

Meeting Date
October 21, 2014



AGENDA	
Section	Consent
Item No.	<i>II.A.1</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Renewal of the Agreement between the St. Johns River Water Management District and the Brevard Mosquito Control District for Annual Rehabilitation of Coastal Wetlands
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:
 It is requested that the Board of County Commissioners authorize the Director of the Natural Resources Management Department to execute the Renewal Agreement between the St. Johns River Water Management District (SJRWMD) and Brevard Mosquito Control District for Annual Rehabilitation of Coastal Wetlands.

Summary Explanation & Background:

The original Agreement was executed on September 2, 2005. This request is for the ninth renewal of the Agreement between SJRWMD and the Brevard Mosquito Control District.

Under this Agreement, past work has connected thousands of acres of impounded coastal wetlands by the installation of culverts and pumps. This work was done through contracts between SJRWMD and Brevard Mosquito Control District. This type of project eliminates the need for pesticides and allows marshes to remain open and tidal throughout the year, while providing effective mosquito control. Over the life of this Agreement, thousands of acres of disturbed habitat have been rehabilitated.

The overall intent of this Agreement is to facilitate rehabilitation or restoration of impacted coastal wetlands, including mosquito impoundments, within the Indian River Lagoon system.

Renewal of this Agreement shall be through September 30, 2015, unless terminated in accordance with the Agreement.

Name: Ernest Brown, Natural Resources Management Department
 Phone: 633-2016

Clerk to the Board instruction:

Exhibits Attached: **Attachment A:** Renewal Agreement
Attachment B: Original Agreement between SJRWMD and Brevard Mosquito Control District

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Stockton Whitten	Assistant County Manager Mel Scott	Department Director / Extension Ernest Brown/52439
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Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

October 22, 2014

M E M O R A N D U M

TO: Ernie Brown, Natural Resources Management Director

RE: Item II.A.1., Agreement Renewal Between the St. Johns Water Management District and the Brevard Mosquito Control District for the Annual Rehabilitation of Coastal Wetlands

The Board of County Commissioners, in regular session on October 21, 2014, authorized you to execute the Agreement Renewal between the St. Johns River Water Management District (SJRWMD) and the Brevard Mosquito Control District for the Annual Rehabilitation of Coastal Wetlands. Enclosed is the original of the Agreement Renewal for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/ds

Encl. (1)

cc: Contracts Administration
Finance
Budget

**NINTH RENEWAL OF THE AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND BREVARD MOSQUITO CONTROL DISTRICT, FOR
ANNUAL REHABILITATION OF COASTAL WETLANDS - BREVARD**

THIS RENEWAL AGREEMENT is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose mailing address is 4049 Reid Street, Palatka, Florida 32177 and BREVARD MOSQUITO CONTROL DISTRICT, ("Contractor"), whose address is 800 Perimeter Road, Titusville, FL 32780, and shall be effective October 1, 2014.

PREMISES:

The parties entered into an agreement on September 2, 2005, for Annual Rehabilitation of Coastal Wetlands - Brevard ("Agreement") and entered into two amendments (Amendment #1 on July 28, 2008, and Amendment #2 effective on October 1, 2013) and entered into eight Renewals (#1 - #8) effective on October 1 of each year from 2006 through 2013, respectively, and now desire to renew the Agreement, including any subsequent amendments, except as otherwise provided for herein.

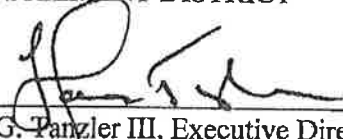
NOW, THEREFORE, in consideration of the above premises, which are hereby made a part of this Renewal Agreement, and the mutual covenants contained herein, the parties hereby agree as follows:


1. The Agreement, Contract #23696, is hereby renewed for an additional twelve (12) month period, beginning October 1, 2014, and ending September 30, 2015.
2. All other terms and conditions of the Agreement are hereby ratified and continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Renewal Agreement on the date set forth below.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BREVARD MOSQUITO CONTROL DISTRICT

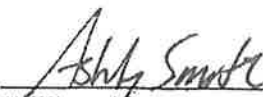
By: 
Hans G. Panzler III, Executive Director, or Designee

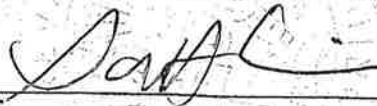
By: 
Mary Bolin Lewis, Chairman
Typed Name and Title

Date: 8-28-14

Date: 10-21-2014

APPROVED AS TO FORM


William Abrams, Sr. Assistant General Counsel

Attest: 
Scott Ellis, Clerk
Typed Name and Title

**AGREEMENT BETWEEN
THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND BREVARD MOSQUITO CONTROL DISTRICT
FOR ANNUAL REHABILITATION OF COASTAL WETLANDS - BREVARD**

THIS 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 BREVARD MOSQUITO CONTROL DISTRICT ("BMCD"), whose address is P.O Box 728, Titusville, Florida 32781-0728.

