



BOARD OF COUNTY COMMISSIONERS

DATE: January 14, 2014
AGENDA ITEM NO. 11b.

Consent Agenda ☒

Regular Agenda ☐

Public Hearing ☐

County Administrator's Signature

Subject:

Cooperative Funding Agreement (CFA) with the Southwest Florida Water Management District (SWFWMD) for Implementation of Best Management Practices (BMPs) in the Coastal Zone 5 Watershed Area at Antilles and Oakhurst Streets (N534)
SWFWMD Agreement No. 14C00000030
County PID No. 000105A (1820)

Department: R for DES

Department of Environment and Infrastructure

Staff Member Responsible:

Jorge M. Quintas, P.E., Director
Engineering & Technical Support

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE THE CFA WITH SWFWMD FOR IMPLEMENTATION OF BMPs IN THE COASTAL ZONE 5 WATERSHED AREA AT ANTILLES AND OAKHURST STREETS, AND AUTHORITY BE GRANTED FOR THE CHAIRMAN TO SIGN AND THE CLERK TO ATTEST.

Summary Explanation/Background:

The purpose of this project, outlined in the CFA with SWFWMD, is for Implementation of BMPs in the Coastal Zone 5 Watershed Area at Antilles and Oakhurst Streets. Implementation of BMPs includes the construction of a flood relief project with construction engineering and inspection (CEI) services in the Antilles and Oakhurst area of Pinellas County. Currently, both streets (Antilles and Oakhurst) experience flooding, along with some residential porch and yard flooding during annual storm events. The cause of this flooding problem is an undersized stormwater conveyance system.

Pinellas County proposes to construct drainage improvements to both roadways to alleviate the flooding. These improvements will consist of the construction of pipes and inlets for conveyance along with a swale system for stormwater quality treatment. The swale system will provide treatment for the project area stormwater which presently goes untreated.

The Antilles and Oakhurst Streets project is upstream of the Glades project also known as Commodore Drive (Project N305) funded by SWFWMD, and is essentially Phase 2 of the Glades project. The Glades project will provide the outfall for the Antilles and Oakhurst Streets project.

Staff and the County Attorney have discussed the indemnification language in Section 10 of this Agreement, and agree that it does not increase the liability to the County beyond an acceptable level of risk.

Staff and SWFWMD anticipate the total cost of the project will be \$2,195,000 with the County's share estimated at \$1,097,500.

This Agreement will be forwarded to SWFWMD for execution following BCC approval.

Fiscal Impact/Cost/Revenue Summary:

Funding to support this project is budgeted in the County's Capital Improvement Program (CIP): Drainage and Stormwater Management, Other Drainage and Stormwater Management Projects allocation, and a grant from SWFWMD.

Exhibits/Attachments Attached:

Contract Review Transmittal
Agreement

Delegated Memo to the County Administrator dated December 18, 2013

Email from DEI Grant Coordinator dated December 27, 2013

Email from SWFWMD dated December 16, 2013

Project Financial Overview

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP**PROJECT: Cooperative Funding Agreement (CFA) w/SWFWMD for Implementation of BMPs in the Coastal Zone 5 Watershed Area at Antilles & Oakhurst Streets (N534)****SWFWMD AGREEMENT NO.**
14C00000030**ESTIMATED EXPENDITURE / REVENUE:** \$1,097,500
(Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in **RED**, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT: County PID No. 000105A (1820)

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: DEI David Talhouk Ivan Fernandez, P.E. Jorge Quintas, P.E.	12/2/13 12/2/13	<i>[Signature]</i> 6030.016 EP	See comments memo	COMMENTS ADDRESSED N/A
Risk Mgmt: Virginia Holscher	12/12/13	<i>[Signature]</i>	Public Entity to Public Entity	
Finance:** Cassandra Williams	12/4/13	<i>[Signature]</i>		
OMB:** Bill Berger	12/12/13	<i>[Signature]</i>		
Legal: Barbara Oklesen by Dave McCreary	12/17/13	<i>[Signature]</i>	1) Objection is request to change implementation language submitted, SWFWMD response included 2) Exhibit A: Measurable Benefit in regards to improvements to water quality is not specific	12/17/13 PLEASE SEE ATTACHED EMAILS N/A
DEI Executive Director: David E. Scott, P.E.	12/27/13	RP for DES		

Please return to Merry Celeste ext: 4-3185

All inquiries should be made to David Talhouk ext: 4-3780.

** See Contract Review Process

COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
PINELLAS COUNTY
FOR
IMPLEMENTATION OF BMPs IN THE COASTAL ZONE 5 WATERSHED
AT ANTILLES AND OAKHURST (N534)

THIS COOPERATIVE FUNDING AGREEMENT is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," 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 COUNTY proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the project consists of the implementation of the Best Management Practices (BMPs) element of the DISTRICT'S Watershed Management Program (WMP) in the Coastal Zone 5 Watershed in the area of Antilles and Oakhurst streets in Pinellas County, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DISTRICT considers the resource benefits to be achieved by the PROJECT worthwhile and desires to assist the COUNTY in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the COUNTY, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. PROJECT CONTACTS AND NOTICES. Each party hereby designates the individual set forth below as its prime contact for matters relating to this Agreement. Notices and reports shall be sent to the attention of each party's prime contact as set forth herein by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth in the introductory paragraph of this Agreement. Notice is effective upon receipt.

Contract Manager for the DISTRICT: Terese Power

Project Manager for the COUNTY: David Talhouk

Any changes to the above representatives or addresses must be provided to the other party in writing.

