



BOARD OF COUNTY COMMISSIONERS

DATE: September 11, 2014

AGENDA ITEM NO. 6

Consent Agenda ☒

Regular Agenda ☐

Public Hearing ☐

County Administrator's Signature:

Subject:

Approval of Cooperative Agreement between Pinellas County, the Southwest Florida Water Management District (SWFWMD) and the Tampa Bay Estuary Program (TBEP) for the Old Tampa Bay Tidal Tributaries Project (W203) SWFWMD Agreement No. 2013REV0010
County PID No. 000296A.

Department:

Environment & Infrastructure

Staff Member Responsible:

Richard Coates, P.E., Director
Transportation & Stormwater

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE COOPERATIVE AGREEMENT BETWEEN PINELLAS COUNTY, SWFWMD, AND THE TBEP FOR THE OLD TAMPA BAY TIDAL TRIBUTARIES PROJECT, AND AUTHORIZE THE CHAIRMAN EXECUTE THE AGREEMENT AND THE CLERK TO ATTEST.

Summary Explanation/Background:

The County, SWFWMD, and the TBEP desire to combine their efforts to improve hydrology and nutrient delivery to Tampa Bay. This project includes the modification of a salinity barrier and restoration of the surrounding areas in Roosevelt Basin Channel 5, the northernmost major drainage channel within the Roosevelt Watershed. Benefits include water quality and drainage improvements, and the creation and restoration of tidal habitat for recreationally important fish species.

Through a separate cooperative agreement between TBEP and SWFWMD, this project site was identified as one of the restoration sites within the Old Tampa Bay Tidal tributaries. On November 20, 2012, the Board approved an interlocal agreement between the County and TBEP for funding associated with the design, permitting, feasibility, and construction activities for this project. The agreement between TBEP and the County, dated November 20, 2012, is attached to this Board item for reference. This cooperative agreement establishes the responsibilities of the parties for the construction portion of the project. As established through these various agreements, the TBEP was the lead party during design. SWFWMD will be the lead party during the construction phase, and the County will assume the maintenance responsibilities following project completion.

Staff, including the office of the County Attorney, have reviewed the indemnification language contained in Paragraph 9 of this Agreement and agree that it does not increase the liability to the County beyond an acceptable level of risk. Pursuant to Resolution No. 06-70, the County Administrator approved the indemnification provisions on August 27, 2014.

Fiscal Impact/Cost/Revenue Summary:

This Agreement establishes the funding relationship between the parties. The County will contribute \$400,000 toward construction activities, and an additional \$86,500 will be funded by a grant through the National Oceanic and Atmospheric Administration. The County portion is budgeted in the Capital Improvement Program - Infrastructure Sales Tax (Penny for Pinellas), Regional Stormwater Quality Improvement Program.

Exhibits/Attachments Attached:

Contract Review Transmittal

Agreement

Delegated Memo Related to Contractual Indemnification Dated August 27, 2014

Interlocal Agreement dated November 20, 2012

Project Financial Overview

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

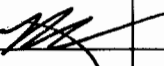



PROJECT: Cooperative Agreement between Pinellas County, the Southwest Florida Water Management District and the Tampa Bay Estuary Program for the Old Tampa Bay Tidal Tributaries Project (W203); PID No. 000296A

CONTRACT NO.: 2013REV0010

ESTIMATED EXPENDITURE / REVENUE: N/A

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:

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: DEI Sarah Malone Kelli Levy Richard Coates, P.E.	4/22/2014 4/22/14 4-22-14	Sm KHL 	See revisions in red	Corrections made by SURF WMB. me
Clerk's Finance: Cassandra Williams	5/1/14	CBW		
Risk: Virginia Holscher On to 5-6-14	5/6/14	GW	Public Entity to Public Entity	
OMB: Bill Berger	5/1/14		See attached email.	Email between OMB & PM. Okay. me
Legal: David McCrea	5/6/14		See email re word regarding voluntary language	Email from SURF WMB dated 4/29/14 attached me
DEI Executive Director: David E. Scott, P.E.	4/22/14			

3/22
Brendon
Mackes
BPM

Please return to Merry Celeste, DEI, ext. 44185

All inquiries should be made to Sarah Malone, ext. 44703

COOPERATIVE AGREEMENT (4)
AMONG THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
TAMPA BAY ESTUARY PROGRAM
AND
PINELLAS COUNTY
FOR
OLD TAMPA BAY TIDAL TRIBUTARIES PROJECT (W203)

THIS COOPERATIVE AGREEMENT ("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 the TAMPA BAY ESTUARY PROGRAM, a special district of the State of Florida, whose address is 263 13th Avenue South, Suite 350, St. Petersburg, Florida 33701, hereinafter referred to as the "TBEP," 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 TBEP and the DISTRICT identified a pilot project site owned by the COUNTY in a separate cooperative agreement (No. 11C00000084) to define potential restoration sites and design pilot studies within Old Tampa Bay tidal tributaries; and

WHEREAS, the DISTRICT, TBEP and the COUNTY desire to combine their resources and efforts to implement a project to restore natural hydrology, encourage fish movement, allow water flow and nutrient flux as well as to provide stormwater improvements in surrounding areas draining to the Roosevelt Basin Channel 5, hereinafter referred to as the "PROJECT"; and

