



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.8.

10/22/2019

Subject:

Approval Re: Cost Sharing Agreement Between the St. Johns River Water Management District and Brevard County for Controlling Abandoned Artesian Wells

Fiscal Impact:

Fiscal Years 2020-2022: \$30,000 (\$10,000 each Fiscal Year) from Road and Bridge Fund 1180/262000

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Cost Sharing Agreement with the St. Johns River Water Management District for the Controlling Abandoned Artesian Wells. It is further requested the Board approve any necessary Budget Change Requests associated with this action.

Summary Explanation and Background:

The Florida legislature directed the St. Johns River Water Management District to locate all known abandoned artesian wells and ensure that each well is properly controlled. The District established a cooperative program, known as the Abandoned Artesian Well Plugging Cost Share Program for this purpose. The District and Brevard County desire to partner and enter into a cooperative cost-sharing agreement for this effort.

The District agrees to furnish and deliver all materials and perform all labor required for controlling abandoned artesian wells. The District and County agree to pay fifty percent of the costs of controlling abandoned artesian wells in Brevard County, up to \$30,000.00 each over the three-year term of this Agreement.

The terms and conditions of this cooperative partnership are outlined in the Cost Sharing Agreement. Per Administrative Order-29, the County Attorney and Risk Management have approved the Agreement.

Clerk to the Board Instructions:

Upon signature by the Chair, please contact the Public Works Department (321-617-7202) to make delivery arrangements of the Agreement to the Public Works Department for further execution by the District. Upon full execution by the District, the Public Works Department will return a copy of the Agreement to the Clerk to the Board.

205



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 23, 2019

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

RE: Item F.8., Cost Sharing Agreement with St. Johns River Water Management District for Controlling Abandoned Artesian Wells

The Board of County Commissioners, in regular session on October 22, 2019, approved and authorized the Chair to execute Cost Sharing Agreement with St. Johns River Water Management District for controlling abandoned artesian wells; and approved any necessary Budget Change Requests associated with this action. Enclosed is executed Cost Sharing Agreement.

Upon execution by St. Johns River Water Management District, please return a fully-executed copy of the Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration
Finance
Budget

**COST SHARING AGREEMENT
BETWEEN THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND BREVARD COUNTY
FOR CONTROLLING ABANDONED ARTESIAN WELLS**

This Cost-Sharing Agreement is entered into 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 COUNTY, a political Subdivision of the State of Florida ("County"), whose address is 2725 Judge Fran Jamiseson Way, Viera, Florida 32940.

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, pursuant to §373.207(1), Fla. Stat., the Florida legislature has directed the water management districts of the state to locate all known abandoned artesian wells, and to ensure that each well is properly controlled; and

WHEREAS, the District has established a cooperative program, known as the Abandoned Artesian Well Plugging Cost Share Program (the "Program"), for the purpose of locating and plugging abandoned artesian wells, and

WHEREAS, the County is a public body and is empowered to enter into an agreement with the District for the purposes of conserving and protecting water resources in Brevard County, Florida; and

WHEREAS, the District has determined that its needs will be best served by entering into a cooperative, cost-sharing agreement with the County for the purposes stated in this Agreement.

The District agrees to furnish and deliver all materials and perform all labor required for controlling abandoned artesian wells (the "Work"). The District shall complete the Work in conformity with this Agreement, which includes the Statement of Work (Attachment A). If any provision in the body of this Agreement conflicts with any attachment to this Agreement, the body of this Agreement will prevail. The parties hereby agree to the following terms and conditions.

1. **TERM.** The term of this Agreement is from the Effective Date to the Completion Date. Time is of the essence for each and every aspect of this Agreement. If additional time is allowed to complete the Work, the new time limit will also be of the essence. All provisions of this Agreement that by their nature extend beyond the Completion Date will survive termination or expiration of this Agreement.
 - (a) **Effective Date.** The Effective Date of this Agreement is the date upon which the last party to this Agreement has dated and executed the same.
 - (b) **Completion Date.** The Completion Date of this Agreement will be no later than September 30, 2022 unless extended by mutual written agreement of the parties. All Work under this Agreement must be completed for use no later than the Completion Date.
2. **DELIVERABLES.** The Work is specified in the Statement of Work, Attachment A. The District shall deliver all products and deliverables as stated therein. The District is responsible for the professional quality, technical accuracy, and timely completion of the Work.