- 1.1 The DISTRICT'S Contract Manager is authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed by the Contract Manager and his or her Bureau Chief, or Director if the Bureau Chief is the Contract Manager, unless the DISTRICT'S Signature Authority provides otherwise. The DISTRICT'S Signature Authority supersedes the approval requirements provided in this provision. The DISTRICT'S Contract Manager is not authorized to approve any time extension which will result in an increased cost to the DISTRICT or which will exceed the expiration date set forth in this Agreement.
- 1.2 The DISTRICT'S Contract Manager is authorized to adjust a line item amount of the PROJECT budget contained in the Project Plan set forth in Exhibit "A" or, if applicable, the refined budget as set forth in Subparagraph 3.4 below. The authorization must be in writing, explain the reason for the adjustment, and be signed by all appropriate DISTRICT staff in accordance with the DISTRICT'S Signature Authority. The DISTRICT'S Contract Manager is not authorized to make changes to the Scope of Work and is not authorized to approve any increase in the amounts set forth in the funding section of this Agreement.

2. SCOPE OF WORK. Upon receipt of written notice to proceed from the DISTRICT, the COUNTY shall perform the services necessary to complete the PROJECT in accordance with the COUNTY'S Project Plan set forth in Exhibit "A." Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the COUNTY prior to being performed by the COUNTY. The COUNTY shall be solely responsible for managing and controlling the PROJECT, both during and after construction and during and after the operation and maintenance of the PROJECT, including the hiring and supervising of any consultants or contractors it engages.

The parties agree that time is of the essence in the performance of each obligation under this Agreement.

3. FUNDING. The parties anticipate that the total cost of the PROJECT will be Two Million One Hundred Ninety-Five Thousand Dollars (\$2,195,000). The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with Subparagraph 3.1 below and anticipates funding PROJECT costs up to One Million Ninety-Seven Thousand Five Hundred Dollars (\$1,097,500), and shall have no obligation to pay any costs beyond this anticipated maximum amount. The COUNTY agrees to provide all remaining funds necessary for the satisfactory completion of the PROJECT.

- 3.1 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the DISTRICT'S Governing Board appropriating funds in its approved budget for the PROJECT in each fiscal year of this Agreement. The COUNTY recognizes that the DISTRICT has approved \$740,000.00 for the PROJECT through Fiscal Year 2014. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT Governing Board, in its sole discretion, in its annual budgets for future fiscal

years. The COUNTY'S payment of any financial obligation under this Agreement is subject to appropriation by the COUNTY'S Board of legally available funds.

- 3.2 The COUNTY shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the COUNTY for the DISTRICT'S share of allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the COUNTY shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the COUNTY for any contingency funds that the DISTRICT determines, in its sole discretion, to be in excess of what was reasonably necessary to complete the PROJECT. The DISTRICT shall reimburse the COUNTY for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COUNTY, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COUNTY. The parties acknowledge that the DISTRICT'S reimbursement percentage stated above is subject to change if the percentage of the DISTRICT'S anticipated funding amount is changed due to subsequent Governing Board approvals.
- 3.3 Unless otherwise stated in this Agreement, any federal, state, local or grant monies received by the COUNTY for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The COUNTY shall provide the DISTRICT with written documentation detailing its allocation of any such funds appropriated for this PROJECT.
- 3.4 The COUNTY may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. The COUNTY must obtain the DISTRICT'S written approval prior to posting solicitations for consultants or contractors and prior to entering into agreements with consultants or contractors to ensure that costs to be reimbursed by the DISTRICT under those agreements are reasonable and allowable under this Agreement. The DISTRICT shall provide a written response to the COUNTY within fifteen (15) business days of receipt of the solicitation or agreement. Upon written DISTRICT approval, the budget amounts for the work set forth in such contract(s) shall refine the amounts set forth in the PROJECT budget and be incorporated herein by reference. The DISTRICT shall not reimburse the COUNTY for costs incurred under consultant and contractor agreements until the DISTRICT approvals required under this provision have been obtained.
- 3.5 Payment shall be made to the COUNTY within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the DISTRICT every two (2) months electronically at invoices@WaterMatters.org, or at the following address:

Accounts Payable Section
Southwest Florida Water Management District
Post Office Box 1166
Brooksville, Florida 34605-1166

The above-referenced payment due date shall not apply to that portion of an invoice that includes contingency expenses. The DISTRICT agrees to reimburse the COUNTY for contingency expenses within a reasonable time to accommodate the process provided for in Section 3.2 of the Agreement.

In addition to sending an original invoice to the DISTRICT'S Accounts Payable Section as required above, copies of invoices may also be submitted to the DISTRICT'S Contract Manager in order to expedite the review process. Failure of the COUNTY to submit invoices to the DISTRICT in the manner provided herein shall relieve the DISTRICT of its obligation to pay within the aforementioned timeframe.