WHEREAS, the TBEP and COUNTY executed a separate agreement for the COUNTY to provide funding for design and construction of the PROJECT, to provide construction access and to coordinate and cooperate in their restoration efforts to reduce nutrient loading into Tampa Bay; and

WHEREAS, the TBEP and COUNTY desire the DISTRICT to be the lead for construction services to implement the PROJECT design within the Roosevelt Basin Channel 5; and

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

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

1. ACCESS. The COUNTY hereby grants permission to the DISTRICT and any of its agents, contractors, employees, or any other party directly involved in the construction of the PROJECT, and any entities engaged for follow-up monitoring purposes to enter upon and use the COUNTY'S real property located in and adjacent to the Roosevelt Basin Channel 5, in Pinellas County for the purpose of environmental restoration, as set forth in this Agreement. This paragraph will survive the expiration or termination of this Agreement.
2. 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 below. Notice is effective upon receipt.

Project Manager for the DISTRICT:
Nancy T. Norton, Professional Engineer
Southwest Florida Water Management District
7601 U.S. Highway 301 North
Tampa, FL 33637

Project Manager for the TBEP:
Ed Sherwood, Program Scientist
Tampa Bay Estuary Program
263 13th Avenue South
St. Petersburg, FL 33701

Project Manager for the COUNTY:
Sarah Malone, Senior Environmental Specialist
Pinellas County
22211 US Highway 19, Building 10
Clearwater, FL 33756

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

- 2.1 Project Managers are hereby 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 in accordance with each party's signature authority. Project Managers are not authorized to approve any time extension which will result in an increased cost, or which will exceed the expiration date set forth in Paragraph 6, Contract Period.
 - 2.2 Project Managers are 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 4.2 below. The authorization must be in writing, explain the reason for the adjustment, and be signed in accordance with each party's signature authority. Project Managers are not authorized to make changes to the Project Specific Obligations and are not authorized to approve any increase in the amounts set forth in the funding section of this Agreement.
3. PROJECT SPECIFIC OBLIGATIONS. The DISTRICT, TBEP and the COUNTY agree to perform the services and fulfill the obligations as specifically designated in the Project Plan set forth in Exhibit "A," attached hereto. Any changes to the obligations and associated costs, except as provided herein, must be mutually agreed to in a formal

written amendment approved by the DISTRICT and the TBEP and the COUNTY prior to being performed by any party, subject to the provisions of Paragraph 4 below.

4. FUNDING. The parties anticipate that the total cost of the PROJECT shall be Four Hundred Thousand Dollars (\$400,000). The TBEP agrees to fund PROJECT costs up to Four Hundred Thousand Dollars (\$400,000) and shall have no obligation to pay any costs beyond this maximum amount. The total amount obligated by the TBEP as stated above has been fully appropriated from legally available funds and shall remain available for the PROJECT until all reimbursements have been made to the DISTRICT as required by this Agreement. In the event that the total cost of the PROJECT exceeds \$400,000, the DISTRICT and the TBEP by mutual agreement, may provide additional funding or reduce the PROJECT scope. The DISTRICT shall pay PROJECT costs prior to requesting reimbursement from the TBEP.

- 4.1 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 TBEP'S payments of any financial obligation under this Agreement are subject to appropriation by its Board of legally available funds.

- 4.2 The TBEP shall reimburse the DISTRICT for the TBEP'S share of the allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." The DISTRICT may contract with consultant(s), contractor(s) or both and the budget amounts for the work set forth in such contract(s) will refine the amounts set forth in the Project Budget and be incorporated herein by reference. The TBEP shall reimburse the DISTRICT for one hundred percent (100%) of all allowable costs in each invoice received from the DISTRICT. Payment shall be made to the DISTRICT within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the TBEP at the following address:

Tampa Bay Estuary Program
263 13th Avenue South, Suite 350
St. Petersburg, Florida 33701

- 4.3 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 TBEP shall not reimburse the DISTRICT for any purposes not specifically identified in Paragraph 3, Project Specific Obligations. Surcharges added to third party invoices are not considered an allowable cost under this Agreement.

- 4.4 Each DISTRICT invoice must include the following certification, and the DISTRICT 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 DISTRICT'S matching funds, as represented in this invoice, are directly related to the performance under the Old Tampa Bay Tidal Tributaries Project (W203) agreement among the Southwest Florida Water Management District, the Tampa

Bay Estuary Program and Pinellas County (Agreement No. 2013REV0010), are allowable, allocable, properly documented, and are in accordance with the approved project budget.”

