

AGREEMENT NO: 18CF0000878/18CFCNTY878

SECOND AMENDMENT
TO AGREEMENT BETWEEN THE SOUTHWEST FLORIDA
WATER MANAGEMENT DISTRICT AND
CITY OF CLEARWATER
AND
PINELLAS COUNTY
FOR
LOWER SPRING BRANCH CONVEYANCE IMPROVEMENTS (N915)

This SECOND AMENDMENT effective upon execution by both parties, by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida having an address of 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," and the CITY OF CLEARWATER, a municipal corporation of the State of Florida, having an address of 112 Osceola Avenue, Clearwater, Florida 33756, hereinafter referred to as the "CITY", and PINELLAS COUNTY, a political subdivision of the State of Florida, whose address is 315 Court Street, Clearwater, Florida 33756, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT, the CITY and the COUNTY entered into an agreement effective October 1, 2017, as amended June 15, 2021 (Agreement No. 18CF0000878), hereinafter referred to as the "Existing Agreement," for design, permitting, and construction of conveyance improvements along the Lower Spring Branch of Stevenson Creek in Pinellas County ; and

WHEREAS, the parties hereto wish to amend the Existing Agreement to replace the DISTRICT'S Contract Manager, the CITY'S Project Manager, the COUNTY'S Project Manager, extend the contract period and modify the Project Schedule, and update contract language applicable to the DISTRICT'S cooperatively funded projects.

WHEREAS, the CITY and the COUNTY acknowledges that the District will not enter into a subsequent amendment to extend the expiration date of the Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree to amend the Existing Agreement as follows:

1. The Project Contacts and Notices Paragraph is hereby amended to modify the DISTRICT'S Contract Manager with Andres Barbarossa, the CITY'S Project Manager with Sam Reilly, and the COUNTY'S Project Manager with Ivan Dimitrov.
2. The first paragraph of the Funding Paragraph is hereby replaced in its entirety with the following:

The parties anticipate that the total cost of the PROJECT will be Three Million Three Hundred Twenty Thousand Dollars (\$3,320,000) (Board-Approved Project Amount). The

DISTRICT'S maximum funding amount is One Million Six Hundred Sixty Thousand Dollars (\$1,660,000). The CITY'S funding match is One Million Six Hundred Sixty Thousand Dollars (\$1,660,000) and cannot include state or federal appropriations, or grant monies, as provided in Subparagraph 3. The COUNTY'S funding match is Five Hundred Thousand Dollars (\$500,000) and cannot include state or federal appropriations, or grant monies, as provided in Subparagraph 4. The CITY and the COUNTY will be the lead parties and agree to provide all remaining funds necessary for the satisfactory completion of the PROJECT.

3. Subparagraph 3 of the Funding Paragraph is hereby replaced in its entirety with the following:

The CITY and the COUNTY shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the CITY and the COUNTY for the DISTRICT'S share of allowable PROJECT costs in accordance with the Project Budget set forth in the Project Plan, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the CITY and the COUNTY combined.

4. Subparagraph 4 of the Funding Paragraph is hereby replaced in its entirety with the following:

The CITY and the COUNTY'S funding match is based on the Board-Approved Project Amount and cannot include state or federal appropriations, or grant monies. The DISTRICT will not fund any PROJECT cost increases. State or federal appropriations, or grant monies, may be used to cover PROJECT cost increases. Should those state or federal appropriations, or grant monies, exceed PROJECT cost increases, the remaining funds will be used to equally reduce the DISTRICT funding amount and the CITY and the COUNTY'S Board-approved match. If PROJECT costs are equal to or less than the Board-Approved Project Amount, state or federal appropriations, or grant monies, will equally reduce the DISTRICT'S funding amount and the CITY and the COUNTY'S Board-approved match. The CITY and the COUNTY shall provide written notice to the DISTRICT if a) it intends to use state or federal appropriations, or grant monies, to fund PROJECT costs, indicating the amount and funding source, and b) PROJECT costs are expected to increase, indicating the increased amount and the funding source to cover the cost increase. If the DISTRICT provides funding for the PROJECT in excess of the amount required by this Agreement, after all state or federal appropriations, or grants monies have been applied, the COOPERATOR will promptly refund such overpaid amounts to the DISTRICT. This Subparagraph shall survive the expiration or termination of this Agreement.