- 3.6 The parties acknowledge that the PROJECT was approved for funding by the DISTRICT based upon the resource benefits expected to be achieved by the PROJECT (the "Measurable Benefit"). The parties also acknowledge that the COUNTY is solely responsible for implementing the PROJECT in such a manner that the expected resource benefits are achieved. If at any point during the progression of the PROJECT the DISTRICT determines that it is likely that the Measurable Benefit, as set forth in the Project Plan, will not be achieved, the DISTRICT shall withhold payments to the COUNTY until such time as the COUNTY demonstrates that the PROJECT shall achieve the required resource benefits.
- 3.7 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, F.S., as may be amended from time to time. The DISTRICT shall not reimburse the COUNTY for any purpose not specifically identified in Paragraph 2, Scope of Work. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the COUNTY are not reimbursable by the DISTRICT and may not be included in the COUNTY'S share of funding contributions under this Agreement.
- 3.8 The DISTRICT has no obligation and shall not reimburse the COUNTY for any costs under this Agreement until the Notice to Proceed with construction has been issued to the COUNTY'S contractor.
- 3.9 Each COUNTY invoice must include the following certification, and the COUNTY hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and the COUNTY'S matching funds, as represented in this invoice, are directly related to the performance under the Implementation of BMPs in the Coastal Zone 5 Watershed at Antilles and Oakhurst (N534) agreement between the Southwest

Florida Water Management District and Pinellas County (Agreement No. 14C00000030), are allowable, allocable, properly documented, and are in accordance with the approved project budget. This invoice includes \$___ of contingency expenses. The COUNTY has been allocated a total of \$___ in federal, state, local or grant monies for this PROJECT. \$___ has been allocated to this invoice, reducing the DISTRICT'S and COUNTY'S share to \$___."

3.10 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the COUNTY will continue to perform the PROJECT work in accordance with the Project Plan. The COUNTY is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the DISTRICT'S Contract Manager no later than ten (10) days after the precipitating event. If not resolved by the Contract Manager, in consultation with his or her Bureau Chief, within ten (10) days of receipt of notice, the dispute will be forwarded to the DISTRICT'S Executive Director. The DISTRICT'S Executive Director in consultation with the DISTRICT'S Office of General Counsel will issue the DISTRICT'S final determination. The COUNTY'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the COUNTY concerning the dispute.

4. COMPLETION DATES. The COUNTY shall commence the PROJECT by December 1, 2013, shall complete construction of the PROJECT by December 31, 2015, and shall otherwise meet the task deadlines established in this Agreement, as may be extended by the DISTRICT in accordance with Paragraph 1 of this Agreement. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the COUNTY, the COUNTY'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the COUNTY is able to resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the DISTRICT written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the COUNTY'S obligations provided for in this provision shall be the COUNTY'S sole remedy for the delays set forth herein.

5. REPAYMENT.

5.1 The COUNTY shall repay the DISTRICT all funds the DISTRICT paid to the COUNTY under this Agreement, if: a) the COUNTY fails to complete the PROJECT in accordance with the terms and conditions of this Agreement, including failing to meet the Measurable Benefit; b) the DISTRICT determines, in its sole discretion and judgment, that the COUNTY has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the COUNTY fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Paragraph 1.1; or d) a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this

Agreement, including the duration of the operation and maintenance obligations set forth in Paragraph 6 of this Agreement. Should any of the above conditions exist that require the COUNTY to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in Paragraph 11, Default.

5.2 Notwithstanding the above, the parties acknowledge that if the completed PROJECT fails to meet the Measurable Benefit specified in this Agreement, the COUNTY may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.

5.3 In the event the COUNTY is obligated to repay the DISTRICT under any provision of this Agreement, the COUNTY shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.

5.4 The COUNTY shall pay attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of COUNTY'S failure to repay the DISTRICT as required by this Agreement.

6. OPERATION AND MAINTENANCE. After construction is completed, the COUNTY shall operate, use and maintain the PROJECT for a minimum of twenty (20) years, in such a manner that the Measurable Benefit required under the Agreement is achieved. In the event the PROJECT is not operated, used and maintained in accordance with these requirements, the COUNTY shall repay the DISTRICT an amount of five percent (5%) of total DISTRICT monies contributed to the PROJECT for each year or a fraction thereof for the early termination of the PROJECT. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

6.1 The COUNTY shall provide the DISTRICT with an operation and maintenance plan that meets the requirements of this provision. Every two (2) years following the completion of the PROJECT, the COUNTY shall submit to the DISTRICT a report describing the operations and maintenance activities that took place during the reporting period and shall certify the Measurable Benefit set forth in the Project Plan has been met.

6.2 The DISTRICT retains the right to audit any certification and the COUNTY shall provide documentation as requested by the DISTRICT to support its certification that the specified Measurable Benefit has been met.

7. CONTRACT PERIOD. This Agreement shall be effective upon execution by the parties and shall remain in effect through March 31, 2016, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the COUNTY, whichever occurs first, unless amended in writing by the parties. The COUNTY shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date of this Agreement.

8. PROJECT RECORDS AND DOCUMENTS. Upon request by the DISTRICT, the COUNTY shall permit the DISTRICT to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the DISTRICT. Payments made to the COUNTY under this Agreement shall be reduced for

amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by either party, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. Each party shall maintain all such records and documents for at least three (3) years following completion of the PROJECT. Each party shall allow public access to PROJECT documents and materials made or received by either party in accordance with the Public Records Act, Chapter 119, F.S. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party.

9. REPORTS.

- 9.1 The COUNTY shall provide the DISTRICT with a quarterly report describing the progress of the PROJECT tasks, adherence to the performance schedule and any developments affecting the PROJECT. The COUNTY shall promptly advise the DISTRICT of issues that arise that may impact the successful and timely completion of the PROJECT.
- 9.2 Upon request by the DISTRICT, the COUNTY shall provide the DISTRICT with copies of all data, reports, models, studies, maps or other documents resulting from the PROJECT.
- 9.3 The COUNTY must ensure that the design of the PROJECT maximizes the resource benefits to the greatest extent practicable. The COUNTY shall provide the DISTRICT with the final design, including supporting documentation for review by the DISTRICT, in order for the DISTRICT to verify that the design meets the requirements of this provision. The DISTRICT shall provide a written response to the COUNTY within ten (10) business days of receipt of the design plans and supporting documentation either verifying the design plans appear to meet the requirements of the Agreement or stating its insufficiencies. The COUNTY shall not finalize the design or advertise the construction bid documents until the DISTRICT provides the required verification. The DISTRICT'S verification shall not constitute an approval of the design, or a representation or warranty that the DISTRICT has verified the architectural, engineering, mechanical, electrical, or other components of the construction bid documents or that such documents are in compliance with DISTRICT rules and regulations or any other applicable rules, regulations or law. The COUNTY shall require the design professional to warrant that the construction documents are adequate for bidding and construction of the PROJECT.
- 9.4 The COUNTY shall provide the data, reports and documents referenced in this provision at no cost to the DISTRICT.