- 4.5 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the DISTRICT will continue to perform the PROJECT work in accordance with the Project Plan. The DISTRICT 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 TBEP'S Project Manager no later than ten (10) days after the precipitating event. If not resolved by the Project 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 Assistant Executive Director. The DISTRICT'S Assistant Executive Director in consultation with the DISTRICT'S Office of General Counsel will issue the DISTRICT'S final determination. The DISTRICT'S continuation of the PROJECT work as required under this provision shall not constitute a waiver of any legal remedy available to the DISTRICT concerning the dispute.
5. COMPLETION DATES. The DISTRICT shall commence the PROJECT within thirty (30) days after execution of this Agreement, shall complete the PROJECT by August 31, 2017, and shall otherwise meet the task deadlines established in this Agreement, as may be extended by the parties in accordance with Paragraph 2 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 DISTRICT, the DISTRICT'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. The suspension of the DISTRICT'S obligations provided for in this provision shall be the DISTRICT'S sole remedy for the delays set forth herein.
6. CONTRACT PERIOD. This Agreement shall be effective upon execution by all parties and shall remain in effect through December 31, 2017, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the DISTRICT, whichever occurs first, unless amended in writing by the parties.
7. PROJECT RECORDS AND DOCUMENTS. Upon request by the TBEP and the COUNTY, the DISTRICT shall permit the TBEP and COUNTY to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the TBEP and COUNTY. Payments made to the DISTRICT under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. The DISTRICT shall refund to the TBEP all such disallowed payments. If an audit is undertaken by any 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 any 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.

8. REPORTS. Upon request by the TBEP or the COUNTY, the DISTRICT shall provide the TBEP or the COUNTY with copies of any and all reports, models, studies, maps or other documents resulting from the PROJECT.
9. LIABILITY. Each party hereto agrees to indemnify and hold the others harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and expense, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees, contractors and agents related to its performance under this Agreement.

This Paragraph 9 does not constitute a waiver of any party's sovereign immunity or extend any party's liability beyond the limits established in Section 768.28, F.S. Additionally, this Paragraph 9 shall not be construed to impose contractual liability on any party for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by any party to be sued by third parties in any manner arising out of this Agreement

10. DEFAULT. Any party may terminate this Agreement upon another party's failure to comply with any term or condition of 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.
11. 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 parties 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.
12. RECOGNITION. The DISTRICT shall recognize TBEP funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to TBEP approval. If construction is involved, the DISTRICT shall provide signage at the PROJECT site that recognizes funding for this PROJECT provided by the TBEP. All signage must meet with TBEP written approvals as to form, content and location, and must be in accordance with local sign ordinances.
13. PERMITS AND REAL PROPERTY RIGHTS. The TBEP shall obtain all permits, local government approvals and all real property rights necessary to complete the PROJECT. The DISTRICT shall have no obligation to commence any construction until all permits, approvals, and property rights necessary have been obtained.

14. COMPENSATORY TREATMENT AND MITIGATION. This PROJECT shall not be used by the COUNTY or any other entity as compensatory water quality treatment or wetland mitigation or any other required mitigation due to impacts for any projects located within or outside of the contributing drainage basin area.
15. CONSERVATION EASEMENTS. The COUNTY shall convey a conservation easement as defined in Section 704.06, F.S., to the DISTRICT, over the PROJECT area generally described in Exhibit "A," attached hereto. The parties acknowledge that for purposes of this provision, the PROJECT area that is subject to a conservation easement is that portion of the property that is being improved with the DISTRICT funds provided under a separate Agreement. The form and content of the conservation easement is subject to DISTRICT review and approval prior to execution, and should be similar to the template attached hereto as Exhibit "B." A Title Commitment or Ownership and Encumbrance Report for the PROJECT area must be completed and provided to the DISTRICT prior to the DISTRICT'S issuing a Notice to Proceed to the Contractor. An as-built boundary survey completed to DISTRICT standards and a title policy for the DISTRICT'S interest is also required with the conservation easement. The conservation easement shall be executed by the COUNTY and provided to the DISTRICT within (30) days of completion of construction of the PROJECT. The COUNTY shall record the conservation easement within thirty (30) days of receipt of notice that the conservation easement was accepted by the DISTRICT.
16. LAW COMPLIANCE. Each party 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 DISTRICT'S consultants, 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.
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 TBEP and the COUNTY, and any contractor of the DISTRICT.
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 DISTRICT is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
21. GOVERNING LAW. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hernando County, Florida.

22. 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.
23. 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 Paragraph 7, 9, 14, 15 and 22.
24. 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.
25. 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, and then to Exhibit "A."

Exhibit "A" Project Plan

Exhibit "B" Sample Conservation Easement

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: _____
Brian J. Armstrong, P.G. Date
Assistant Executive Director

TAMPA BAY ESTUARY PROGRAM

By: Holly Greening Aug 7, 2014
Holly Greening, Executive Director Date

PINELLAS COUNTY

By: _____
Karen Williams Seel, Chair Date
Board of County Commissioners

Approved as to form:

By: [Signature]
Attorney

Attest: Ken Burke, CPA, Clerk of the Circuit Court

By: _____
Deputy Clerk

COOPERATIVE AGREEMENT
AMONG THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
TAMPA BAY ESTUARY PROGRAM
AND
PINELLAS COUNTY
FOR
OLD TAMPA BAY TIDAL TRIBUTARIES (W203-4)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>msm</u>	<u>7/23/14</u>
RISK MGMT	<u>DIA</u>	
CONTRACTS	<u>gmx</u>	<u>7/31/14</u>
BUREAU CHIEF		
DIRECTOR		
GOVERNING BOARD		<u>DIA gmx</u>

