

**FIRST ADDENDUM TO ALTERNATIVE WATER SUPPLY COST-SHARE AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND CITY OF DELTONA**

This Addendum is entered into by and between the Governing Board of THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (“District”), whose address is 4049 Reid Street, Palatka, Florida, 32177, and CITY OF DELTONA (“Recipient”), whose address is 2345 Providence Boulevard, Deltona, Florida 32725. The above-referenced parties may be collectively referred to as the “Parties.”

RECITALS:

WHEREAS, the Parties entered into the Alternative Water Supply Cost-Share Agreement, District Contract #35354, (“Agreement”) on January 29, 2020, and amended the Agreement on June 17, 2020 (“Amendment 1”), November 17, 2022 (“Amendment 2”), and June 21, 2023 (“Amendment 3”) (together the Agreement as amended by the three amendments, hereinafter the “Amended Agreement”);

WHEREAS, the Amended Agreement provided cost-share funding for Recipient’s Alexander Avenue Water Resources Facility Project 4B (“Project”);

WHEREAS, the cost-share funding provided in the Amended Agreement is partially funded by the State of Florida Department of Environmental Protection Standard Agreement between the State of Florida Department of Environmental Protection (“FDEP”) and the District for SJRWMD – City of Deltona, Alexander Avenue Water Resources Facility Project 4B, Agreement Number WS007, entered into on December 12, 2019, and amended on October 17, 2022 and June 13, 2023 through formal amendments and on March 9, 2021, through a change order (“FDEP Revenue Agreement”);

WHEREAS, the Recipient initiated construction of the Project on January 14, 2022;

WHEREAS, in April 2022, construction crews discovered “artesian well ‘boils’” along with elevated groundwater pressure conditions below the ground surface of the Project location;

WHEREAS, the Recipient halted construction of the Project because the elevated water pressures made it difficult to dewater the site and to provide a safe, stable area for the construction crews during excavation;

WHEREAS, the elevated water pressures and “artesian well ‘boils’” were unforeseen conditions, unknown to Recipient during the planning of the Project;

WHEREAS, the Recipient represented to the District that it explored alternative methods and locations for constructing the Project to account for the unforeseen conditions; however, the alternatives would result in significant cost increases;

WHEREAS, the unforeseen site conditions rendered construction of the Project no longer economically feasible for the Recipient;

WHEREAS, in a letter dated April 9, 2024, Recipient requested the termination of the Amended Agreement, stating, “[t]his project has been deemed un-constructable for a number of reasons including that the project has been impacted by discovery of artesian well ‘boils’ and elevated groundwater conditions encountered at the intake pump station location during construction”;

WHEREAS, Paragraph 11(a) of the Amended Agreement provides that if the Project is not completed, then Recipient shall refund to the District all of the funds provided to the Recipient pursuant to the Amended Agreement, unless the District determines in its sole judgement and discretion that the Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible and excuses Recipient from its obligation to return funds;

WHEREAS, the Recipient submitted three invoices to the District for reimbursement under the Amended Agreement: the first invoice dated June 1, 2022, requesting \$392,365.40 ("Invoice #1"); the second invoice dated September 30, 2022, requesting \$592,076.68 ("Invoice #2"); and the third invoice dated January 26, 2023, requesting \$348,187.80 ("Invoice #3");

WHEREAS, the District made full payments to Recipient for each of the three invoices, with \$392,365.40 paid for Invoice #1 on July 22, 2022; \$592,076.68 paid for Invoice #2 on November 4, 2022; and \$348,187.80 paid for Invoice #3 on February 24, 2023;

WHEREAS, subsequent to payment, the District discovered that Invoice #3 included ineligible construction costs in the amount of \$158,152.20, which did not conform to the requirements of the Amended Agreement (the "Ineligible Expenses");

WHEREAS, the District has received funding from FDEP for construction of the Project and FDEP has requested that the District repay funds for unused Project construction materials, Ineligible Expenses, and remaining unused funds;

WHEREAS, the Parties wish to clarify and resolve certain responsibilities and obligations pertaining to termination of the Amended Agreement through this Addendum to the Amended Agreement;

WHEREAS, the District and FDEP are negotiating an addendum to the FDEP Revenue Agreement for the purpose of clarifying and resolving certain responsibilities and obligations pertaining to termination of the Amended Agreement;

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged by the Parties, the Parties agree as follows:

1. **Effective Date.** This Addendum shall be effective on the date upon which the last party has dated and executed the same.
2. **Revocation Period.** The District shall have a Revocation Period, during which time the District may revoke its approval of this Addendum. The Revocation Period shall expire at the earlier of (1) the sixtieth (60th) calendar day following the Effective Date; or (2) immediately upon the execution of an addendum to the FDEP Revenue Agreement by both the District and FDEP. If such an addendum is executed, the District shall provide written notice to the Recipient within seven (7) calendar days of the addendum's execution. If the District elects to revoke its approval of the Addendum, notice shall be given in accordance with paragraph 8(a) of the Amended Agreement.
3. **Refund of Funds.** Recipient shall make electronic payment to the District in the amount of \$596,340.66 (the "Total Returned Funds"). The Total Returned Funds is comprised of

\$542,568.91 for unused Project construction materials and \$53,771.75 for Ineligible Expenses. Recipient shall make electronic payment for the Total Returned Funds in two installments as follows:

Installment #1: \$298,170.33 to be paid no later than October 15, 2024; and

Installment #2: \$298,170.33 to be paid no later than October 15, 2025.

The District will provide electronic wiring instructions to Recipient.

4. **Forgiveness by District.** Provided the Recipient timely makes payment for the Total Returned Funds as described in Paragraph 3, the District agrees to forgive the Recipient's obligation to refund any additional funds under Paragraph 11(a) of the Amended Agreement. Such forgiveness is subject to the Forgiveness Limitation set forth in Paragraph 5 below.
5. **Forgiveness Limitation.** The District expressly reserves the right to receive a refund of funds under Paragraph 11(a) of the Amended Agreement to the extent that Recipient successfully recovers funds expended for the Project. Recipient shall notify the District within seven (7) calendar days of Recipient's recovery of funds expended for the Project.
6. **Indemnity.** Recipient agrees to indemnify and hold harmless the District from and against any claim by FDEP for the repayment of any funds made to Recipient under the Amended Agreement that exceed the amount of the Total Returned Funds.
7. **Termination of the Amended Agreement.** The Amended Agreement shall terminate the first calendar day after the complete payment is made for the Total Returned Funds.
8. **Order of Precedence.** To the extent that any other provision of the Amended Agreement conflicts with the provisions of this Addendum, the provisions of this Addendum shall take precedence for interpretation over all other documents that comprise the Amended Agreement.
9. **Survival of Terms.** The following provisions will remain in full force and effect after the Termination of the Amended Agreement as necessary to affect performance:
 - Paragraphs 3, 4, 5, 6, 8, 9, and 10 of the Addendum; and
 - Paragraphs 10, 14, 16, 19, 20, and 26 of the body of the Amended Agreement.
10. The terms of this Addendum shall be valid and binding and inure for the benefit of the heirs, successors, and assigns of both Parties.
11. All other terms and conditions of the Amended Agreement are hereby ratified and continue in full force and effect.

[Signature Page follows]

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

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT**

CITY OF DELTONA

By: _____

By: _____

Michael A. Register, P.E., Executive Director
(Or designee)

Santiago Avila, Jr., Mayor

Date: _____

Date: _____