10. RISK, LIABILITY, AND INDEMNITY.

- 10.1 To the extent permitted by Florida law, the COUNTY assumes all risks relating to the PROJECT and agrees to be solely liable for, and to indemnify and hold the DISTRICT harmless from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from

the design, construction, operation, maintenance or implementation of the PROJECT; provided, however, that the COUNTY shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the DISTRICT'S officers, employees, contractors and agents. The acceptance of the DISTRICT'S funding by the COUNTY does not in any way constitute an agency relationship between the DISTRICT and the COUNTY.

10.2 The COUNTY agrees to indemnify and hold the DISTRICT harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the COUNTY'S officers, employees, contractors and agents related to its performance under this Agreement.

10.3 This Paragraph 10 shall not be construed as a waiver of the COUNTY'S sovereign immunity or an extension of COUNTY'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Paragraph 10 will not be construed to impose contractual liability on the COUNTY for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the COUNTY to be sued by third parties in any manner arising out of this Agreement.

10.4 Nothing in this Agreement shall be interpreted as a waiver of the DISTRICT'S sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the DISTRICT to be sued by third parties in any manner arising out of this Agreement.

11. DEFAULT. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, including the failure to meet task deadlines established in this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured in thirty (30) days, then the thirty (30) days may be extended at the non-defaulting party's discretion, if the defaulting party is pursuing a cure of the default with reasonable diligence. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

12. RELEASE OF INFORMATION. The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the other party no later than three (3) business days prior to the interview or press release. This provision shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.

13. DISTRICT RECOGNITION. The COUNTY shall recognize DISTRICT funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to DISTRICT approval. If construction is involved, the COUNTY shall provide signage at the PROJECT site that recognizes funding for this PROJECT provided by the DISTRICT. All signage must meet with DISTRICT written approval as to form, content and location, and must be in accordance with local sign ordinances.
14. PERMITS AND REAL PROPERTY RIGHTS. The COUNTY shall obtain all permits, local government approvals and all real property rights necessary to complete the PROJECT prior to commencing any construction involved in the PROJECT. The DISTRICT shall have no obligation to reimburse the COUNTY for any costs under this Agreement until the COUNTY has obtained all permits, approvals, and property rights necessary to accomplish the objectives of the PROJECT. In the event a permit, approval or property right is obtained but is subsequently subject to a legal challenge that results in an unreasonable delay or cancellation of the PROJECT as determined by the DISTRICT in its sole discretion, the COUNTY shall repay the DISTRICT all monies contributed to the PROJECT.
15. LAW COMPLIANCE. The COUNTY shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement. If the PROJECT involves design services, the COUNTY'S professional designers and the DISTRICT'S regulation and projects staff shall meet regularly during the PROJECT design to discuss ways of ensuring that the final design for the proposed PROJECT technically complies with all applicable DISTRICT rules and regulations. However, the DISTRICT undertakes no duty to ensure compliance with such rules and regulations.
16. DIVERSITY IN CONTRACTING AND SUBCONTRACTING. The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the COUNTY to make good faith efforts to encourage the participation of minority owned and woman owned and small business enterprises, both as prime contractors and subcontractors, in the performance of this Agreement, in accordance with applicable laws.
 - 16.1 If requested, the DISTRICT shall assist the COUNTY by sharing information to help the COUNTY in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.
 - 16.2 The COUNTY agrees to provide the DISTRICT with a report indicating all contractors and subcontractors who performed work in association with the PROJECT, the amount spent with each contractor or subcontractor, and to the extent such information is known, whether each contractor or subcontractor was a minority owned or woman owned or small business enterprise. If no minority owned or woman owned or small business enterprises were used in the performance of this Agreement, then the report shall so indicate. The Minority/Women Owned and Small Business Utilization Report form is attached as Exhibit "B." The report is required upon final completion of the PROJECT prior

to final payment, or within thirty (30) days of the execution of any amendment that increases PROJECT funding, for information up to the date of the amendment and prior to the disbursement of any additional funds by the DISTRICT.

17. ASSIGNMENT. Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without the prior written consent of the other party. Any attempted assignment in violation of this provision is void.
18. CONTRACTORS. Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the DISTRICT and any consultant or contractor of the COUNTY.
19. THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.
20. LOBBYING PROHIBITION. Pursuant to Section 216.347, F.S., the COUNTY is prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
21. PUBLIC ENTITY CRIMES. Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. The COUNTY agrees to include this provision in all contracts issued as a result of this Agreement.
22. SCRUTINIZED COMPANIES. Pursuant to Section 287.135, F.S., a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S., is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more. Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2011, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under Subsection 287.135(5), F.S., or has been placed on either of the aforementioned lists. The COUNTY agrees to comply with the requirements of Section 287.135, F.S. in connection with the implementation of the PROJECT.