EXHIBIT "A" **PROJECT PLAN**

Project Description

The PROJECT is intended to serve as a pilot project to remove or modify the Channel 5 salinity barrier structure in Old Tampa Bay (Phase 1) and to enhance estuarine habitat in and adjacent to Channel 5 (Phase 2). The PROJECT area will be further defined once 30% design is completed. Design, permitting and monitoring for Phase 1, is funded through a separate agreement between the DISTRICT and the Tampa Bay Estuary Program (TBEP) in which the TBEP is the lead. The DISTRICT will be the lead in construction of Phases 1 and 2. Construction activities are dependent upon final design plans and may include removal or modification of the Channel 5 salinity barrier structure, removal of exotic and nuisance vegetation as necessary, and re-grading of the site to elevations proper for the rehydration of stranded wetland communities. Upland and wetland plants will be added to the site to provide soil stabilization and to aid in re-colonization of disturbed areas.

Project Tasks:

The DISTRICT will be the lead for all restoration construction-related activities in accordance with the final design plans completed by TBEP.

The DISTRICT may retain the services of a private contractor or may use DISTRICT personnel and equipment to construct the PROJECT.

The TBEP will:

- A. Contract and administer Construction Engineer Inspection (CEI) for both phases of PROJECT implementation.
- B. Provide funding for construction of the PROJECT in accordance with Paragraph 4 of this Agreement.

The COUNTY will:

- A. Provide access to the PROJECT site as provided in Paragraph 1 of this Agreement.
- B. Leave restored and enhanced habitats intact and free from future construction disturbances by conveying a conservation easement over the parcel to the DISTRICT in accordance with Paragraph 15 of this Agreement.
- C. Provide funding for construction of the PROJECT in accordance with the Interlocal Agreement between the COUNTY and TBEP entered into on November 20, 2012.
- D. Be responsible for any additional costs for restoration or enhancement initiated by the COUNTY beyond the scope of work described in this Agreement and for any additional structures or services such as interpretive centers, maintenance etc., which are not directly related to habitat restoration.
- E. Be responsible for maintenance of enhanced and restored habitats after the PROJECT has been deemed complete. Maintenance is inclusive of all PROJECT

components and includes removal of exotic plant species that may grow within the PROJECT site. Where feasible, removal of exotics will be manual, inclusive of hand tools and chain saws; at a minimum, biannual removal of new and re-sprouts should be performed until native vegetation sufficiently covers open ground and can out compete/exclude exotic vegetation. Control of exotics will be compatible with the intent of the PROJECT, so the use of heavy machinery and widespread use of herbicides will be discouraged. This provision will survive the expiration or termination of this Agreement and will be binding upon the COUNTY in perpetuity.

- F. Be responsible for any post-PROJECT reporting that may be required by the permitting agencies.

Measurable Benefit: The removal of the salinity barrier on Channel 5 and re-establishment of wetland hydrology and estuarine habitat adjacent to Channel 5 will result in approximately 14 acres of channelized freshwater creek converted to oligohaline/polyhaline estuarine habitat.

Deliverables:

The DISTRICT will deliver the following to TBEP and the COUNTY:

- A. Construction bid packages (prior to posting)
- B. Copy of Contract with Contractor in accordance with Subparagraph 4.2
- C. Copy of Notice-To-Proceed to Contractor
- D. One copy of a summary of the construction quality assurance data, construction record drawings and permit related submittals (e.g. Notice of Commence Construction, Complete Construction Notification and NPDES Certification).

Project Schedule:

DESCRIPTION	COMMENCE	COMPLETE
Prepare, Advertise and Award Bid	Within 30 days after execution of this Agreement or upon design completion, whichever is later	270 days after design completion
Construction Phase 1	90 days after bid award	365 days after construction commences
Construction Phase 2	90 days after Phase 1 construction is complete	August 31, 2017

Project Budget:

The total PROJECT budget for the construction activities related to Phase 1 and Phase 2 restoration projects occurring on Channel 5 is \$400,000.

DESCRIPTION	DISTRICT	TBEP	TOTALS
		PINELLAS COUNTY	
Construction Activities	\$0	\$400,000	\$400,000
Construction Engineering Inspection	\$0	\$0	\$0
Total Funding	\$0	\$400,000	\$400,000

EXHIBIT "B"
SAMPLE CONSERVATION EASEMENT

Return recorded original to:
Office of General Counsel
Southwest Florida Water Management District
2379 Broad Street (U.S. 41 South)
Brooksville, Florida 34604-6899

Prepared by:

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is given this ____ day of _____, 201 __, by _____ having an address at _____ ("Grantor"), to the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation, having a mailing address at 2379 Broad Street (U.S. Highway 41 South), Brooksville, Florida 34604-6899 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property situated in _____ County, Florida, more specifically described in Paragraph "1" of this document ("Property"); and

WHEREAS, the Grantor desires to implement a habitat restoration project known as ____ [name of project] _____ ("Project"); and

WHEREAS, Grantee provided funding, planning and design services for implementation of the Project; and

WHEREAS, Grantor, in consideration of the funding and services provided by Grantee agrees to grant and secure to the Grantee a perpetual conservation easement as defined in Section 704.06, Florida Statutes, over the Property.