3. **FUNDING OF AGREEMENT.** The District and County agree to pay 50 % of the costs of controlling abandoned artesian wells in the Brevard County, up to \$30,000.00 each over the entire term of this Agreement, equally divided between the following fiscal year periods:

Fiscal Year: October 1, 2019 – September 30, 2020 Amount:\$ \$10,000.00

Fiscal Year: October 1, 2020 – September 30, 2021 Amount:\$ \$10,000.00

Fiscal Year: October 1, 2021 – September 30, 2022 Amount:\$ \$10,000.00

Funding for each applicable fiscal year of this Agreement is subject to District Governing Board budgetary appropriation.

4. **FUNDING CONTINGENCY**

(a) This Agreement is contingent upon funding availability, 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 Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Work not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Agency and this Agreement will be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

(b) The District and the County each intend to fulfill their obligations as stated in this Agreement, but they cannot make commitments in excess of appropriated funds authorized by law and made administratively available. If either party cannot fulfill its obligations due to funding, this Agreement may be terminated at the election of either party.

5. **PAYMENT OF INVOICES.** The District shall invoice the County in September of each year for payment of 50 % of the amount expended for the controlling of abandoned wells during that year.

6. **LIABILITY AND INSURANCE.** (a) Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Nothing contained in this Agreement may be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in §768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations. (b) District shall require that all contractors performing the Work are sufficiently insured for commercial general liability. District shall also ensure the contractor has County added as an additional insured to the contractor's insurance prior to the contractor performing any of the Work on County's property.

7. **PROJECT MANAGEMENT**

(a) The project managers listed below are responsible for overall coordination, and management of the Work. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address must be provided within five business days. All notices must be in writing to the Project Managers at the addresses below and must be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) email. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

DISTRICT

Gary Foster, Project Manager
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177-2571
Phone: 386-329-4421
Email: Gfoster@sjrwmd.com

COUNTY

Tammy Thomas-Wood, Support Service Manager
Brevard County Public Works Department
2275 Judge Fran Jamieson Way, Suite A-201
Viera, Fl 32940
Phone: 321-617-7202
Email: Tammy.thomas-wood@brevardfl.gov

(b) The District's Project Manager has sole and complete responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Work.

8. **AMENDMENTS.** The parties may not amend this Agreement except in writing. Modifications that alter, add to, or deduct from the Work, or otherwise modify the terms of this Agreement, must be implemented through a formal amendment. The District's Project Manager may also issue a District Supplemental Instruction (DSI) form (Attachment C) to authorize minor adjustments to the Work that are consistent with the purpose of the Work. Both parties must sign the DSI. A DSI may not be used to change the Total Compensation, quantity, quality or the Completion Date of the Work, or to change or modify the Agreement.

9. **TERMINATION**

(a) **Termination for Default.** If either party materially fails to fulfill its obligations under this Agreement, the terminating party shall provide the non-terminating party written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. The non-terminating party will have 30 days to cure the breach. If the non-terminating party fails to cure the breach within the 30-day period, the terminating party may issue a Termination for Default Notice and this Agreement will be terminated upon receipt or such notice.

(b) **Termination for Convenience.** Either party may terminate this Agreement at any time for convenience upon 45 days' prior written notice to the non-terminating party. Upon District receipt of notice of termination, it shall place no further orders for materials, equipment, services, or facilities, for which reimbursement would otherwise be sought. The District shall also make every reasonable effort to cancel, upon terms satisfactory to the District, all orders or subcontracts related to the Work for which compensation under this Contract would otherwise be sought. In the event of such termination, County shall compensate District for all work performed pursuant to this Agreement prior to the effective date of termination.

10. **ASSIGNMENT AND SUBCONTRACTS.** The District shall not sublet, assign, or transfer any Work involving more than twenty percent (20%) of the total cost of the Work without County's prior written consent. Neither County approval of a subcontractor nor any other provision of this Agreement creates a contractual relationship between any subcontractor and County. The District is responsible for fulfilling all work elements in any subcontracts and payment of all monies due.

11. **AUDIT; ACCESS TO RECORDS.** The District and County must preserve its books and other records involving transactions related to this Agreement and provide each other, or its duly authorized representatives, access and necessary facilities to inspect and audit those records for five years after the receipt of funds. If an examination or audit is performed, the parties must continue to maintain all required records until such audit has been completed and all questions arising from it are resolved. The parties shall refund any payment(s) that are found to not constitute allowable costs based upon an audit examination.

12. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., the parties shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.