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 Brevard County; and

WHEREAS, the District has determined that its needs will be best served by entering into an Agreement for services that can be provided by BMCD (hereafter "the Work").

NOW THEREFORE, in consideration of the payments herein specified, and which the District agrees to make, BMCD 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 Annual Rehabilitation of Coastal Wetlands - Brevard, Contract #SJ411F0. BMCD 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; Exhibit "B" - Comptroller's Memorandum; 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 the date upon which the last party to this Agreement has dated and executed the same; provided, however, that in the event a date other than the aforesaid is set forth below in this section, that date shall be the Effective Date.

In lieu of the aforesaid Effective Date, the Effective Date of this Agreement shall be October 1, 2005.
 2. **Completion Date.** The Completion Date of this Agreement shall be no later than September 30, 2006, 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.
 3. This Agreement may be renewed for two (2) additional twelve (12) month terms by the mutual and written consent of each party.
- B. **Schedule of Work.** BMCD 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." BMCD 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 BMCD's submission of any required submittals. BMCD 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. BMCD shall deliver all products and deliverables as stated therein and in accordance with each individual Work Order. BMCD is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. BMCD shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, BMCD 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.** BMCD shall submit progress reports, as specified in each individual Work Order, 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.** With the exception of installed culverts, pumps, and associated items which shall be owned and maintained by BMCD, all deliverables are the property of the District, including Work that has not been accepted by the District, when BMCD 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 BMCD. 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. BMCD shall include language in all subcontracts that so provides.

- D. **BMCD Computer Codes.** If the existing computer codes required for the development of a model selected by BMCD and necessary for use in completing the Work are deemed proprietary by BMCD, then BMCD grants to the District and its assignees a non-exclusive license to use the proprietary computer model codes and agrees to indemnify and hold the District harmless from all costs, damages, and expenses, including attorney's fees, arising from any claim, right, or suit over the proprietary interests in the computer codes developed for the Work. Documentation of BMCD's proprietary rights shall be provided to the District upon request. BMCD's computer codes may be public records subject to the provisions of Section 119.07, Fla. Stat. If a third party seeks access to this proprietary information, the District shall notify BMCD in writing of the request in order to give BMCD the right to protect its proprietary interest.
- E. **District Computer Codes.** BMCD shall not be entitled to claim any proprietary right to computer codes that are developed by BMCD in fulfilling the requirements of the Work, which shall be considered "work for hire" under applicable copyright and/or patent law. Such computer codes, which constitute a Deliverable hereunder, are the sole and exclusive property of the District. The District may copyright or patent such computer codes in its own name to the full extent authorized by law.

ARTICLE III - COMPENSATION

- A. **Amount of Funding.** For satisfactory performance of the Work, the District agrees to pay BMCD not to exceed the total amount of work orders (the "Total Compensation").
- B. **In-Kind Services.** Through this Agreement, BMCD agrees to provide matching funds and/or in-kind services for certain work orders under this project. Any matching funding and/or in-kind services provided by BMCD shall be identified in each work order, as applicable.
- C. **Invoicing Procedure.** All invoices shall be submitted to the St. Johns River Water Management District, Director, Division of Financial Management, 4049 Reid Street, Palatka, Florida 32177. BMCD shall submit itemized invoices, as specified in each individual Work Order, in conjunction with status reports based upon the actual portion of the Work performed and shall bill per the Project Budget included with the individual Work Order(s) on a cost reimbursable basis. All invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit review and shall comply with the document requirements described in the Comptroller's Memorandum, dated October 7, 1997, attached hereto and made a part hereof as Exhibit B to this Agreement.

All payment requests submitted by BMCD shall include the following information:

1. Contract number and Work Order number.
2. BMCD's name and address (include remit address if necessary)
3. Name of District's Project Manager
4. Name of BMCD's Project Manager
5. Cost data (utilize the appropriate method for payment request per the contract)

- (a) Supporting documentation and copies of invoices
- 6. Progress Report (as per contract requirements)
- 7. Diversity Report (The report shall include company names for all women and minority-owned 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 BMCD 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 BMCD 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.