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of Section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee a perpetual conservation easement over the Property to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

The scope, nature and character of this Conservation Easement shall be as follows:

1. Property. The Property that is the subject of this Conservation Easement is described in Exhibit "A" attached hereto and incorporated by this reference.
2. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained in its restored condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.
3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - a. Constructing or placing buildings, roads, billboards or other advertising, utilities or other structures on or above the ground;
 - b. Dumping or placing soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
 - c. Removing, trimming or destroying trees, shrubs, or other vegetation, except for

removal of nuisance or exotic vegetation in accordance with a plan approved by Grantee;

d. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances;

e. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, dredging and fencing ;

g. Acts or uses detrimental to such retention or maintenance of land or water areas in a natural state; and

h. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

5. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

a. To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement; and

b. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and to require the restoration of areas or features of the Property that may be

damaged by any activity inconsistent with the Conservation Easement.

6. Grantor's Property Maintenance. Grantor agrees to maintain the Property in the restored state and condition in which it exists as of the date of the execution of this Conservation Easement. Removal of nuisance or exotic plant or animal species is not prohibited by the Conservation Easement, if performed in accordance with a plan approved by Grantee, and the methods used do not impair the ecological integrity of the Conservation Easement. Grantor shall bear all costs related to the operation, upkeep or maintenance of the Property.

7. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges, of whatever description, levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of this Easement (collectively "Taxes") and shall furnish Grantee with satisfactory evidence of payment upon request.

8. Public Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

9. Grantee's Discretion. Grantee may enforce the terms of this conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

10. Grantee's Liability. Grantor assumes all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from Grantor's ownership of the

Property. Neither Grantors, nor any person or entity claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property that may occur on the Property.

11. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

12. Recordation. Grantor shall record this Conservation Easement and any amendments hereto in a timely fashion in the Official Records of _____ County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records.

13. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement and any subsequent amendments shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

14. Assignment. Grantee shall not assign its rights and obligations under this Conservation Easement except to another organization qualified to hold such interests under applicable state laws.

15. Modifications. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their respective personal representatives, heirs, successors, and assigns. Any such amendment, alteration, release or revocation shall be timely recorded in the Official Records of _____ County, Florida.

16. Notices. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt

requested, and addressed to the appropriate party or successor.

17. Subsequent Conveyance. Grantor shall reference the terms and conditions of this Conservation Easement by Official Book and Page Number in any subsequent deed or other conveyance by which Grantor divests itself of any interest in the Property. Any future holder of the Grantor's interest in the Property must be notified of this Conservation Easement in writing by the Grantor. Grantor further agrees to provide Grantee written notice of any transfer of their interest in the Property at least thirty (30) days prior to such transfer. Grantor's failure to comply with any of the foregoing does not impair the validity of this Conservation Easement or Grantee's ability to enforce its provisions in any way.

18. Severability. If any provision of this Conservation Easement is determined to be invalid, the remaining provisions shall remain in full force and effect.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

Signature of Witness

By: _____
Print Name:

Printed/Typed Name

Title: _____

Signature of Witness

Printed/Typed Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____
201_, by _____, who did not take an oath.

Public, State of Florida at Large

Notary

My Commission Expires:

Commission No.

Personally known _____ OR produced identification _____. Identification produced

_____.

TO: Mark S. Woodard, County Administrator

FROM: David E. Scott, P.E., Executive Director, Department of Environment and Infrastructure

SUBJECT: Request for Exemption to Pinellas County Resolution No. 06-07 Related to Contractual Indemnification by the County for the Cooperative Agreement between Pinellas County, the Southwest Florida Water Management District (SWFWMD), and the Tampa Bay Estuary Program (TBEP) for the Old Tampa Bay Tidal Tributaries Project (W203)

DATE: August 27, 2014

RECOMMENDATION: I RECOMMEND THE COUNTY ADMINISTRATOR APPROVE THE REQUEST FOR AN EXEMPTION TO PINELLAS COUNTY RESOLUTION NO. 06-70 RELATED TO CONTRACTUAL INDEMNIFICATION BY THE COUNTY FOR THE COOPERATIVE AGREEMENT BETWEEN PINELLAS COUNTY, SWFWMD, AND THE TBEP FOR THE OLD TAMPA BAY TIDAL TRIBUTARIES 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 do not increase the liability to the County beyond an acceptable level of risk. Without SWFWMD as an additional funding resource would limit external funding sources for current and future infrastructure projects. The SWFWMD is progressively incorporating the revised agreement terms into their cooperative funding agreements.

Approval of this Exemption Request is within the authority of the County Administrator, as delegated by the Board of County Commissioners, pursuant to Resolution No. 06-70, Pinellas County Code.

Please retain the original packet for filing on your future quarterly receipt and file report, and scan a copy of the signed delegated memo to Merry Celeste, DEI.

