

BOARD OF COUNTY COMMISSIONERS

DATE: February 12, 2013

AGENDA ITEM NO. 8

Consent Agenda ☒

Regular Agenda ☐

Public Hearing ☐

County Administrator's Signature:

Subject:

Approval and Acceptance of a Promotional Fund Grant Agreement from the Deepwater Horizon Economic Claims Administration, BP and the Plaintiff Steering Committee for the Promotion and Marketing of Two Programs in Support of Gulf Tourism and Seafood Industries.

Department:

Convention and Visitors Bureau

Staff Member Responsible:

D.T. Minich, Director

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS APPROVE AND ACCEPT THE PROMOTIONAL FUND GRANT AGREEMENT FROM THE DEEPWATER HORIZON ECONOMIC CLAIMS ADMINISTRATION, BP AND THE PLAINTIFF STEERING COMMITTEE FOR THE PROMOTION AND MARKETING OF TWO PROGRAMS IN SUPPORT OF GULF TOURISM AND SEAFOOD INDUSTRIES.

Summary Explanation/Background:

This is an award of \$500,000 that will allow the Convention and Visitors Bureau (CVB) to conduct two major programs to dispel negative Gulf seafood impressions and generate tourism to Pinellas County.

While tourism has rebounded in the two years since the "Deepwater Horizon" oil spill in the Gulf of Mexico on April 20, 2010, the local seafood industry has not. Despite repeated statements from scientists that Gulf of Mexico seafood is safe to eat, the perception still persists that Gulf seafood is tainted.

The Gulf Tourism and Seafood Promotional Fund (Promotional Fund) was established by British Petroleum (BP) and the Plaintiffs Steering Committee in the Deepwater Horizon Economic and Property Damages Settlement resulting from the "Deepwater Horizon" oil spill in the Gulf of Mexico on April 20, 2010. One of the primary purposes of the \$57 million Promotional Fund is to award grants to non-profit and government entities in support of programs that advertise, market and promote Gulf tourism and the seafood industries.

In October 2012, the CVB submitted a proposal to the Deepwater Horizon Economic Claims Center (DHECC) for two programs, the St. Petersburg & The Bay Area Food & Wine Festival and "Emeril's Florida" TV show. The food and wine festival is a three-day festival that will offer a variety of culinary and wine-focused events that showcase Gulf seafood and the area's fine art and music scene. The second program, "Emeril's Florida," will consist of a 30-minute television show on the Cooking Channel featuring celebrity chef Emeril Lagasse. This 30-minute episode is in partnership with Visit Florida and will be one of six Florida destinations featured in a cooking series that focuses on local cuisine and chefs with an emphasis on fresh Gulf seafood. The television episode will air three times on the Cooking Channel during 2013 and three additional times during 2014.

After reviewing 350 applications, the DHECC notified the CVB it had been awarded a \$500,000 grant. According to the Agreement, grant funds will be paid to the County in four installments of \$125,000 each upon receipt of a quarterly progress and final report. The term of this Agreement is from December 1, 2012, to November 30, 2013.

Fiscal Impact/Cost/Revenue Summary:

The \$500,000 in revenue from this grant will offset promotional and marketing expenditures in support of the two programs.

There is no required County match for the grant.




Exhibits/Attachments Attached:

Contract Review Transmittal
Promotional Fund Grant Agreement

CONTRACT REVIEW TRANSMITTAL SLIP **Convention and Visitors Bureau**

PROJECT: Deepwater Horizon Gulf Tourism and Seafood Promotional Fund Grant AgreementTOTAL REVENUE: \$500,000

Please review the attached and **forward to the next Review Authority** in the sequence indicated below. Indicate any necessary changes by revising, IN RED, the appropriate sections of the document to reflect the wording of the desired change. Time is of the essence, please make your review as complete and as fast as possible.

	Date	Signature	Comments	Comments Incorporated
1. CVB D.T. Minich	<u>1/10/13</u>	<u></u>		
2. Risk Management Virginia Holscher	<u>1/10/13</u>	<u>see attached email</u>		
3. Clerk/Finance Cassandra Williams	<u>1/11/13</u>	<u>"</u>		
4. OMB Eric Naughton	<u>1/14/13</u>	<u>"</u>		
5. County Attorney Dennis Long	<u>1/18/13</u>	<u></u>		
6. County Administration Mark Woodard	<u>1/25/13</u>	<u></u>		

Please return to: Teri Tuxhorn, CVB – EpiCenter, 13805 58th St. N. Suite 2-200, Clearwater
 If you have any questions, contact Teri by dialing the entire number 464-7465. Thank you.