23. GOVERNING LAW. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be in Hernando County, Florida.
24. SEVERABILITY. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Notwithstanding the above, if a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with Subparagraph 5.1.
25. SURVIVAL. The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement including Subparagraphs 3.3 and 9.2, and Paragraphs 5, 6, 8, 10, 14, 17 and 24 and any provisions requiring an offset or other continuing resource benefit.
26. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.
27. DOCUMENTS. The following documents 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," and then to Exhibit "B."

Exhibit "A" COUNTY'S Project Plan

Exhibit "B" Minority/Women Owned and Small Business Utilization Report Form

The remainder of this page intentionally left blank.

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

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Robert R. Beltran, P.E., Executive Director Date

PINELLAS COUNTY

By: _____
~~Kenneth A. Welch, Chair~~ Date
Board of County Commissioners
Karen Seel, Chair

Approved as to form:

Attest: Ken Burke, CPA
Clerk of the Circuit Court

By: _____
Pinellas County Attorney

By: _____
Deputy Clerk

COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
PINELLAS COUNTY
FOR
IMPLEMENTATION OF BMPs IN THE COASTAL ZONE 5 WATERSHED
AT ANTILLES AND OAKHURST (N534)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>MEM</u>	<u>10/23/13</u>
RISK MGMT	<u>N/A</u>	
CONTRACTS	<u>[Signature]</u>	<u>10/28/13</u>
BUREAU CHIEF	<u>[Signature]</u>	<u>11/14/13</u>
DIRECTOR	<u>[Signature]</u>	<u>11/15/13</u>
GOVERNING BOARD	<u>N/A</u>	

EXHIBIT "A"
COUNTY'S PROJECT PLAN

Project Description:

This Stormwater Improvement-Flood Protection project is an Implementation of the Best Management Practices (BMPs) element of the DISTRICT'S Watershed Management Program (WMP) in the Coastal Zone 5 Watershed in the area of Antilles and Oakhurst streets in Pinellas County. The PROJECT includes the construction of a new surface water management system serving a 3.33-acre drainage area and drainage improvements including pipes and inlets which are to be installed within an existing open ditch system in an effort to alleviate localized flooding.

The COUNTY shall, separate to this Agreement and prior to implementation of this PROJECT, design the stormwater collection system, secure the necessary rights-of-way, easements and all necessary permits for construction.

Project Tasks:

The COUNTY shall provide water quality and flood protection for the drainage area by constructing a stormwater collection system with treatment swales above the pipes within an existing open ditch system.

The COUNTY shall:

1. Attend one meeting with the DISTRICT prior to beginning the PROJECT to discuss the approach, schedule and budget.
2. Construct the PROJECT in accordance with the final design verified by the DISTRICT.
3. Provide construction engineering and inspection (CEI) services during construction, including survey, observations, and materials testing, to ensure that the construction work is performed in accordance with the final design verified by the DISTRICT.

Measurable Benefit:

The PROJECT will provide the following benefits:

- Eliminate roadway flooding for the 10-year/24-hour storm event (7.5" rainfall) and eliminate structural level of service deficiencies for the 100-year/24-hour storm event (9.0" rainfall).
- Water quality treatment for 3.3 acres with approximately 2400 linear feet of treatment swale.

Project Deliverables:

- Quarterly Status Reports
- Final Construction Drawings and Technical Specifications
- Construction Permits
- Copy of all required federal, state and local environmental permit application packages and final permits
- Copy of Contract with consultant and contractor in accordance with Subparagraph 3.4
- Copy of Notice-To-Proceed to contractor
- One copy of a summary of the construction quality assurance data, construction record drawings and permit related submittals
- Minority/Women Owned and Small Business Utilization Report
- Operation and Maintenance Plan
- Bi-annual Operation and Maintenance Report

Project Schedule:

DESCRIPTION	COMMENCE	COMPLETE
Final Design Plans	12/01/13	01/31/14
Bidding & Contract Award	03/28/14	06/14/14
Construction and CEI	08/28/14	12/31/15

Additional task deadlines contained in the performance schedules of any consultant and contractor contracts will be incorporated herein by reference.

Project Budget:

Description	DISTRICT	COUNTY	TOTAL
Construction	\$1,097,500	\$1,097,500	\$2,195,000
CEI	\$0	\$0	\$0

The remainder of this page intentionally left blank.

EXHIBIT "B"
MINORITY/WOMEN OWNED AND SMALL BUSINESS UTILIZATION REPORT

Projects receiving \$100,000 or more in cooperative funding from the Southwest Florida Water Management District require the submission of the following information within 30 days of any amendment increasing project funding and with the final invoice. Questions regarding use of this form should be directed to Contracts Administration, Phone (352) 796-7211 ext. 4132.

COOPERATOR: _____ AGREEMENT NO.: _____ PROJECT NAME: _____ TOTAL PROJECT COST: _____		INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED*											
		BUSINESS CLASSIFICATION		CERTIFIED MBE				NON-CERTIFIED MBE				UNKNOWN	
		NON-MINORITY	SMALL BUSINESS Section 288.703(1) F.S.	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN
NAMES OF CONTRACTORS AND SUBCONTRACTORS UTILIZED	TOTAL AMOUNT PAID												

* ☐ Our organization does not collect minority status data.