Recommendation Approved:  Date: 8/28/14
Mark S. Woodard, County Administrator

Attachments:
Email from SWFWMD dated April 29, 2014
Resolution No. 06-70

From: [Nancy Norton](#)
To: [Malone, Sarah J](#)
Subject: FW: Ch 5 agreement
Date: Tuesday, April 29, 2014 1:48:04 PM
Attachments: [image001.gif](#)
[image002.gif](#)
[image003.gif](#)
[image004.gif](#)

Hi Sarah,

I left you a voice mail requesting that you send the original agreements back for us to make the changes. Joanne also noted that even the signature page will need to be changed. It is too bad I didn't see you while I was in Pinellas County this morning, we could have handed them off.

Thanks,

Nancy Norton
NSRB-SWIM Program
SWFWMD
(813) 985-7481 extension 2203

From: Joanne Rehor
Sent: Tuesday, April 29, 2014 9:30 AM
To: Nancy Norton
Subject: FW: Ch 5 agreement

Nancy,

I looked at the language below and compared the agreement to our existing template language and Paragraph 9 is the District's standard language and cannot be revised. The District is currently reviewing template language once each year to make any necessary revisions, with the exception of any Florida Statute Revisions and then changes are made accordingly.

Since the signature page will need to be revised to remove the name of the County's Chairman, I suggest you get the originals back from the County and we can make the appropriate date revisions and reroute for District signature. The approval of the dates in the agreement should not take long and then you can send new originals to the County for signature.

Please let me know how you want to proceed with this agreement.

JoAnne M. Rehor
Contracts Administrator
Finance Bureau
Southwest Florida Water Management District
2379 Broad Street

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

No. 11
BCC 11-20-12
9:31 A.M. Burgess/SCHMIDT

- #11 Interlocal Agreement with the Tampa Bay Estuary Program for the Channel 5 and Feather Sound Restoration project (PID No. 000296A) approved. Pinellas County agrees to fund up to \$500,000.00 of restoration project costs with funding provided by the Infrastructure Sales Tax; all project tasks are to be completed within two years; Chairman authorized to execute the agreement and the Clerk to attest.

Motion - Commissioner Welch
Second - Commissioner Latvala

Chairman Morroni thanked the Tampa Bay Estuary Program for its hard work in the Feather Sound community.

Vote - 7 - 0

***PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY,
SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE
OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE
NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW***



**INTERLOCAL AGREEMENT
BETWEEN PINELLAS COUNTY AND THE TAMPA BAY ESTUARY PROGRAM
FOR
CHANNEL 5 AND FEATHER SOUND RESTORATION
PID No. 000296A (1859)**

INTERLOCAL AGREEMENT

THIS AGREEMENT, entered into on the 20 day of November 2012, between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, and the TAMPA BAY ESTUARY PROGRAM, hereinafter called the TBEP.

WITNESSETH, That:

WHEREAS, this Agreement is made and entered between the parties pursuant to Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," and

WHEREAS, the Regional Stormwater Treatment project identified in the COUNTY'S Penny for Pinellas funds exist to improve water quality, and

WHEREAS, the COUNTY and the TBEP desire to restore a portion of Channel 5, and

WHEREAS, the COUNTY and the TBEP desire to coordinate and cooperate in their restoration efforts to reduce nutrient loading into Tampa Bay.

NOW THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, receipt of which is hereby acknowledged by all parties, it is hereby agreed by and between the parties as follows:

SECTION 1
SERVICES TO BE PROVIDED BY THE TBEP

The TBEP desires to reduce nutrient loading from the Feather Sound area and improve water quality to Tampa Bay. The TBEP shall be responsible for project management which includes the hiring of all consultants to develop site plans and secure necessary permits for all phases of restoration and enhancement of the total project area (see Exhibit "A," Scope of Work). This process shall follow all competitive bidding procedures and seek at least three (3) competitive bids.

SECTION 2
SERVICES TO BE PROVIDED BY THE COUNTY

The COUNTY shall reimburse the TBEP for the costs up to \$500,000, to support the development of designs, survey, permitting, and construction activities for the restoration of tidal wetlands. The County will provide staff for review and approval of all bids throughout the project. The County will provide in-kind services for pre- and post-restoration water quality sampling to determine nutrient loading, field surveys, contract and report review and project team meetings. The pre- and post-restoration water quality sampling will be collected from upstream and offshore downstream sites in coordination with other restoration projects occurring in the Feather Sound area and as resources allow. The existing water quality and flow monitoring site on Channel 5 will be used to assess pre-restoration water quality and nutrient loading. Post-restoration monitoring sampling locations and frequencies will be developed after construction is complete.

Water quality sampling in the Roosevelt Creek Watershed demonstrated high loading of Total Nitrogen and Total Phosphorous to the Feather Sound area. The results and recommendations of the County's Roosevelt Creek Watershed Management Plan will be used to help with site selection and conceptual restoration designs for this project.

County staff time and equipment will be provided for in-kind services such as participation on the project technical advisory team, plan review, field work, reports, and project coordination.