From: Holscher, Virginia [mailto:vholscher@co.pinellas.fl.us]
Sent: Thursday, January 10, 2013 4:44 PM
To: Teri Tuxhorn; Naughton, Eric C; Williams, Cassandra B
Cc: Burbidge, Katherine A; Makras, Tiffany C; Long, Dennis; DT Minich
Subject: RE: Deepwater Horizon Promotional Grant Agreement

Grant only – no insurance requirements, but please let us know when the events will be happening and who will manage the events, so we can help from a risk perspective.

Thanks

Virginia E. Holscher, CPCU
Bureau Director, Risk Management
400 South Fort Harrison Avenue
Clearwater, FL 33756
Phone: 727-464-3559
Fax: 727-464-4060
Cell: 727-328-4756
vholscher@pinellascounty.org

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All government correspondence is subject to the public records law.

From: Williams, Cassandra B [mailto:cbwilliams@co.pinellas.fl.us]
Sent: Friday, January 11, 2013 3:17 PM
To: Teri Tuxhorn
Subject: RE: Deepwater Horizon Promotional Grant Agreement

I have reviewed and approved this agreement.

From: Naughton, Eric C [mailto:enaughton@co.pinellas.fl.us]
Sent: Monday, January 14, 2013 11:25 AM
To: Holscher, Virginia; Teri Tuxhorn; Williams, Cassandra B
Cc: Burbidge, Katherine A; Makras, Tiffany C; Long, Dennis; DT Minich
Subject: RE: Deepwater Horizon Promotional Grant Agreement

Ok with OMB.

PROMOTIONAL FUND GRANT AGREEMENT

This Promotional Fund Grant Agreement (this “Agreement”) is entered into by Pinellas County, on behalf of Visit St. Petersburg/Clearwater, (“Grantee”), with offices at 13805 58th Street North, Suite 2-200, Clearwater, Florida 33760; Patrick Juneau, as Trustee (the “Trustee”) of the Settlement Trust as further defined below (the “Settlement Trust”), and as Claims Administrator of the Court Supervised Settlement Program (the “Claims Administrator”); and solely for the purposes of taking cognizance and approving the terms of this Agreement, BP Exploration & Production Inc. (“BP Exploration”) and Lead Class Counsel.

RECITALS

WHEREAS, BP Exploration, a Delaware corporation and certain of its affiliates (collectively “BP”) have been named as defendants in *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (the “MDL Litigation”);

WHEREAS, BP and the Economic Class Representatives, individually and on behalf of the Economic and Property Damages Settlement Class, by and through Lead Class Counsel entered into an Economic and Property Damages Settlement Agreement (“Settlement Agreement”) dated April 18, 2012, and amended May 1, 2012, for the purpose of settling all Released Claims against the Released Parties, including BP;

WHEREAS, the United States District Court of the Eastern District of Louisiana (the “Court”) has preliminarily approved the Settlement Agreement by Order dated May 2, 2012 (the “Preliminary Approval Order,” as further defined below);

WHEREAS, on May 4, 2012, BP, Lead Class Counsel, the Trustee and J.P. Morgan Trust Company (the “Directed Trustee”) entered into the *Deepwater Horizon* Economic and Property Damages Trust Agreement (the “Trust Agreement”) creating the Settlement Trust;

WHEREAS, the Settlement Trust is intended to meet the requirements of a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended from time to time, and section 1.468B-1(c) of the Treasury Regulations promulgated thereunder;

WHEREAS, the Settlement Trust’s purpose is to establish a mechanism to pay Settlement Payments (as defined in the Settlement Agreement) and the costs of administering the Settlement Program (as defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement and the Trust Agreement.

WHEREAS, the Trustee has the power, pursuant and subject to the terms of the Settlement Agreement and the Trust Agreement, to make distributions from the funds held by the Settlement Trust subject to the terms and conditions thereof; and

WHEREAS, Grantee desires to obtain funds for promotional services as described on attached Schedule “1”;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

AGREEMENT

1. Definitions.

The following words and phrases have the meanings indicated. Other words and phrases appearing in capital letters throughout this Agreement shall have the meanings they are given with their first operative use. Terms not otherwise defined herein shall have the same meanings ascribed to them in the Settlement Agreement and/or the Trust Agreement.