- 13. COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.** County and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
- 14. GOVERNING LAW, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement will be construed according to the laws of Florida and will not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. In the event of any legal proceedings arising from or related to this Agreement: (1) each party shall bear its own attorney's fees, including appeals; and (2) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.
- 15. VENUE.** In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings will be in Brevard County, Florida.
- 16. NON-LOBBYING.** Pursuant to §216.347, Fla. Stat., as amended, the County 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.
- 17. PUBLIC RECORDS.** Records of County that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If County receives a public records request, County shall promptly notify the District's Project Manager. 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 materials related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.

IN WITNESS WHEREOF, the parties have signed on the day and year written below each of their names. This Agreement may be executed in separate counterparts, which will not affect its validity. This Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT
DISTRICT

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: _____
Christine Mundy, Bureau Chief or Designee

By: _____
Kristine Isnardi, Chair
As approved by the Board on 10/22/19

Date: _____

Attest:

Scott Ellis, Clerk

Reviewed for legal form and content:

Assistant County Attorney

- Documents attached:
- Attachment A — Statement of Work
 - Attachment B — Well Investigation Form
 - Attachment C — District Supplemental Instructions

ATTCHMENT A — STATEMENT OF WORK

The purpose of this Agreement is for controlling abandoned artesian wells in Indian River County, Florida, utilizing the services of a Florida-licensed water well contractor. The District and the County each agree to perform the work as specified. Should any change in this work be necessary, the District and the County shall execute an amendment to the Agreement, specifying the change in work, and if applicable, establishing any changes to the funding amount.

18. Responsibilities of the County:

- (a) The County shall obligate funding for 50% of the costs of controlling abandoned artesian wells in Brevard County up to the amount of \$10,000 for each fiscal year.
- (b) The County shall submit to the District written assurance of availability of funds for each fiscal year on or before September 30.
- (c) The County shall pay the District up to \$10,000 each fiscal year for the services of a water well contractor and the materials necessary for controlling abandoned artesian wells in Brevard County, Florida.
- (d) The County is responsible for locating wells that are to be controlled and shall complete a Well Investigation Form (Attachment B) for each well and submit the form to the District.
- (e) The County is responsible for obtaining written consent of well owners, authorizing their wells to be plugged by the District.
- (f) The County shall provide local contact with the public regarding the identification of new wells for the District's inventory.
- (g) The County shall provide local coordination of the Program.

19. Responsibilities of the District:

- (a) The District shall administer the provisions of this Agreement.
- (b) The District shall obligate funding for 50% of the costs of controlling abandoned artesian wells up to the amount of \$10,000 for each fiscal year.
- (c) The District shall submit to the County written assurance of availability of funds for each fiscal year on or before September 30.
- (d) The District shall maintain the services of a qualified water well contractor for the duration of this Agreement.
- (e) The District shall provide professional and technical support necessary to address all aspects of the work carried out by the contractor.

GENERAL PURPOSE WELL INVESTIGATION FORM

Reported By: _____ Phone: _____

Well Owner Name & Address: _____

_____ Phone: _____

Well Location: _____

GPS Position: _____ (Latitude) _____ (Longitude)

Date of Inspection: _____ Observed By: _____

Well Diameter: _____ Well Depth: _____

Well Status: (Check All That Apply)

Accessible By:

Well Head:

Condition:

Action:

Foot

Visible

Capped

Left as Found

Vehicle

Buried

Valved

Temp Plug

Boat only

Discharge visible only

Leaking

Temp Repair

Not accessible

Under power lines

Flowing

Flagged or staked

Unable to locate

Other _____

Flow upon arrival_gpm Flow

wide open_____gpm Flow

as left _____gpm

Comments:

Attach photos

PROPERTY LOCATION MAP
(from major intersection & to include mileage, may attach printed map)



SITE SKETCH
(from edge of landmark to well & to include approximate feet)

ATTACHMENT C — DISTRICT'S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO:

FROM: Gary Foster, Project Manager

CONTRACT NUMBER: 34852

CONTRACT TITLE: Revenue-Cost Share Agreement for Controlling Abandoned Artesian Wells

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

1. CONTRACTOR'S SUPPLEMENTAL INSTRUCTIONS:

2. DESCRIPTION OF WORK TO BE CHANGED:

- DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS:

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

Approved: _____ Date: _____

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

Approved: _____ Date: _____

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

Approved: _____ Date: _____
Gary Foster, District Project Manager

Acknowledged: _____ Date: _____
Tina Spurlock, District Procurement Specialist

cc: Contract file
Financial Services