

SECOND AMENDMENT AND RENEWAL
TO THE
CONTRACT FOR OPERATION, MAINTENANCE AND ENGINEERING SERVICES
FOR THE
WATER CONSERV II RECLAIMED WATER SYSTEM JOINT FACILITIES

THIS SECOND AMENDMENT AND RENEWAL (the “SECOND AMENDMENT”) is made and entered into this _____ day of _____, 2016 by and between the **City of Orlando, Florida**, a municipal corporation existing under the laws of the State of Florida, 400 S. Orange Avenue, Orlando, Florida 32801 (CITY), **Orange County, Florida**, a charter county and political subdivision of the State of Florida, 201 South Rosalind Avenue, Orlando, Florida 32801 (COUNTY), hereinafter jointly referred to as the “CITY/COUNTY,” and **Woodard & Curran Inc.**, a Maine corporation with a principal place of business located at 41 Hutchins Drive, Portland, Maine, 04102, (hereinafter “CONTRACT OPERATOR”).

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR have previously entered into a Contract for Operation, Maintenance and Engineering Services (hereinafter the “CONTRACT”) dated September 21, 2006, for the Water Conserv II Reclaimed Water System Joint Facilities, which initial term expired on September 30, 2011; and

WHEREAS, Section 19.2 of the CONTRACT allows for renewal for succeeding terms of five (5) years based upon negotiation of the Scope of Services and Reimbursable Costs; and

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR have previously entered into an amendment and renewal to the CONTRACT (hereinafter the “FIRST AMENDMENT”) dated September 21, 2011, which expires September 30, 2016; and

WHEREAS, the CITY/COUNTY and the CONTRACT OPERATOR now desire to extend the term of the CONTRACT, amend certain provisions of the CONTRACT, including certain provisions set forth in the FIRST AMENDMENT, and add certain new conditions; and

WHEREAS, the parties agree that except as specifically amended herein, the other terms and provisions of the CONTRACT, as amended by the FIRST AMENDMENT, remain in full force and effect.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and given one to the other, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. RECITALS; DEFINED TERMS

All of the recitals contained herein are true and correct, and are incorporated herein by reference. Capitalized terms used herein shall have the meanings ascribed to them in the CONTRACT unless defined in this SECOND AMENDMENT.

II. TERM

As specifically allowed in Section 19.2 of the CONTRACT, this SECOND AMENDMENT shall extend the term of the CONTRACT for an additional five (5) year term to and including September 30, 2021.

III. BILLING OF REIMBURSABLE ITEMS

Section 3 of the CONTRACT, as amended by the FIRST AMENDMENT, provides that the COUNTY will directly pay for certain specified services including an item identified as “PB Americas, Inc. Annual O&M Services to Orange County -- (Refers to consulting services that had formerly been paid directly by the COUNTY in support of the operations and maintenance of the Water Conserv II Reclaimed Water Joint Facilities)”. Section 3 of the CONTRACT is hereby amended to include the item described as:

WSP | Parsons Brinckerhoff Annual O&M Services to Orange County – (Refers to consulting services that had formerly been paid directly by the COUNTY in support of the operations and maintenance of the Water Conserv II Reclaimed Water Joint Facilities)

As an item that CONTRACT OPERATOR will be responsible for direct payment of on a Cost-Plus-Fixed-Fee method.

IV. SECTION 8 CLAIMS AND DISPUTES/REMEDIES

Section 8.2.1 of the Contract is hereby deleted and replaced with the following:

8.2.1 Except as provided in Section 8.1 herein, all claims, disputes and/or matters in question between CITY/COUNTY and the CONTRACT OPERATOR arising out of or relating to this CONTRACT, or breach of it, will be decided by arbitration if the parties hereto mutually agree, or if they do not agree, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division). The parties consent and submit to the exclusive jurisdiction of any such court and expressly waive all rights to trial by jury for any matters arising under this Agreement. Neither party shall be liable to the other party in any legal matter, dispute, action or proceeding arising out of or related to this CONTRACT for the expense of the other party’s attorneys’ fees and court costs, including those incurred on appeal or in bankruptcy.

V. SECTION 9 BONDS, INDEMNITY AND INSURANCE

Section 9.1 of the CONTRACT is hereby deleted and replaced with the following:

9.1 Indemnity

To the fullest extent permitted by law, the CONTRACT OPERATOR shall indemnify and hold harmless the CITY/COUNTY, their officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses, including attorney's fees for personal injury and property damage to the extent resulting from any negligent act or omission of CONTRACT OPERATOR or its sub-contractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the negligence of the CITY/COUNTY. To the extent that the CITY/COUNTY incurs defense costs that are covered by CONTRACT OPERATOR's indemnity obligations under this paragraph, CONTRACT OPERATOR shall reimburse CITY/COUNTY for such defense costs at the conclusion of the legal proceeding.