Signature

Date

Print Name and Title

TO: Robert S. LaSala, County Administrator

FROM: David E. Scott, P.E., Executive Director - Environment and Infrastructure *RP for DE S*

SUBJECT: Request for Exemption to Pinellas County Resolution No. 06-07 Relating to Contractual Indemnification by the County to the Cooperative Funding Agreement (CFA) with the Southwest Florida Water Management District (SWFWMD) for the Coastal Zone 5 Watershed Area at Antilles and Oakhurst Streets Project (N534)

DATE: December 18, 2013

RECOMMENDATION: I RECOMMEND THE COUNTY ADMINISTRATOR APPROVE THE REQUEST FOR AN EXEMPTION TO PINELLAS COUNTY RESOLUTION NO. 06-70 RELATING TO CONTRACTUAL INDEMNIFICATION BY THE COUNTY TO THE CFA WITH SWFWMD FOR THE COASTAL ZONE 5 WATERSHED AREA AT ANTILLES AND OAKHURST STREETS PROJECT.

DISCUSSION: Prior to the passing of Resolution 06-70 by the Board of County Commissioners, indemnification provisions within contractual agreements requiring the County to indemnify others have been avoided by the County to the extent practicable. As the determination to agree to indemnify another party had not been subject to a uniform decision making process within the County, Resolution 06-70 was passed in an attempt to lay-out policy guidelines to aid in this decision-making process. However, circumstances arise where it is necessary to indemnify another party in order to acquire goods, services or funding usually not available from another source.

Pinellas County actively pursues cooperative funding from SWFWMD and other sources to pay for vital infrastructure improvements. The SWFWMD has begun the process of revising the terms of their CFAs in an effort to reduce the risks associated with granting funding to their cooperating agencies. In an effort to maintain consistency with all of their cooperating agencies, SWFWMD will not make changes to their agreement for an individual cooperating agency. Cooperative funding agreements, such as this; through the SWFWMD do not increase the liability to the County beyond an acceptable level of risk. Without SWFWMD as an additional funding resource, this would limit external funding sources for current and future infrastructure projects. SWFWMD will progressively incorporate the revised agreement terms into their cooperative funding agreements.

There is a potential loss in funding from SWFWMD for this project in the amount of \$1,097,500.00.

Approval of this Exemption Request is within the authority of the County Administrator, as delegated by the Board of County Commissioners, pursuant to Resolution 06-70.

Please retain one original packet for filing on your future quarterly receipt and file report.

Recommendation Approved

Robert S. LaSala
Robert S. LaSala, County Administrator

Date: *12/30/13*

Attachments:
Resolution No. 06-70

RP for DE S

RESOLUTION 06- 70

**A RESOLUTION RELATING TO CONTRACTUAL
INDEMNIFICATION BY THE COUNTY.**

WHEREAS, Pinellas County frequently enters into contractual relationships;

WHEREAS, these contracts vary from purchase orders to multimillion dollar contracts, to interlocal agreements;

WHEREAS, the County generally requires other contracting parties to indemnify the County for the negligence both of the contractor and of the County;

WHEREAS, many parties refuse to indemnify the County for the actions or inactions of the County and often seek to require the County to indemnify them for the actions of the County, its contractors, or third parties;

WHEREAS, the nature of the party, and the subject matter of the contract are factors in the County's decision making regarding risk assumption and indemnification;

WHEREAS, the County usually has refused to indemnify other entities for several reasons: 1) The County is entitled to sovereign immunity under the Florida Constitution and §768.28, Fla. Stat., and an indemnification could be interpreted as a contractual waiver of that sovereign immunity; 2) The Florida Constitution prohibits a County from pledging its credit to another entity and the indemnification could be viewed as a pledge of the County's credit; 3) Article VII Section 10 of the Florida Constitution, and §§129.06 and 129.07, Fla. Stats. require that a County limit its expenditures to the budgeted amounts, and contracts requiring expenditures in violation of these statutes are not only void,

but subject the commissioners voting and contracting for such amounts, and their individual bonds, to liability for any excess indebtedness contracted for; 4) §§129.08 and 129.09, Fla. Stats. provide for criminal liability for commissioners knowingly voting for such expenditures, and the clerk of the circuit court signing any payment thereon;

WHEREAS, currently various individuals make determinations relative to these indemnification or risk assumption decisions based on the nature, size, necessity or desirability of the agreement at issue;

WHEREAS, in advising various departments and bodies regarding these indemnification or risk assumption matters, the County Attorney's Office has caused the phrase, "to the extent permitted by law" to be added to clauses wherein the County purports to indemnify another entity;

WHEREAS, the County Attorney's Office interpretation has been that due to all of the constraints listed above, "the extent permitted by law" is – not at all, and that the indemnification of another entity is a void *ab initio* action with no effect;

WHEREAS, certain legal precedents have come out that could be construed to undermine the County Attorney's Office interpretation;

WHEREAS, American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459 (Fla. 2005) (*holding that a municipality could contractually be held liable under an indemnification provision despite sovereign immunity defenses raised*), and Florida Department of Natural Resources v. Garcia, 753 So.2d 72 (Fla. 2000) (*holding that the City of*

Miami could indemnify the State of Florida despite a statutory provision that prohibits one governmental entity from indemnifying a second governmental entity for the second entity's negligence) are two cases that raise potential problems for the interpretation previously relied upon by the County Attorney's Office;

WHEREAS, the County Attorney's Office has been in contact with other County Attorney's Offices, reviewed the widely varying policies thereof, and has researched and discussed the matter internally;

WHEREAS, it is the opinion of the County Attorney's Office that the most conservative and safest course of action is to never indemnify another party;

WHEREAS, as a practical matter, it is sometimes necessary, to achieve policy goals that are in the best interests of the County, to take on the risk of such an indemnity provision; and

WHEREAS, the Board of County Commissioners hereby finds that there is a need for the County to implement a uniform policy and methodology for the review of matters relating to contractual risk assumption or indemnification of other entities by the County.

