

BOARD OF COUNTY COMMISSIONERS

DATE: September 17, 2013

AGENDA ITEM NO. 3

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature:

Subject:

Approval of an Operating Agreement Between the East Lake Community Library and the Palm Harbor Community Services Agency, Inc.

Department:

Office of the County Administrator

Staff Member Responsible:

Mark S. Woodard, Assistant County Administrator

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE AN OPERATING AGREEMENT WITH THE PALM HARBOR COMMUNITY SERVICES AGENCY, INC. (PHCSA) TO PROVIDE SPECIFIED ADMINISTRATIVE SERVICES TO THE EAST LAKE COMMUNITY LIBRARY (ELCL) AND AUTHORIZE THE CHAIR TO EXECUTE ON BEHALF OF THE EAST LAKE LIBRARY MUNICIPAL SERVICES TAXING UNIT.

Summary Explanation/Background:

Under the existing Library Cooperative Interlocal Agreement, the ELCL operated as a unit of the Palm Harbor Library. With the dedicated funding source approved by the Board of County Commissioners (up to a 0.25 mill levy) and the new Library Cooperative Interlocal Agreement, the ELCL can exercise greater independence. This Operating Agreement enables the ELCL to leverage the administrative and governance infrastructure of the PHCSA to realize cost savings and economies of scale.

Fiscal Impact/Cost/Revenue Summary:

None

Exhibits/Attachments Attached:

Operating Agreement

**EAST LAKE COMMUNITY LIBRARY
OPERATING AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2013, ("Effective Date") by and between the Palm Harbor Community Services Agency, Inc., a Florida not-for-profit corporation ("Agency"), and Pinellas County, a political subdivision of the State of Florida ("County"), for and on behalf of the East Lake Library Municipal Services Taxing Unit ("East Lake Library MSTU").

WITNESSETH:

WHEREAS, pursuant to Chapter 163, Florida Statutes, the County and participating municipalities have entered into an Interlocal Agreement effective as of October 1, 2013, providing for the continuation of the cooperative library program for Pinellas County administered by the Pinellas Public Library Cooperative, Inc. ("Cooperative"), in order to provide, extend and/or improve library services to the unincorporated areas of the County and the municipalities that are members of the Cooperative (the "Library Interlocal Agreement"); and

WHEREAS, pursuant to the authority granted in Chapter 85-489, Laws of Florida, Section 114-212, et seq., Pinellas County Code, Chapter 125, Florida Statutes, and other applicable statutes and regulations (together the "Act"), the County, Agency, Cooperative, and the East Lake Community Library Advisory Board, Inc. ("Advisory Board") entered into a series of agreements funding the East Lake Community Library ("ELCL"), including most recently the Amended and Restated Agreement dated March 19, 2008, providing for the establishment and operation of a public library within the same boundaries of the East Lake Special Fire Control District; and

WHEREAS, pursuant to Section 114-330, et seq., Pinellas County Code, on May 21, 2013, the County established the East Lake Library MSTU providing for the levy of not exceeding 0.25 mill for library programs and facilities within East Lake which, along with other available funding sources, will provide a stable funding source for the operations of the ELCL as provided herein; and

WHEREAS, the parties hereto desire to continue to realize the economies of scale and benefits achieved by utilizing the operational and management services of the Agency for ELCL, while recognizing that the ELCL should be operated as an independent and self-sufficient library to the fullest extent possible under the Library Interlocal Agreement, applicable laws, and this Agreement; and

WHEREAS, the parties hereto intend that ELCL will reimburse the Agency for any of the operational and management services provided to the ELCL as provided in this Agreement; and