- D. **Payments.** The District shall pay BMCD one hundred percent (100%) of each approved invoice.
- E. **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 BMCD 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.
- F. **Forfeiture of Final Payment.** BMCD shall submit the final invoice to the District not later than 90 days after the Completion Date. BMCD'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.
- G. **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 BMCD 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.
- H. **Release.** Upon the satisfactory completion of the Work, the District will provide a written statement to BMCD 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

- A. This Agreement is at all times contingent upon funding, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one (1) year are subject to annual appropriation of funds, in the sole discretion and judgment of the District's Governing Board, for each succeeding year. Should the Work provided for hereunder not be approved, in whole or in part, for funding by an external funding source, or the Governing Board in succeeding years, the District shall so notify BMCD, and this Agreement shall be deemed terminated for convenience in accordance with **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

Ron Brockmeyer, Project Manager
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177
386-329-4495
E-mail: rbrockmeyer@sjrwmd.com

BMCD

Scott Linkenhoker, Project Manager
Brevard Mosquito Control District
P.O. Box 728
Titusville, Florida 32781-0728
321-264-5032
E-mail: scott.linkenhoker@countygovt.brevard.fl.us

- 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 BMCD 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 BMCD 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.** BMCD 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 BMCD 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 BMCD's default is effected by the District, any payment due to BMCD at the time of termination shall be adjusted to cover any additional costs to the District because of BMCD's default. If termination for the District's default is effected by BMCD, 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 BMCD, up to the termination date.
- D. Upon receipt of a termination action under paragraphs "A" or "B" above, BMCD 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 BMCD 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. BMCD's shall provide the District with any licenses to enter real property interests owned by BMCD necessary for completion of the Work.
- F. If, after termination for failure of BMCD to fulfill contractual obligations, it is determined that BMCD 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.** BMCD shall not sublet, assign, or transfer any Work, in whole or in part, or assign any moneys due or to become due hereunder, which involve more than fifteen percent (15%) of the total cost of the Work, without the prior written consent of the District. As soon as practicable after signing this Agreement, but in no event not less than ten (10) calendar

days prior to the effective date of any such subcontracts, BMCD shall notify the District's project manager in writing of the names of such subcontractors. BMCD shall not employ any such subcontractors until they are approved in writing by the District, which approval shall not be unreasonably withheld. Upon receipt of such consent, when a written work product is involved, BMCD shall cause the names of the firm(s) responsible for such portions of the Work to appear thereon. BMCD shall provide the District with an executed copy of any such subcontracts within ten (10) calendar days after the effective date of the subcontract. Neither District approval of a subcontractor nor any other provision of this Agreement shall create a contractual relationship between any subcontractor and the District.

- B. BMCD shall be responsible for the fulfillment of all Work elements included in the subcontracts and shall be responsible for the payment of all monies due under any subcontract. BMCD 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. BMCD shall hold the District harmless from any liability or damages arising under or from any subcontract to the extent allowed by law. Nothing herein shall create any contractual relationship between any subcontractor and the District.
- C. **Interest of BMCD.** BMCD 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 BMCD to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
- D. **Independent Contractor.** BMCD is an independent contractor. Neither BMCD nor BMCD's employees are employees of the District. BMCD shall have the right to control and direct the means and methods by which the Work is accomplished. BMCD may perform services for others, which solely utilize its facilities and do not violate any confidentiality requirements of this Agreement. BMCD 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. BMCD'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 BMCD 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 BMCD's duties hereunder or alter BMCD's status as an independent contractor.
- E. **Non Lobbying.** Pursuant to Section 216.347, Fla. Stat., as amended, BMCD 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.

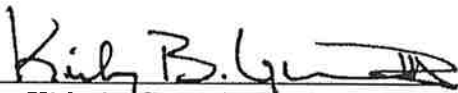
- F. **Civil Rights.** Pursuant to Chapter 760, Fla. Stat., BMCD shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
- G. **Audit: Access to Records.** BMCD agrees that the District or its duly authorized representatives shall, until the expiration of three (3) years after expenditure of funds hereunder, have access to examine any of BMCD's books, documents, papers, and other records involving transactions related to this Agreement. BMCD 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. BMCD 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. BMCD will provide proper facilities for access to and inspection of all required records.
- H. **Release of Information.** Records of BMCD 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 BMCD receives a request for any such records, BMCD shall notify the District's project manager within three (3) workdays of receipt of such request and prior to the release of any information. 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.
- I. **Royalties and Patents.** Unless expressly provided otherwise herein, BMCD 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 BMCD 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. BMCD 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.
- J. **Diversity.** The District is committed to the opportunity for diversity in the performance of all procurements, and expects 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 prime, second- and lower-tier participants. The District will assist its vendors (contractors and suppliers) by sharing information on W/MBEs to encourage their participation.
- K. **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the state of Florida.
- L. **Venue.** In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings, if in state court, shall be in Duval County, Florida, and if in federal court, shall be in the Middle District of Florida, Jacksonville Division.
- M. **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.