- 1.1 Applicable Law: means all applicable local, state and federal laws, rules and regulations.
- 1.2 Claims Administrator: has the meaning ascribed to it in the Settlement Agreement.
- 1.3 Individual: means a natural person.
- 1.4 Lead Class Counsel: means the lawyers appointed by the Court to represent the Class of Claimants.
- 1.5 Settlement Trust: means the qualified settlement trust fund established pursuant to that certain *Deepwater Horizon* Economic and Property Damages Trust Agreement, dated May 4, 2012, among BP, Lead Class Counsel, the Claims Administrator, and the Directed Trustee.
- 1.6 Parties: means the Settlement Trust, the Claims Administrator, Grantee, BP and Lead Class Counsel. BP and Lead Class Counsel are only made Parties to this Agreement for the purposes of taking cognizance and approving the terms of this Agreement.
- 1.7 Preliminary Approval Order: means the Order entered by the Court on May 2, 2012 granting preliminary approval of the Settlement Agreement.

2. Scope of Services.

- 2.1 Services. The general scope of the services to be furnished by Grantee shall be those described on attached Schedule "1".
- 2.2 The Services shall be provided in strict accordance with the terms of the Settlement Agreement, the Preliminary Approval Order, a final approval order (if one is entered) and in compliance with Applicable Law.

3. Grant Award.

- 3.1 Amount of Grant. Subject to the terms and conditions of this Agreement, and contingent upon sufficient funding of the Settlement Trust by BP, the Settlement Trust agrees to award to Grantee up to \$500,000.00_ for the period December 1, 2012 to November 30, 2013. The Grant shall be payable as follows:

\$125,000.00 after the signing and processing of the contract.
\$125,000.00 upon receipt and approval of the first quarter report.
\$125,000.00 upon receipt of the second and third quarter reports.

\$125,000.00 upon receipt and approval of the final report and the submission of all of the deliverables as outlined in Schedule 1.

- 3.2 Documentation. Grantee shall submit to the Claims Administrator all documentation as further described in Paragraph 3.3 within ten (10) days before the beginning of each calendar quarter, or more frequently as the Claims Administrator may require. The Claims Administrator shall review Grantee's documentation and if acceptable, authorize the next Grant payment. In the event that any documentation is deemed not acceptable by the Claims Administrator, Grantee shall be notified in writing of such deficiencies within ten (10) days of submission of the documentation.
- 3.3 Reporting. Grantee will provide reports to the Claims Administrator at least quarterly, within ten (10) days before the beginning of each quarter, or more often as the Claims Administrator may require, in which it will report, for the preceding quarter the following: a updated list of services and deliverables as outlined on Schedule 1. The Claims Administrator may distribute such reports as it deems appropriate. In addition, Grantee may be required to provide additional reports as may further be defined by the Claims Administrator in writing.
- 3.4 Ownership of Documentation. All records, reports, documents and other material delivered or transmitted to Grantee by the Claims Administrator shall remain the property of the Claims Administrator, and shall be returned by Grantee to the Claims Administrator, at Grantee's expense, at termination or expiration of this Agreement. All records, reports, documents, or other material related to this Agreement and/or obtained or prepared by Grantee in connection with the performance of the Services contracted for herein shall become the property of the Claims Administrator, and shall, upon request, be returned by Grantee to the Claims Administrator, at Grantee's expense, at termination or expiration of this Agreement.
- 3.5 Audit Rights. Grantee will provide to the Claims Administrator copies of its audit reports, if and when requested to do so by the Claims Administrator. In addition, the Claims Administrator or its authorized representatives may, at any time on reasonable notice, audit the operation of Grantee in relation to the activities undertaken pursuant to this Agreement.
- 3.6 Payment in Full. The Grant payments made hereunder are and shall be deemed to constitute "payment in full" for any Services performed by Grantee.