Provided, however, to the extent that this CONTRACT is deemed by a court of competent jurisdiction to be a construction contract under Section 725.06, Florida Statutes, any obligation of the CONTRACT OPERATOR to indemnify or hold harmless the CITY/COUNTY, its officers and employees shall be limited to an obligation to indemnify and hold harmless to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the CONTRACT OPERATOR and persons employed or utilized by the CONTRACT OPERATOR in the performance of the CONTRACT; and the aggregate liability of CONTRACT OPERATOR under this CONTRACT shall not exceed the total value of the construction project paid to CONTRACT OPERATOR, or one million dollars (\$1,000,000), whichever is greater.

Section 9.1.2 of the CONTRACT is hereby deleted and replaced with the following:

9.1.2 Hold Harmless

CITY/COUNTY agree to indemnify and hold harmless the CONTRACT OPERATOR, its elected officers and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses including attorney's fees for personal injury and property damage to the extent attributable to CITY/COUNTY's negligent acts or omissions, or those of its officials and employees acting within the scope of their employment. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by CITY/COUNTY to assume any liability for the negligence of the CONTRACT OPERATOR. CITY/COUNTY shall not assume any liability for consequential damages, including though not exclusively, loss of revenue and loss of use of equipment.

Section 9.1.3 of the CONTRACT is hereby deleted and replaced with the following:

9.1.3 Hazardous Substances, Claims by Third Parties

CONTRACT OPERATOR agrees to indemnify and hold harmless CITY/COUNTY from any and all claims, by third party persons or legal entities, for losses, damages, costs or other claims

and liabilities arising from CONTRACT OPERATOR's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to CONTRACT OPERATOR's operations herein but only to the extent caused by the negligence of the CONTRACT OPERATOR. To the extent that the CITY/COUNTY incurs defense costs that are covered by CONTRACT OPERATOR's indemnity obligations under this paragraph, CONTRACT OPERATOR shall reimburse CITY/COUNTY for such defense costs at the conclusion of the legal proceeding. CONTRACT OPERATOR agrees that it shall dispose of all Materials in strict compliance with local, state and federal statutes, laws, ordinances, codes, rules, regulations, orders or decrees and shall provide evidence of such disposal satisfactorily to CITY/COUNTY's designated representative. In the event of CONTRACT OPERATOR's failure to comply with this paragraph, CONTRACT OPERATOR shall, at its sole cost and expense, promptly commence and diligently pursue any required investigation, assessment, cleanup, remediation, restoration, and monitoring of any waters and lands affected by CONTRACT OPERATOR's failure to comply and to restore the damaged water and/or land to the condition existing immediately prior to the occurrence which caused the damage. Upon discovery of a failure or violation related to its disposal operations, CONTRACT OPERATOR shall immediately notify such failure or violation to all applicable governmental agencies having jurisdiction and to the CITY/COUNTY. CITY/COUNTY acknowledges that, in seeking the services of CONTRACT OPERATOR under this CONTRACT, CITY/COUNTY are requesting CONTRACT OPERATOR to undertake environmental and other operational obligations for CITY/COUNTY'S benefit which may be uninsurable. Therefore, notwithstanding anything contained in this CONTRACT to the contrary, CITY/COUNTY agrees that CONTRACT OPERATOR'S indemnity of CITY/COUNTY set forth above shall not apply to and CONTRACT OPERATOR shall not be liable to the CITY/COUNTY for and, , to the extent permitted by Section 768.28, Florida Statutes, CITY/COUNTY shall indemnify and hold harmless CONTRACT OPERATOR, its directors, officers, employees and agents from and against, any and all claims, by persons or legal entities other than CITY/COUNTY for losses, damages, costs or other claims and liabilities, including (without limitation of the type or kind of claims or liabilities covered) those arising under local, state or federal laws (including but not limited to the Clean Water Act, CERCLA or RCRA) or common law theories of strict liability, which are directly or indirectly connected with or caused by or arise on account of the presence, discharge, release, disposal or escape of hazardous or toxic substances, waste, pollutants or contaminants of any kind (hereinafter collectively "Hazardous Substances"), whether at CITY/COUNTY'S Water Reclamation Facilities or at any other location, which hazardous substances (i) are contained in the influent to the JOINT FACILITIES, or (ii) are not added by CONTRACT OPERATOR (hereinafter collectively "Indemnified Substances"). It is expressly understood and agreed that CONTRACT OPERATOR is not and shall not be responsible or liable for, and that CITY/COUNTY'S indemnity of CONTRACT OPERATOR hereinabove set forth shall, without limitation of the type or kind of claims or liabilities covered, apply to and cover any and all claims and liability, including future claims and liability resulting from regulatory changes in presently accepted practices, caused by or arising directly or indirectly from the presence or release of Indemnified Substances on or off the site of the JOINT FACILITIES or the presence or release of the Indemnified Substances contained in water in or distributed from the JOINT FACILITIES. Notwithstanding the above, with respect to losses, damages, costs or other claims or liabilities caused by substances which are added or are required to be added by the CONTRACT OPERATOR pursuant to the provisions of this CONTRACT

(for example, chlorine), the release from liability and CITY/COUNTY'S indemnification of CONTRACT OPERATOR set forth above in this Section 9.1.3 shall not apply to such losses, damages, costs or other claims and liabilities to the extent such losses, damages, costs or other claims or liabilities were caused by the negligence or willful misconduct of the CONTRACT OPERATOR. The provisions of this paragraph shall survive the termination or expiration of the CONTRACT."