SECTION 3
PROJECT FUNDING

The COUNTY agrees to fund up to \$500,000 of the cost for the restoration project. The TBEP will invoice the County for reimbursement. Documentation of expenditures shall be provided by the TBEP in support of the reimbursement request. The TBEP's records of expenses related to requests for reimbursement shall be subject to examination, audit, and/or reproduction by the COUNTY'S agent or representative, should the COUNTY determine a need for such examination. Records should be retained for three (3) years from final payment.

SECTION 4
ADDITIONAL SERVICES

The COUNTY and TBEP shall not enter into Additional Services that would require additional reimbursement without advance written approval by the COUNTY. This Agreement and project is not intended to affect the current and future maintenance responsibilities of either jurisdiction and does not imply availability of future funding for this type of project.

SECTION 5
TERMINATION OF AGREEMENT

This Agreement may be terminated by either party upon thirty (30) days written notice if conditions arise, such as lack of available funding, that dictates that it is in the public interest to terminate. This document embodies the whole agreement between the parties. There are no promises, terms, conditions or allegations other than those contained herein and this document shall supersede all previous communications, representations and/or agreement, whether written or verbal, between the parties hereto. This Agreement may be modified only in writing executed by all parties. This Agreement shall be binding upon the parties, their successors, assigns and legal representatives.

SECTION 6
OFFICIAL NOTICE

All notices required by law and by this Agreement to be given by one (1) party to the other shall be in writing and shall be sent to the following respective addresses:

COUNTY: Pinellas County Dept. of Environment & Infrastructure
Attn: Sarah Malone, Senior Environmental Scientist
Watershed Management
300 South Garden Ave
Clearwater, FL 33756

CITY: Tampa Bay Estuary Program
Attn: Ed Sherwood, Program Scientist
263 13th Ave. South
St. Petersburg, FL 33701

SECTION 7
AGREEMENT TO BE FILED WITH THE CLERK OF THE CIRCUIT COURT

Prior to its effectiveness, this Agreement and subsequent amendments thereto must be filed with the Clerk of the Circuit Court of Pinellas County.

SECTION 8
TERM

This Agreement will become effective upon the date of approval and shall remain in effect until December 31, 2014.

SECTION 9
HOLD HARMLESS

The COUNTY and TBEP agree to be fully responsible for their own acts of negligence, or their respective agents' acts of negligence when acting within the scope of their employment, and agree to be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either the COUNTY or the TBEP. Nothing herein shall be construed as consent by the COUNTY or TBEP to be sued by third parties in any manner arising out of this Agreement.

SECTION 10

GOVERNING LAW AND DOCUMENT EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their official seals hereto affixed, the day and year first above written.

TAMPA BAY ESTUARY PROGRAM, an
Independent special district of the State of
Florida

PINELLAS COUNTY, by and through
its Board of County Commissioners

By: Holly Greening
Holly Greening
Executive Director

By: John Morone
Chairman

ATTEST:

ATTEST:

By: Ronald A. Hadler

By: Ronald D. [Signature]

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: [Signature]
Office of County Attorney

EXHIBIT "A"
CHANNEL 5 RESTORATION: DESIGN, PERMITTING, AND CONSTRUCTION
PROJECT PLAN – SCOPE OF WORK

PROJECT OBJECTIVE

Management recommendations from the recently completed Tampa Bay Tidal Tributary Habitat Initiative Project (TBEP Tech. Pub. 02-08) indicated that enhancing the value of tidal tributaries was dependent upon their physical and hydrologic connectivity with adjacent bay waters and upstream habitats. The research effort attempted to quantify the importance of small tidal tributaries to fisheries in the Tampa Bay area and concluded that maintaining natural freshwater flow regimes to these creeks – especially reducing “flashiness” of flow delivery – is critical to support conditions necessary for fish production. Specific restoration actions to assist in reducing flashiness include maintaining and restoring naturally-vegetated buffer areas around tidal creeks; replacing hardened shorelines with native vegetation to slow down stormwater inflow; removing obsolete salinity barriers to restore faunal movement and natural flow regimes; and restoring natural sinuosity in straightened and hardened tidal tributaries.

In Tampa Bay, there are more than 100 named and unnamed tidal tributaries. A vast majority of these systems have some active or remnant salinity barrier or hydrologic obstruction within their tidal extent that serve to impede movement of estuarine biota or significantly modify hydrologic exchange with the watershed. In addition, some degree of alteration to the creek channel or shoreline is present in most tidally-influenced systems in Tampa Bay. Several altered tributaries and tidally-influenced conveyances that drain to Old Tampa Bay are prime candidates for either direct habitat restoration and/or removal of salinity barrier structures. Under this PROJECT, restoration activities will be undertaken on the Channel 5 tidal tributary within Pinellas County, FL.

The specific objectives of this PROJECT are to: 1) develop a comprehensive restoration plan for the Channel 5 system, 2) obtain the necessary permits to accomplish restoration activities, and 3) construct the restoration project.

PROJECT DESCRIPTION

The TBEP will hire CONSULTANT(s) to perform the PROJECT, which will include the following tasks:

Task 1 – Project Management

The TBEP will be responsible for coordinating progress meetings with the PROJECT Team to ensure that PROJECT objectives, timelines, permitting reviews, and construction activities are routinely communicated.