NOW THEREFORE BE IT RESOLVED by the Pinellas County Board of County Commissioners as follows:

I. The County Policy is that the County does not indemnify other parties. That Policy may only be waived based on certain factors such as:

- 1) the availability of the goods or services from other sources;
- 2) the County's need/desire for the goods or services;
- 3) the probability of a loss occurring.

II. County policy not to indemnify others should not be waived lightly and when done, shall conform to the following requirements:

- 1) The other entity must have refused, in writing, to remove all indemnification requirements requested of the County directly, and refused to allow a statement that each party be responsible for its own negligence to take the place of the indemnification provision.
- 2) No indemnification by the County for the acts of any entity other than the County, its Governing Body, or its employees shall be approved. Particularly, no contract shall be entered into that requires the indemnification for acts or omissions of third parties, or third party agents of the County.
- 3) County indemnification of a party shall specifically be limited to the lesser of the contract amount, or the limits of sovereign immunity under §768.28, Florida Statutes (\$100,000/\$200,000). Recovery shall be limited contractually to the actual damages incurred as a result of County's sole negligence. No recovery of attorney's fees and costs should be permitted.
- 4) County indemnification shall specifically be limited to traditional liabilities for which the County could be held liable under common law interpreting the limited waiver of sovereign immunity (i.e. no waiver of sovereign immunity for planning functions or otherwise). Language shall also be included that states that any claim must comply with the procedures found in §768.28, Fla. Stat. for such tort claims.
- 5) County indemnification requires specific individual review through the contract review process which must include, at a minimum, the Clerk of the Circuit Court, the County Attorney's Office, the County Risk Management Department, and the County Administrator's Office.

III. To the extent possible, and after consideration as outlined above, the following language is to be used for the County to indemnify another party (Contractor):

County hereby agrees to indemnify the Contractor for claims brought against the Contractor only to the extent that they are found to result from the sole negligence of the County, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the County. This indemnification shall not be construed as a waiver of the County's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the County could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the County must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII,

section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the County to only those damages caused by County's sole negligence, and specifically not include any attorney's fees or costs associated therewith.

IV. Notwithstanding any contractual authority delegation to the contrary, any indemnification provisions entered into by the County other than that listed in paragraph III. may only be entered into at the specific direction of the County Administrator or his designee, and only after review by the County Attorney's Office. Any indemnity provision entered into pursuant to this subsection IV shall be reported to the Board of County Commissioners in arrears no less than quarterly.

Commissioner Morroni offered the foregoing resolution and moved its adoption, which was seconded by Commissioner Seel, and upon roll call the vote was:

AYES: Duncan, Stewart, Harris, Seel, and Morroni.

NAYS: None.

ABSENT AND NOT VOTING: Welch and Latvala.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY
By [Signature] Attorney

Kimm, Bunita L

From: Talhouk, David A
Sent: Friday, December 27, 2013 2:43 PM
To: Kimm, Bunita L
Cc: McCrea, David; Fernandez, Ivan J; Hall, Brent D; Celeste, Merry E
Subject: RE: PID 000105A (1820) Cooperative Funding Agreement w/SWFWMD - Coastal Watershed Zone 5 at Antilles-Oakhurst Streets
Attachments: ContractReviewSlip-CFA wSWFWMD for Watershed Area at Antilles-Oakhurst 3....pdf
Importance: High

The Measurable benefits section of the Agreement specifies our Level of Service for flooding and states also that we are constructing approximately 2400 linear feet of swale for water quality treatment. The agreement requires no removal thresholds for any water quality constituent. It only says that we are required to construct approximately 2400 linear feet of swale. That is the way we want it. We do not want nutrient removal requirements. Concerns expressed by Legal under Measurable Benefits imply that requirements are not specific. They are specific....we need to construct approximately 2400 linear feet of swale for water quality treatment and build inlets and a conveyance system to help meet our Level of Service standard for flood control. That is the way we want it.

David A. Talhouk, E.I.
Planning & Design Section
Engineering and Technical Support Division
Department of Environment and Infrastructure
Phone (727) 464-3780
dtalhouk@pinellascounty.org

All government correspondence is subject to the public records law.

From: Kimm, Bunita L
Sent: Friday, December 27, 2013 2:02 PM
To: Talhouk, David A
Cc: McCrea, David; Fernandez, Ivan J; Hall, Brent D; Celeste, Merry E
Subject: FW: PID 000105A (1820) Cooperative Funding Agreement w/SWFWMD - Coastal Watershed Zone 5 at Antilles-Oakhurst Streets
Importance: High

Good Afternoon, Dave ~

I need a written response to Legal's concern (see Item #2 on the attached Contract Review Slip) regarding the Measurable Benefit section under Exhibit A of the subject Agreement. This Agreement is going before the Board and Legal's comment will need to be addressed.

I have until Monday morning to get this signed and submitted for the next Board meeting. Please expedite.

Thank you,

Bunny Kimm
Pinellas County Dept. of Environment & Infrastructure (DEI)
(727) 464-4750
bkimm@pinellascounty.org
All government correspondence is subject to the public records law.

From: Talhouk, David A
Sent: Friday, December 20, 2013 1:52 PM
To: Kimm, Bunita L
Cc: McCrea, David; Hall, Brent D; Fernandez, Ivan J; Celeste, Merry E
Subject: RE: PID 000105A (1820) Cooperative Funding Agreement w/SWFWMD - Coastal Watershed Zone 5 at Antilles-Oakhurst Streets
Importance: High

I will handle. Thank you.