4. Term.

- 4.1 This Agreement is effective as of 12:01 a.m. Eastern Standard Time on December 1, 2012 (the "Effective Date") and its term shall end on November 30, 2013 (the "Expiration Date"), unless terminated on a different date in accordance with Paragraph 4.2 or as otherwise agreed by the Parties.
- 4.2 Grantee shall be authorized to perform the Services as further defined in Schedule "1" to this Agreement starting on the Effective Date, through and including the earlier of the date that: (1) the Court denies the Parties' motion for final approval of the Settlement Agreement; (2) the reversal on appeal of a Court order granting final approval of the Settlement Agreement; (3) the Court enters an Order closing the proposed Court Supervised Settlement Program; (4) Grantee is terminated by the

Claims Administrator with at least thirty (30) days written notice before the end of any quarter, which the Claims Administrator shall have the right to do with or without cause (collectively, "Termination Events"); or (5) the Expiration Date. As used herein, "cause" shall include, without limitation, the following: (i) the failure of Grantee to perform the Services in accordance with the requirements of this Agreement, (ii) the breach by Grantee of any other obligations under this Agreement, which breach is not cured within ten (10) days of written notice thereof, (iii) the commission of any act or any omission involving gross negligence, fraud, or other intentional or willful misconduct by Grantee, and (iv) any other violation of a statute, regulation, order, decree or court requirement or other Applicable Law by Grantee.

5. [Intentionally Omitted]

6. Representations and Warranties.

Grantee represents, warrants and covenants that: (i) it has the power and authority to enter into this Agreement and to perform all of its obligations hereunder; (ii) the execution, delivery and performance of this Agreement does not violate or conflict with any other agreement to which Grantee is a party or by which it is bound; (iii) Grantee has not previously entered into any agreement that would restrict Grantee in the performance of the Services; (iv) Grantee shall comply with all Applicable Law in performing its obligations under this Agreement; (v) Grantee shall use commercially reasonable efforts to verify that each of its employees performing Services is legally entitled to work in the United States and has all necessary visas and work permits; (vi) Grantee has the capacity and resources to perform the Services; (vii) all Services shall be performed by qualified personnel in a timely, professional and workmanlike manner in accordance with generally accepted industry practices; (viii) Grantee is either a governmental entity political subdivision of a governmental entity, or is recognized by the Internal Revenue Service (the "IRS") as a public charitable organization under sections 501(c)(3) and 509(a)(1), (2) or (3) of the Internal Revenue Code, and will inform the Claims Administrator immediately of any changes in, or IRS proposed or actual revocation (whether or not appealed) of such tax status; and (ix) all Grant funds shall be used only for the purposes described herein.

7. [Intentionally Omitted]

8. [Intentionally Omitted]

9. Miscellaneous.

9.1 Subcontracting. Notwithstanding any provision in this Agreement to the contrary, Grantee shall not subcontract any of its obligations under this Agreement to any third party unless approved in writing by the Claims Administrator.

9.2 Successors and Assigns. The terms and conditions of this Agreement shall be binding upon the Parties and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that, unless otherwise provided in this Agreement, the obligations of the Parties under this Agreement may not be delegated nor shall any rights be assigned or transferred, including by merger, reorganization, change of control, acquisition or sale of all or substantially all of its assets or business or otherwise (including, without limitation, by operation of law) (collectively a "Sale Transaction"), by a Party without the other Parties' prior written consent.

- 9.3 Compliance with Laws. Grantee and its respective employees and agents shall comply with all Applicable Law in performance under this Agreement.
- 9.4 Tax Responsibility. Grantee shall be responsible for the payment of any taxes that might be due from or assessed on any of the Grant funds received under this Agreement.
- 9.5 Maintenance of Books and Records. In order to implement and effectuate the audit rights of the Claims Administrator as described in Paragraph 3.5, Grantee shall maintain its books and records and other documents pertaining to the use and disposition of the grant funds received and to the Services rendered under this Agreement, for a period of at least three (3) years after the Termination Date.
- 9.6 Dispute Resolution. Any and all claims, disputes and controversies arising under or relating to this Agreement that cannot be resolved by the Parties shall be determined solely in the Court, under Louisiana law without regard to its conflicts of law provisions. All Parties waive the right to a jury trial. In the Court's discretion, the prevailing Party in any dispute arising from this Agreement may be awarded reasonable attorney's fees.
- 9.7 Complete Agreement. This Agreement and any exhibits, together with any addenda, set forth the entire agreement of the Parties with respect to Services hereunder, and any prior or contemporaneous promises, conditions or understandings are superseded and/or replaced with this Agreement.
- 9.8 Modification. No provision of this Agreement may be changed unless the change is set forth in a written amendment to this Agreement signed by the Parties.
- 9.9 No Waiver. If a Party waives compliance with any term or condition of this Agreement, it shall be not deemed a waiver of any other right, nor to permit less than strict compliance with any term or condition on any future occasion.
- 9.10 Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the law of the State of Louisiana without reference to its conflict of laws principles. To the extent that any provision is found to be unenforceable or invalid, then such provision shall be ineffective only to the extent of such unenforceability or invalidity, and shall not affect the enforceability or validity of any other provision of this Agreement.
- 9.11 Notices. All notices and correspondence required to be given by this Agreement shall be delivered by hand or certified mail, return receipt requested and postage pre-paid, or by a nationally recognized courier service, or by facsimile transmission, and be addressed as follows:

If to Claims Administrator and/or Settlement Trust:

Patrick Juneau
935 Gravier St.
Suite 1905
New Orleans, LA
Phone: 504-264-9740

Fax: 504-264-9746
Email: mjj@dheclaims.com

If to Grantee:

D.T. Minich, Executive Director
Visit St. Petersburg/Clearwater
13805 58th St. N., Suite 2-200
Clearwater, FL 33760
Phone: 727-464-7220
Fax: 727-533-2172
Email: dt@visitspc.com

- 9.12 Counterparts. This Agreement may be executed in one or more counterparts which taken together shall constitute one single agreement between the Parties.
- 9.13 Independent Contractors. Grantee is an independent contractor. No Party to this Agreement is an agent, representative, joint venturer, or partner of any other Party. No Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, any other Party. Each Party shall bear its own costs and expenses in performing the Agreement. Grantee shall be responsible for the payment of all fees, wages and/or salaries payable to Grantee personnel and for providing Grantee personnel with any fringe benefits to which they are entitled by reason of being an employee or contractor of Grantee. Grantee shall comply, at its expense, with all applicable provisions of workers' compensation laws, unemployment compensation laws, federal social security law, the Fair Labor Standards Act and all other applicable federal, state and local laws and regulations relating to terms and conditions of employment required to be fulfilled by employers. Grantee shall comply with all applicable occupational health and safety laws, standards and requirements pertaining to the Services, including, but not limited to, OSHA standards and analogous state standards for work performed under this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement which shall be effective on the date first above-written, to be executed on their behalf by the undersigned duly authorized individuals.

Settlement Trust

By:

Grantee: PINELLAS COUNTY, FLORIDA

By and through its Board of County Commissioners

Signature

Patrick Juneau

Printed Name

Trustee

Printed Title

Date

Signature

Kenneth T. Welch

Printed Name

Chairman

Printed Title

Date

Claims Administrator

By:

Signature

Patrick Juneau

Printed Name

Claims Administrator

Printed Title

Date

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By:  _____

ATTEST: Ken Burke

Clerk of the Circuit Court

By: _____

Deputy Clerk

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Schedule 1

Description of Services

The Visit St. Petersburg/Clearwater will implement two programs:

1. The St. Petersburg & the Bay Area Food and Wine Festival, and
2. Emerils' Florida TV Show

Food and Wine Festival

1. Submit a detailed synopsis of the three-day event, including all festival activities, a listing of the names of chefs, artists and performers.
2. Submit a copy of the marketing and PR plan developed to promote the event, including copies of news releases distributed and copies of articles published promoting the festival.
3. Submit copies of print advertisements, magazine/newspaper inserts, flyers, posters and other promotional materials developed to promote the festival.
4. Submit screen shots of websites promoting the festival, as well as a narrative on the use of social media and Internet marketing to include sites and effectiveness.
5. Submit copies of radio and television ads along with run schedules.
6. Submit screen shots and/or artwork of Home Shopping Network advertisements, as well as run schedules.

Emeril's Florida

1. Submit a copy of the 30-minute television show that will air on the Cooking Channel featuring Chef Emeril Lagasse.
2. Submit a copy of the repurposed content into multiple 2-3 minute vignettes to use on digital platforms.
3. Submit screen shots of the use of these vignettes as digital promotion and advertising.
4. Submit a schedule of television show run and air times.

Final Report

1. Submit a final report that provides a description of the project, summarizes all of the activities, provides a synopsis of the social media, digital, print and broadcast campaigns in promoting and tracking the effectiveness the projects, provides an analysis of return on investment and economic impact and provides information on the ways in which these projects have been measured and evaluated to have met the outcomes to increase the number of visitors, increase visitor spending and increase hotel occupancy.