WHEREAS, the parties recognize that the Advisory Board should continue to provide policy guidance and input on ELCL issues to the ELCL Director.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Purpose.** The purpose of the Agreement is to provide for the day-to-day management and operation of the business and affairs of ELCL during the term hereof.
2. **Maintenance of Library Facility.** The County and the Agency have entered into a lease for the ELCL dated June 8, 1999, as amended (the "Lease"). The terms and conditions of the Lease shall govern the use and maintenance of the ELCL facility.
3. **Funding for Library Operations and Facilities.** The personnel, operating and capital expenses necessary for the operations of the ELCL shall be funded from funds lawfully appropriated by the County in the East Lake Library MSTU, as well as funding from other legally available sources, including the Cooperative. The Agency shall prepare and submit an annual budget for the ELCL as part of the annual budget proposal submitted to the County by the Agency, which shall include revenues from all sources, including the Cooperative, beginning fund balances, East Lake Library MSTU revenues, and any other revenue sources. All expenditures for personnel and operating expenses of the ELCL during the term of this Agreement shall be made in accordance with the annual budget for the ELCL approved by the County for the fiscal year in which the expenditures are made. Capital expenditures shall be made in accordance with the procedures and requirements in place as agreed to by the Agency and the County. The Agency will request the funds allocated by the County for the ELCL in accordance with and subject to the following:
 - A. The County shall budget funds from taxes collected in the East Lake Library MSTU, and not from other sources available to the Palm Harbor Library or Cooperative, to the extent permitted by Florida law and consistent with the Library Interlocal Agreement, and to the extent said funds are deemed by the County to be necessary for the personnel, operating and capital expenses of the ELCL.
 - B. During the term hereof, no funds budgeted, appropriated, or designated for the Palm Harbor Library, regardless of source, will be expended on the ELCL, except for funds managed by the Palm Harbor Library for the express benefit of the ELCL as provided herein.
 - C. During the term hereof, all expenditures made pursuant to the approved budget on behalf of the ELCL shall be made only after approval in accordance with the financial policies of the Agency, as may be from time to time amended by the Agency.
 - D. The County shall pay to the Agency the funds budgeted for the ELCL program upon receipt of a payment request from the Agency, and at no time shall the Agency advance funds for the ELCL.
 - E. Any funds received in excess of the annual budgets for the ELCL, such as donations, fines, or fees, will be deposited into the accounts of and utilized for the benefit of the ELCL.

- F. During the term hereof, the Agency shall be reimbursed for administrative expenses from funds allocated for the ELCL for any additional services provided to the ELCL by the Agency at rates established by the Agency, which shall be subject to approval by the County.
- G. The Agency shall establish separate bank accounts for the ELCL, and all funds received for, and all expenditures made on behalf of, the ELCL programs shall be deposited into and made solely from these accounts.
- H. Within ninety (90) days of the end of the fiscal year of the ELCL, audited financial statements covering the operations of the ELCL for the fiscal year, including statements of income, balance sheets, and statements of changes in financial position, accompanied by an opinion issued in accordance with general accounting principles by an independent certified public accountant shall be provided to the Cooperative and the County. The Agency may, at its option, include this information in the Agency's annual audit. The Agency shall submit both the audit and an annual report describing the ELCL services provided for the prior fiscal year to the County in accordance with the requirements of the Agency Agreement with the County dated August 11, 1998.

4. **Library Personnel and Operations.**

- A. Employees. All employees of the ELCL shall be employees of the Agency, subject to all personnel policies, standards and requirements of the Agency. There shall be an ELCL Library Director, who shall be hired by the Agency, with input from of the Advisory Board and the Cooperative Executive Director; provided, however, if agreed to by the Agency, the Palm Harbor Library Director may manage the operations of the ELCL with all powers and responsibilities of the ELCL Director as provided herein. The ELCL Director shall be supervised, evaluated (including salary recommendation), and disciplined by the Agency with input from the Advisory Board in accordance with the Agency's policies and procedures. All other personnel of the ELCL shall be hired, supervised, evaluated, and disciplined by the ELCL Director in accordance with the established personnel policies of the Agency. The ELCL Director and the Palm Harbor Library Director shall meet periodically as is necessary to review and update policies, procedures, and operations of the ELCL. All employees assigned to the ELCL shall be entitled to the same benefits as generally provided to the Agency employees. To the extent economically feasible, the Agency will secure separate insurance policies or benefits programs for the ELCL employees, such as health insurance, workers' compensation insurance, etc.
- B. Operation. During the term hereof, the ELCL shall be operated as a public library in accordance with the policies, regulations and procedures of the Agency, the Cooperative, and applicable Florida law. Any deviations from these policies, regulations and procedures shall take effect only after approval by the Agency, upon the recommendation of the Advisory Board. With regard to the operation of the ELCL:

- 1) The Advisory Board shall provide input to the Agency on ELCL long-term planning, services, and collections.
 - 2) The Palm Harbor Library Director on a regular basis shall meet with the ELCL Director and the Advisory Board to review and discuss common issues relating to library operations, including operating efficiencies, cost savings and other improvements to library services; provided that all parties hereto understand and agree that any duties of the Palm Harbor Library Director relating to the ELCL shall not interfere with the full time duties and responsibilities for the Palm Harbor Library.
 - 3) Hours and schedules for the ELCL shall be set by the ELCL Director, subject to Agency approval.
 - 4) Materials selection will be made by the ELCL Director subject to the collection development policies approved for the ELCL.
 - 5) Interlibrary loans and other requests made to the Cooperative libraries will initiate from the ELCL.
 - 6) Use of the Palm Harbor Library by East Lake Library MSTU residents will continue to be calculated as non-resident usage by the Palm Harbor Library. Usage of the ELCL by residents of areas outside the East Lake Library MSTU will be calculated as non-resident usage by the ELCL.
 - 7) The Agency owns and maintains all computers, printers and network equipment at the ELCL during the term of this agreement. Responsibility for said hardware and software repair and maintenance is the sole responsibility of the ELCL.
 - 8) The Agency shall purchase insurance for the ELCL out of funds designated for the ELCL, other than that required to be purchased by the Agency in accordance with this agreement, naming the Agency and the Palm Harbor Library as additional insured.
- C. The Agency, from funds available in the annual budget for the ELCL program, shall secure and maintain the same types and amounts of insurance coverage for the ELCL program as required by the Agency, or as otherwise required in the Lease or other governing documents.

5. **Miscellaneous.**

- A. This Agreement shall take effect on October 1, 2013, and continue in full force and effect until September 30, 2015, unless otherwise terminated as provided herein. The term of this Agreement may be extended for additional one-year terms by mutual written agreement of the parties.

- B. Notwithstanding any other provision herein, this Agreement and all obligations herein, are subject to and conditioned upon the availability of funds lawfully appropriated and available for the purposes established in this Agreement.
- C. Notwithstanding any other provision herein, if any party referenced in this subsection determines in its sole discretion that it would be impracticable to continue the relationship as provided herein, the Agency or County may terminate this Agreement as a party to this Agreement upon sixty (60) days' written notice to the other parties hereto or otherwise mutually agreed to by the parties.
- D. To the extent permitted by law, the Agency shall indemnify and hold harmless the County, its officers, agents, and employees from all damages, judgments, claims, expenses, costs (including interest), court costs and attorney's fees, arising out of or connected with the operations of the ELCL, not resulting from the County's sole active negligence.
- E. All notices, authorizations, requests, or communications in connection with this Agreement shall be directed to the County Administrator, or designee, for the County, and the Chair for the Agency, as set out herein. Notices required by this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier, charges prepaid, return receipt requested. The designated person(s) may be amended by either party by giving written notice to the other party:

The County's contact is:

County Administrator
Pinellas County Courthouse
315 Court Street
Clearwater, FL 33756

and the Agency's contact is:

Chair
Palm Harbor Community Services Agency, Inc.
2330 Nebraska Avenue
Palm Harbor, FL 34683-3609

with a copy to the Advisory Board contact:

Chair
East Lake Community Library Advisory Board, Inc.
4125 East Lake Road
Palm Harbor, FL 34685-4128

- F. This Agreement is not assignable without the written consent of the non-assigning parties hereto.

G. This Agreement may be amended upon the written consent of all the parties hereto.

H. The ELCL Funding Agreement effective December 1, 2003, is hereby terminated and shall be of no further force and effect as of the Effective Date.

6. **Fiscal Nonfunding.** The funds to be used for services performed pursuant to this Agreement are subject to periodic appropriation of funds by the County. Further obligations under this Agreement are contingent upon the availability of funds. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay for any services performed under this Agreement beyond the portion for which funds are appropriated. Such failure of appropriation shall not constitute a breach of this Agreement. The County agrees to promptly notify the Advisory Board in writing of such failure of appropriation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for the uses and purposes therein expressed.

PINELLAS COUNTY, a political subdivision
of the State of Florida, for and on behalf of the
East Lake Library Municipal Services Taxing Unit

PALM HARBOR COMMUNITY
SERVICES AGENCY, INC.

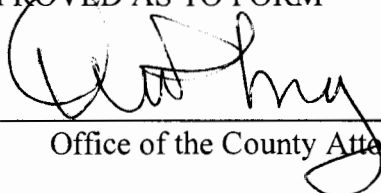
By: _____
Kenneth T. Welch, Chair

By: _____
Rex Haslam, Chair

ATTEST:
KEN BURKE, CLERK OF COURT

By: _____
Deputy Clerk

APPROVED AS TO FORM

By:  _____
Office of the County Attorney