

FIRST AMENDMENT TO COST PARTICIPATION AGREEMENT NO. 1
FOR CONSTRUCTION AND OPERATION AND
MAINTENANCE OF THE BLACK CREEK
WATER RESOURCE DEVELOPMENT PROJECT

THIS AMENDMENT is entered into as of this ____ day of October 2022 by and between City of Gainesville d/b/a Gainesville Regional Utilities (“GRU”), whose address is P.O. Box 147117, Sta. A122, Gainesville, Florida 32614-7117, and the St. Johns River Water Management District, a special taxing district created by Chapter 373, Florida Statutes, (the District), whose address is 4049 Reid Street, Palatka, Florida 32177-2529.

RECITALS

A. On July 29, 2021, the District and GRU entered into that certain COST PARTICIPATION AGREEMENT NO. 1 FOR CONSTRUCTION AND OPERATION AND MAINTENANCE OF THE BLACK CREEK WATER RESOURCE DEVELOPMENT PROJECT (the Agreement).

B. Among other things, in the Agreement GRU agreed to participate financially in the construction, operation, and maintenance of the Black Creek Water Resource Development Project (Black Creek WRD) and make payment in two parts. GRU has already completed the first part of its payment on October 28, 2021, (prior to the November 1, 2021, deadline) for construction, operation, and maintenance. The Agreement currently requires the second payment by “no later than November 1, 2022.” However, the Agreement also contemplates that the District would first determine the final award for the construction bid for the Black Creek WRD, and based on that bid award, within 30 days thereafter, the District would notify GRU of the final construction cost per 0.1 feet of lift and notify GRU of the dollar amount of the remaining portion of the Black Creek WRD cost GRU must pay the Escrow Agent provided that regardless of the construction bid final

award GRU's payment originally due by November 1, 2022 would not exceed \$1,047,222.00.

C. The District has been proceeding with the Project in three construction phases: (1) the pump station and intake structure at Black Creek, (2) the pipeline along State Roads 16 and 21, and (3) a treatment system/recharge location. At its July 2022 meeting, the Governing Board approved the Wharton-Smith bid of approximately \$15.9 million for the construction of the first phase of the Project (the pump station and intake structure at Black Creek). At its September 2022 meeting, the Governing Board approved the DBE Management LLC bid of \$38,813,100 for the second phase of the Project (construction of the pipeline). With the supplemental work and pipe escalation allowances, the awarded contract will have a total not-to-exceed amount of \$41,313,100, which came in below the District's construction cost estimate for the second phase.

D. Since the District still has one construction element left to bid, which will not be awarded until early 2023, and given that the second construction phase cost came in below the District's construction cost estimate, the parties believes it would be in their best interests to delay GRU's second payment for a year (until November 1, 2023), to allow the District to provide GRU with a more precise cost per 0.1 foot of recovery purchased. The parties also believe it would be in their mutual best interest to delay until November 1, 2023, GRU's second payment of \$308,165 for the Back Creek WRD operation and maintenance costs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the District and GRU agree as provided herein.

1. The recitals set forth above are incorporated herein by reference and made a part hereof as fully as if set forth herein verbatim.

Extension of Deadlines

2. Section 5 of the Agreement is amended such that within 30 days after determining

the cost of the third construction phase of the Project (the final award for the construction bid of the Black Creek WRD) and by not later than October 1, 2023, the District will notify GRU of the final construction cost per 0.1 feet of lift and notify GRU of the dollar amount of the remaining portion of the Black Creek WRD cost GRU must pay the Escrow Agent.

3. Section 5 of the Agreement is amended such that by no later than November 1, 2023, GRU will pay, deposit, and deliver, in escrow, to the Escrow Agent, the remaining amount of GRU's construction cost payment.

4. Section 6 of the Agreement is amended such that by no later than November 1, 2023, GRU will also pay to the escrow agent the remaining operation and maintenance payment amount of \$308,165.

5. These time extensions do not to change any other substantive terms of the Agreement not explicitly identified herein, including those provisions regarding cost methodologies or to reduce or diminish any of the benefits to GRU of participating in the Agreement. In addition, these time extensions do not alter the provision of the Agreement limiting the maximum amount of GRU's second construction cost payment to \$1,047,222 regardless of the final construction cost bid award.

6. Specifically, nothing in this First Amendment changes the Agreement's provisions described in sections 8 – 22 of the Agreement and the ability of GRU to rely upon the same as provided in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the dates set forth below.

(Signatures on the following pages)

Attest:

Omichele D. Gainey, City Clerk

CITY OF GAINESVILLE

By: _____
Mayor Lauren Poe

Date of Execution: _____

Approved as to the form and legality:

By: _____

Name: _____
Assistant City Attorney II

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: _____
Michael A. Register, P.E.
Executive Director

Attest: _____
Erin H. Preston
Interim General Counsel

(SEAL)

Approved as to Legal Form and Content:

Thomas I. Mayton, Jr. Deputy General Counsel

FILED on this _____ day of October 2022.

District Clerk