5. Subparagraph 11 of the Funding Paragraph is hereby replaced in its entirety with the following:

Each COOPERATOR invoice must include the following certification, and the COOPERATOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I certify that the costs requested for reimbursement and the Cooperator's matching funds are directly related to the performance under the Agreement between the Southwest Florida Water Management District and the Cooperator (Agreement No. 18CF0000878), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$__ of contingency funds expenditures.

In accordance with Subparagraph 3 of the Funding Paragraph, the Cooperator received a total of \$__ in federal or state appropriations, or grant monies for the Project, and \$__ has been allocated to this invoice, reducing the District's and Cooperator's share of this invoice to \$__ / \$__ respectively. The Cooperator expects the Project costs will increase by ____ for a total Project cost of _____. The Cooperator intends to use the following state or federal appropriations, or grant monies to fund increased Project costs: _____."

6. New Subparagraph 13 of the Funding Paragraph is hereby added as follows:

Reimbursement for expenditures of contingency funds is contingent upon the DISTRICT'S approval and determination, in its sole discretion, that the expenditures were necessary to achieve the resource benefit of the PROJECT and were not in excess of what was reasonably necessary to complete the PROJECT. The term "contingency funds" shall include funds that are allocated for unanticipated or extra work needed to complete the PROJECT. Items not considered for reimbursement include those unrelated to the resource benefit or resulting from design errors and defects in the work. The CITY and the COUNTY, collectively, may submit up to 5% of the Board-Approved Project Amount for contingency reimbursement. The DISTRICT'S total reimbursement obligation of contingency expenses is limited to its funding percentage of the Board-Approved Project Amount. If an invoice includes expenditures of contingency funds, the CITY and the COUNTY shall complete and submit the Contingency Funds Justification form Exhibit "C", attached hereto and made a part of this Agreement, to explain the basis of each line item expenditure.

7. The Contract Period Paragraph is hereby amended to extend the expiration date of June 30, 2024 to December 01, 2029.
8. The Diversity In Contracting And Subcontracting Paragraph is hereby amended to delete Subparagraphs 1 and 2.
9. The Documents Paragraph is hereby replaced in its entirety with the following:

The following document(s) is/are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit "A", then to Exhibit "C".

Exhibit "A" Project Plan
Exhibit "C" Contingency Funds Justification Form

10. The CITY'S Project Schedule section set forth in the Project Plan is hereby replaced in its entirety with the following:

PROJECT SCHEDULE (CITY)

DESCRIPTION	COMMENCE	COMPLETE
Design	05/01/2024	07/01/2024
Permitting	05/01/2024	08/01/2024
Bidding & Contract Award	03/01/2027	05/01/2027
Construction and Construction engineering & Inspection (CEI)	06/01/2027	06/01/2029
As-built Survey, Record Drawing & Substantial Completion	06/02/2029	09/01/2029

11. The terms, covenants and conditions set forth in the Existing Agreement that have not been specifically amended herein, will continue in existence, are hereby ratified, approved and confirmed, and will remain binding upon the parties hereto.

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IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this SECOND AMENDMENT on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Scott Letasi, P.E., PMP Date
Bureau Chief, Engineering and Project Management

CITY OF CLEARWATER

By: _____
Bruce Rector, Mayor Date

By: _____
Jennifer Poirrier, City Manager Date

Approved as to form:

Attest:

David Margolis
City Attorney

Rosemarie Call
City Clerk

PINELLAS COUNTY

By: _____
Date

Name: _____

Title: _____
Authorized Signatory

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