Section 9.2 of the CONTRACT is hereby deleted and replaced with the following:

9.2 Insurance

CONTRACT OPERATOR agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this CONTRACT the following types of insurance coverage with limits and on forms including endorsements as described herein.

The CONTRACT OPERATOR shall require and ensure that each of its sub-contractors providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better. All policies referenced herein, except the Workers' Compensation and Professional policies, shall list the City/County, their employees, appointed and elected officials, as additional insureds. All policies shall contain a provision requiring written notice to the City/County at least thirty (30) days prior to cancellation or material modification.

Required Coverage:

1. Workers' Compensation The CONTRACT OPERATOR shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$500,000 each incident of bodily injury or disease for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the CITY/COUNTY.

Required Endorsements:

- Waiver of Subrogation- WC 00 03 13 or its equivalent

2. Commercial General Liability The CONTRACT OPERATOR shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$10,000,000 (ten million dollars) per occurrence. CONTRACT OPERATOR further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. Any deductibles applicable to the general liability policy shall not exceed \$500,000, which deductible shall not be the responsibility of the CITY/COUNTY. All umbrella policies shall be written on a "follow-form" basis and may be combined to meet the required limit.

Required Endorsements:

- Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.

Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations

- Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.

Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.

3. Business Automobile Liability The CONTRACT OPERATOR shall maintain coverage for all owned; non owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$1,000,000 (one million dollars) per accident. In the event the CONTRACT OPERATOR does not own automobiles the CONTRACT OPERATOR shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

4. Professional Liability (if applicable)- The CONTRACT OPERATOR shall maintain professional liability coverage with limits of not less than \$2,000,000 (two million dollars) per claim and in the aggregate .

5. Contractor's Pollution Liability- The CONTRACT OPERATOR shall maintain pollution liability coverage including onsite clean up coverage for all incidents associated with their negligent operation and maintenance of the JOINT FACILITIES.

When a self-insured retention or deductible exceeds \$100,000 the CITY/COUNTY reserves the right to request a copy of CONTRACT OPERATOR's most recent annual report or audited financial statement.

For policies written on a "Claims-Made" basis the CONTRACT OPERATOR agrees to maintain a retroactive date prior to or equal to the effective date of this CONTRACT. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this CONTRACT the CONTRACT OPERATOR agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the CONTRACT OPERATOR of the obligation to provide replacement coverage.

By entering into this CONTRACT, CONTRACT OPERATOR agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the CITY/COUNTY for the workers' compensation and liability policies as required herein. When required by the insurer or should a policy condition not permit the CONTRACT OPERATOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACT OPERATOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

Prior to execution and commencement of any operations/services provided under this CONTRACT the CONTRACT OPERATOR shall provide the CITY/COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the CONTRACT OPERATOR shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the following with

copies to the designated representatives for both the CITY and the COUNTY.

Orange County Board of County Commissioners
c/o Risk Management Division
109 E. Church Street, Suite 200
Orlando, Florida 32801

City of Orlando
Director of Public Works
400 South Orange Avenue
Orlando, Florida 32801

VI. CONTROLLING LAWS

Section 17 of the CONTRACT is hereby deleted and replaced with the following:

The parties to this CONTRACT acknowledge that this CONTRACT is made and entered in the State of Florida. This CONTRACT, including all amendments hereto, and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction.

VII. ENTIRE AGREEMENT

This SECOND AMENDMENT shall not supersede or amend the CONTRACT or other amendments except as specifically provided herein. No additions, alterations, or variations to the terms of this SECOND AMENDMENT shall be valid, nor can the provisions of this SECOND AMENDMENT be waived by either party, unless such additions, alterations, or waivers are expressly set forth in writing in a document duly executed by both parties.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this SECOND AMENDMENT on the day and year first written above.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

Attest:

By: _____
Martha O. Haynie, County Comptroller
Clerk to the Board of County Commissioners

CITY OF ORLANDO, FLORIDA

By: _____
Mayor Buddy Dyer

Attest:

By: _____
Amy Iennaco
Interim City Clerk

APPROVED AS TO FORM AND LEGALITY:

For the use and reliance of Orlando, Florida
_____20_____

Assistant City Attorney, Orlando, FL

CONTRACT OPERATOR

Woodard & Curran, Inc.

By: _____

Print Name: _____

Title: _____

Signed, sealed and delivered in the
presence of :

WITNESS

WITNESS

STATE OF FLORIDA }

COUNTY OF _____ }

PERSONALLY APPEARED before me, the undersigned authority,
_____, [] well known to me or [] who has produced his/her
_____ as identification, and known by me to be the
_____ of the corporation named above, and acknowledged
before me that he/she executed the foregoing instrument on behalf of said corporation as its true act
and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this _____ day of _____,
20____.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: