATOR hereinabove set forth shall, without limitation of the type or kind of claims or liabilities covered, apply to and cover any and all claims and liability, including future claims and liability resulting from regulatory changes in presently accepted practices, caused by or arising directly or indirectly from the

presence or release of Indemnified Substances on or off the site of the JOINT FACILITIES or the presence or release of the Indemnified Substances contained in water in or distributed from the JOINT FACILITIES. Notwithstanding the above, with respect to losses, damages, costs or other claims or liabilities caused by substances which are added or are required to be added by the CONTRACT OPERATOR pursuant to the provisions of this CONTRACT (for example, chlorine), the release from liability and CITY/COUNTY'S indemnification of CONTRACT OPERATOR set forth above in this Section 9.1.3 shall not apply to such losses, damages, costs or other claims and liabilities to the extent such losses, damages, costs or other claims or liabilities were caused by the negligence or willful misconduct of the CONTRACT OPERATOR. The provisions of this paragraph shall survive the termination or expiration of the CONTRACT."

Section 9.2 of the CONTRACT is hereby deleted and replaced with the following:

9.2 Insurance

CONTRACT OPERATOR agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this CONTRACT the following types of insurance coverage with limits and on forms including endorsements as described herein.

The CONTRACT OPERATOR shall require and ensure that each of its sub-contractors providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. All policies referenced herein, except the Workers' Compensation and Professional policies, shall list the City/County, their employees, appointed and elected officials, as additional insureds. All policies shall contain a provision requiring written notice to the City/County at least thirty (30) days prior to cancellation or material modification.

Required Coverage:

1. **Workers' Compensation** The CONTRACT OPERATOR shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$500,000 each incident of bodily injury or disease for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the CITY/COUNTY.

Required Endorsements:

- Waiver of Subrogation- WC 00 03 13 or its equivalent

2. **Commercial General Liability** The CONTRACT OPERATOR shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$10,000,000 (ten million dollars) per occurrence. CONTRACT OPERATOR further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. Any deductibles applicable to the general liability policy shall not exceed \$500,000, which deductible shall not be

the responsibility of the CITY/COUNTY. All umbrella policies shall be written on a “follow-form” basis and may be combined to meet the required limit.

Required Endorsements:

- Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.

Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations

- Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.

Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

3. Business Automobile Liability The CONTRACT OPERATOR shall maintain coverage for all owned; non owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$1,000,000 (one million dollars) per accident. In the event the CONTRACT OPERATOR does not own automobiles the CONTRACT OPERATOR shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

4. Professional Liability (if applicable)- The CONTRACT OPERATOR shall maintain professional liability coverage with limits of not less than \$2,000,000 (two million dollars) per claim and in the aggregate .

5. Contractor’s Pollution Liability- The CONTRACT OPERATOR shall maintain pollution liability coverage including onsite clean up coverage for all incidents associated with their negligent operation and maintenance of the JOINT FACILITIES.

When a self-insured retention or deductible exceeds \$100,000 the CITY/COUNTY reserves the right to request a copy of CONTRACT OPERATOR’s most recent annual report or audited financial statement.

For policies written on a “Claims-Made” basis the CONTRACT OPERATOR agrees to maintain a retroactive date prior to or equal to the effective date of this CONTRACT. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this CONTRACT the CONTRACT OPERATOR agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the CONTRACT OPERATOR of the obligation to provide replacement coverage.

By entering into this CONTRACT, CONTRACT OPERATOR agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the CITY/COUNTY for the workers’ compensation and liability policies as required herein. When required by the insurer or should a policy condition not permit the CONTRACT OPERATOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACT OPERATOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any operations/services provided under this CONTRACT the CONTRACT OPERATOR shall provide the CITY/COUNTY with current

certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the CONTRACT OPERATOR shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the following with copies to the designated representatives for both the CITY and the COUNTY.

Orange County Board of County Commissioners
c/o Risk Management Division
109 E. Church Street, Suite 200
Orlando, Florida 32801

City of Orlando
Director of Public Works
400 South Orange Avenue
Orlando, Florida 32801

VI. CONTROLLING LAWS

Section 17 of the CONTRACT is hereby deleted and replaced with the following:

The parties to this CONTRACT acknowledge that this CONTRACT is made and entered in the State of Florida. This CONTRACT, including all amendments hereto, and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction.

VII. ENTIRE AGREEMENT

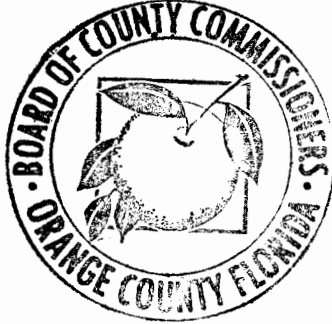
This SECOND AMENDMENT shall not supersede or amend the CONTRACT or other amendments except as specifically provided herein. No additions, alterations, or variations to the terms of this SECOND AMENDMENT shall be valid, nor can the provisions of this SECOND AMENDMENT be waived by either party, unless such additions, alterations, or waivers are expressly set forth in writing in a document duly executed by both parties.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this SECOND AMENDMENT on the day and year first written above.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



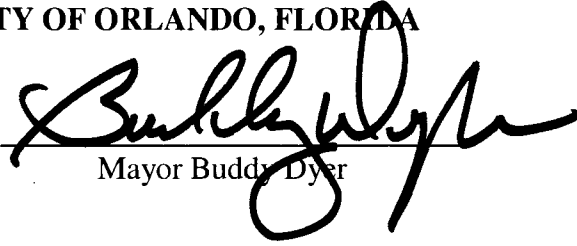
By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Attest:

By: *Craig O. Stopynka*
Martha O. Haynie, County Comptroller
fol Clerk to the Board of County Commissioners

CITY OF ORLANDO, FLORIDA

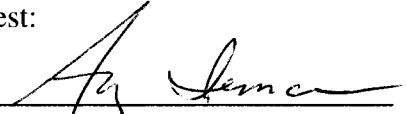
By: _____



Mayor Buddy Dyer

Attest:

By: _____

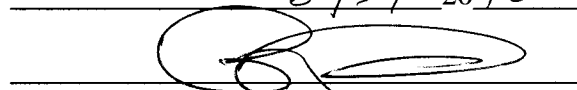


Amy Iannaco
Interim City Clerk

APPROVED AS TO FORM AND LEGALITY:

For the use and reliance of Orlando, Florida

8/31/2016



Assistant City Attorney, Orlando, FL



CONTRACT OPERATOR

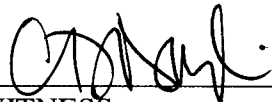
Woodard & Curran, Inc.

By: 

Print Name: Douglas J. McKeown

Title: CEO

Signed, sealed and delivered in the presence of :

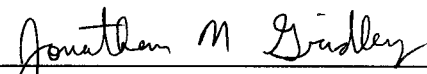

WITNESS


WITNESS

 Maine
STATE OF FLORIDA }
COUNTY OF Cumberland }

PERSONALLY APPEARED before me, the undersigned authority, Douglas J. McKeown, well known to me or [] who has produced his/her CEO as identification, and known by me to be the of the corporation named above, and acknowledged before me that he/she executed the foregoing instrument on behalf of said corporation as its true act and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this 1 day of September, 2016.


NOTARY PUBLIC
Print Name: Jonathan N. Gridley
My Commission Expires: June 9, 2023

JONATHAN N. GRIDLEY
NOTARY PUBLIC
State of Maine
My Commission Expires
June 9, 2023