David A. Talhouk, E.I.
Planning & Design Section
Engineering and Technical Support Division
Department of Environment and Infrastructure
Phone (727) 464-3780
dtalhouk@pinellascounty.org

All government correspondence is subject to the public records law.

From: Kimm, Bunita L
Sent: Friday, December 20, 2013 10:31 AM
To: Talhouk, David A
Cc: McCrea, David; Hall, Brent D; Fernandez, Ivan J; Celeste, Merry E
Subject: PID 000105A (1820) Cooperative Funding Agreement w/SWFWMD - Coastal Watershed Zone 5 at Antilles-Oakhurst Streets
Importance: High

Good Morning, Dave ~

The attached Agreement has just about completed contract review, however, the County Attorney has concerns regarding Exhibit A page 1 of the document. Legal's specific statement was, "Exhibit A; Measurable Benefit in regards to improvements to water quality are not specific." The improvements to water quality aren't fully specified under the "Measurable Benefit" section of the Agreement, and could possibly be an issue between the County and SWFWMD when determining that all terms and conditions of the Project have been met.

Please advise whether you are contacting SWFWMD to clarify Legal's concern.

Thank you,

Bunny Kimm
Division of Engineering and Technical Support
Pinellas County Dept. of Environment & Infrastructure (DEI)
14 S. Ft. Harrison Ave., 2nd Floor, Clearwater, FL 33756
Phone (727) 464-4750
Fax (727) 464-4363
bkimm@pinellascounty.org

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McCrea, David

From: MaryBeth McNeil [MaryBeth.McNeil@swfwmd.state.fl.us]
Sent: Monday, December 16, 2013 12:21 PM
To: Oklesen, Barbara S
Cc: Pemberton, Christy D; McCrea, David; Celeste, Merry E; Quintas, Jorge M; Talhouk, David A
Subject: RE: indemnification- Amendment 2 to the CFA for Bee Branch Channel Improvements - L378, 11C00000122; Amendment 1 to CFA Lealman Area Drainage Improvement. 11C00000013; CFA for Implementation of BMPsin the Coastal Zone 5 Watershed Area, 14C00000030

Barbara,

The District is not agreeable to either deleting or amending its standard indemnification provision that is in our Cooperative Funding Agreements. Please let me know if you need anything else from me to satisfy the requirements of the County's resolution.

Thanks.

Mary Beth

Mary Beth McNeil
Assistant General Counsel
Office of General Counsel
Southwest Florida Water Management District
2379 Broad Street, Brooksville, Florida 34604-6899
(352) 796-7211, Ext. 4657
(352) 754-6878, Fax
MaryBeth.McNeil@swfwmd.state.fl.us

From: Oklesen, Barbara S [mailto:boklesen@co.pinellas.fl.us]
Sent: Monday, December 16, 2013 9:26 AM
To: MaryBeth McNeil
Cc: Pemberton, Christy D; McCrea, David; Celeste, Merry E; Quintas, Jorge M; Talhouk, David A
Subject: indemnification- Amendment 2 to the CFA for Bee Branch Channel Improvements - L378, 11C00000122; Amendment 1 to CFA Lealman Area Drainage Improvement. 11C00000013; CFA for Implementation of BMPsin the Coastal Zone 5 Watershed Area, 14C00000030

Mary Beth – We have three agreements with indemnification language to which the County objects and requests that you delete or change to conform to the County's resolution regarding indemnification. I have attached our resolution regarding same. I have also included the language present in all three agreements. I have also attached your comments regarding review of a prior discussion regarding indemnification.

Please indicate whether SWFWMD will delete this language or amend it to conform to the resolution attached above-06-70.

Barbara Oklesen
Managing Assistant County Attorney
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
Phone: (727) 464-3354
Fax: (727) 464-4147

PINELLAS COUNTY CAPITAL IMPROVEMENT PROJECT (CIP) PROJECT FINANCIAL OVERVIEW

1. Construction Phase: ☒ 2. Date: January 14, 2014
3. SWFWMD Agreement: ☒

4. Title: Antilles & Oakhurst Drainage Improvements (PID # 000105A)

5. Anticipated Scope and Description: Drainage improvements to alleviate street flooding.

6. YEAR OF CONSTRUCTION START: FY14

7. PROJECT BUDGET:	FY 14 Appropriation	Multi-Year Plan
Professional Services (Architectural/Engineering/Consulting)	\$ 100,000	\$ 210,870
Land/Right of Way/Building Acquisitions		
Construction:	1,050,000	2,100,000
Testing	5,000	10,000
Other: Inter-local Agreement Payments, Misc. Materials, etc.		
TOTAL	\$ (1) 1,155,000	\$ (2) 2,320,870

8. FINANCIAL RESOURCES:

Penny for Pinellas Sales Tax:	\$ 2,320,870
Local Option Gas Tax:	
Transportation Impact Fees:	
Grant(s):	
Reimbursements:	
Enterprise Revenue (Water, Sewer, Solid Waste):	
Other:	
TOTAL FINANCIAL RESOURCES	\$ (2) 2,320,870

9. Project's First Full Year Estimated Operating Budget Fiscal Impact: ⁽³⁾

Fiscal Year:	N.A.
New Positions:	NONE
Number:	N.A.
Type:	N.A.
Total Est. Fiscal Impact (Personal Services, Operating Expenses)	\$ 0

(1) Amount represents FY 14 appropriation.

(2) Amount represents expenditures from prior years, current Multi - Year Plan's project estimate and anticipated resources.

(3) Does not apply to current phase.

Prepared By the Office of Management & Budget, December 10, 2013.