- N. **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.
- O. **Waiver of Right to Jury Trial.** In the event of any civil proceedings arising from or related to this Agreement, BMCD 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.
- P. **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.
- Q. **Entire Agreement.** This Agreement, upon execution by BMCD 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. BMCD agrees that no representations have been made by the District to induce BMCD 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.
- R. **Separate Counterparts.** This Agreement may be executed in separate counterparts, which shall not affect its validity.

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 BMCD 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

BREVARD MOSQUITO CONTROL DISTRICT

By: 
Kirby B. Green III, Executive Director

By: 


Ron Pritchard, D.P.A./Chairman
Typed Name and Title

Date: 9/2/05

Date: 8/23/05
As approved by the Board

APPROVED BY THE OFFICE
OF GENERAL COUNSEL

Attest: 


Stanley J. Niego, Sr. Assistant General Counsel

Scott Ellis/Clerk
Typed Name and Title

Documents attached:

- Exhibit A — Statement of Work
- Exhibit B — Comptroller's Memorandum

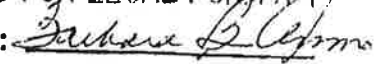
REVIEWED FOR LEGAL FORM AND
CONTENT: 
ASSISTANT COUNTY ATTORNEY

EXHIBIT "A" – STATEMENT OF WORK

REHABILITATION OF COASTAL WETLANDS

I. BACKGROUND

The value of coastal wetland function to the ecosystem and the positive benefits identified by various researchers were the justification for the inclusion of impoundment reconnection and wetland rehabilitation as a high priority in the Indian River Lagoon (IRL) SWIM Plan Update (Steward et al. 2003) and the IRL CCMP (EPA 1996). Coastal habitat rehabilitation is also included in the Northern Coastal Basins SWIM Plan. Past work has reconnected approximately 19,000 acres of impounded coastal wetlands by the installation of culverts and pumps. This work was done through contracts with mosquito control districts (MCD) and/or U.S. Fish and Wildlife Service (USFWS). Culvert installation is the primary method used in Brevard and Indian River Counties to reintegrate these wetlands into the Lagoon ecosystem with over 18,300 acres being reconnected in these 2 counties. Impoundment work in Volusia County initially concentrated on dike breaching. Three impoundments were permanently breached with explosives by East Volusia Mosquito Control District (EVMCD). Mosquito control in these permanently open systems was accomplished by the installation of rotary ditch systems. This technique eliminates the need for pesticides and allows marshes to remain open and tidal throughout the year. More recently, work has led to the "scrapping down" of the dikes (nearly 10 miles) around impounded salt marshes while still accomplishing effective mosquito control. Rotary ditch designs for these projects (when needed) have included connected tidal systems and isolated ditch systems with created ponds or "potholes." Project work has also developed methods to rehabilitate the nearly 2,000 acres of coastal wetlands scarred by dragline ditching. Nearly 100 acres of disturbed habitat has been rehabilitated.

II. OBJECTIVE

The overall intent of this agreement is to facilitate rehabilitation or restoration of impacted coastal wetlands (including impoundments) within the IRL system. All of the above coastal wetland rehabilitation methods are beneficial to the IRL and would be appropriate for implementation under this agreement.

III. TASKS

Detailed tasks for each implementation project initiated under this agreement will be jointly defined by the parties and enumerated in each work order.

IV. SCHEDULE

Project schedules will be jointly established by project managers for each party and stated in each work order.

V. BUDGET

Project costs, including matching funds or in-kind services, will be established by mutual agreement of the parties and detailed in writing in each work order.

EXHIBIT "B"

Comptroller Contract Payment Requirements
Department of Banking and Finance, Bureau of Auditing Manual (10/07/97)
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.) Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of documentation representing the minimum requirements:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.
- Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Pursuant to 216.346, Florida Statutes, a contract between state agencies including any contract involving the State University system or the State Community College system, the agency receiving the contract or grant moneys shall charge no more than 5 percent of the total cost of the contract or grant for overhead or indirect cost or any other cost not required for the payment of direct costs.