Task 2– Development of Preliminary Design(s)

Preliminary designs will be developed for Channel 5 based upon the input from the PROJECT team. The CONSULTANT will submit this information to the TBEP and COUNTY staff for review in the form of a letter report, which will be considered the Preliminary Design Submittal. Included in the letter report will be a preliminary construction cost estimate for the site(s), along with any other pertinent information that may have an impact on the final design of the site(s).

Task 3 – Development of 60%, 90%, 100% and Final Design(s) and Permitting

Based upon approval of the Preliminary Design Submittal by the PROJECT Team, the TBEP will direct the CONSULTANT to prepare design plans and acquire permits for the recommended PROJECT site(s). Fully developed detailed construction documents (i.e., construction plans, technical specifications, bid documents) will be prepared by the CONSULTANT as the Final Design. The CONSULTANT will provide construction plans, technical specifications and estimates of probable construction costs at 60%, 90% and 100%, and Final design efforts.

Task 4 – Environmental Permit Preparation & Application

The TBEP will direct the CONSULTANT to prepare all permit applications necessary for construction of the PROJECT site(s). The CONSULTANT will assist the PROJECT Team in obtaining an Environmental Resource Permit (ERP), a Nationwide permit, and other authorizations as needed for the PROJECT site(s).

Task 5 – Construction Activities

The TBEP will ensure that all restoration construction-related activities are completed for the PROJECT in a timely manner with input and oversight from the PROJECT Team.

DELIVERABLES

The TBEP will provide the COUNTY with two (2) hard copies and two (2) electronic copies of all project reports and design plans listed below.

1. Draft Conceptual Designs
2. Preliminary Designs, Model, and Report
3. 60%, 90%, 100%, and Final Design Plans, Specifications and Probable Cost Estimate Report
4. Permit Applications and RAI Correspondence

PROJECT DURATION AND TIMELINE

Initial design work will begin within 30 days from the COUNTY'S issuance of a Notice to Proceed, with all tasks completed within 24 months.

Completion Schedule:

- Task 1 as needed and throughout PROJECT
- Task 2 within 3 months
- Task 3 within 6 months
- Task 4 within 12 months
- Task 5 within 24 months

PROJECT BUDGET:

The total estimated PROJECT budget for the overall design, permitting, and construction activities related to restoration projects occurring on Channel 5 is \$816,330.

Description	TBEP Leveraged Funds	Pinellas County Funds	TOTALS
Feasibility Report, Design & Permitting	\$120,000	\$100,000	\$220,000
Construction Activities & Oversight	\$196,330	\$400,000	\$596,330
TOTALS	\$316,330	\$500,000	\$816,330

Pinellas County Capital Improvement Program Project Budget Detail Report

May 2, 2014

Parameters: Project: 000296A 1859 Regional Stormwater Qual Budget Type Code: Planning Fund Type: All

Current Year Estimate	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
-----------------------------	------	------	------	------	------	------	------	------	------	------	------	-------

Function: Physical Environment
Activity: Flood Control

Project: 000296A 1859 Regional Stormwater Quality

Fund: 3001	Capital Projects	Center: 413100	CIP-Physical Environment		Program: 3015	Watershed Mgmt Plan Projects						
010.1	Acquisition-Penny	200,000	0	0	0	0	0	0	0	0	0	200,000
021.1	Design-Penny	62,000	100,000	162,500	439,000	184,500	184,000	0	0	0	0	1,132,000
021.2	Design-Grant	0	100,000	162,500	188,500	184,500	184,500	178,000	0	0	0	998,000
030.1	Constr-Penny	0	100,000	800,000	290,000	401,000	318,000	0	0	0	0	1,909,000
030.4	Constr-Grant	38,000	10,000	300,000	290,000	317,500	315,000	278,000	0	0	0	1,548,500
040.1	Testing-Penny	0	0	5,000	5,000	5,000	5,000	0	0	0	0	20,000
040.4	Testing-Grant	0	0	5,000	5,000	5,000	5,000	0	0	0	0	20,000
110.1	Other-Penny	50,000	50,000	500	500	500	500	0	0	0	0	102,000
110.4	Other-Grant	0	0	500	500	500	500	500	0	0	0	2,500
Project Total for : Fund: 3001		Capital Projects	Center: 413100	CIP-Physical Environment		Program: 3015		Watershed Mgmt Plan Projects				
		350,000	360,000	1,436,000	1,218,500	1,098,500	1,012,500	456,500	0	0	0	5,932,000
Total for Project: 000296A		1859 Regional Stormwater Quality										
		350,000	360,000	1,436,000	1,218,500	1,098,500	1,012,500	456,500	0	0	0	5,932,000

Funding Source:

Grant - State	0	100,000	168,000	194,000	190,000	190,000	178,500	0	0	0	0	1,020,500
Grant - Local	38,000	10,000	300,000	290,000	317,500	315,000	278,000	0	0	0	0	1,548,500
Penny for Pinellas	312,000	250,000	968,000	734,500	591,000	507,500	0	0	0	0	0	3,363,000
Funding Total:	350,000	360,000	1,436,000	1,218,500	1,098,500	1,012,500	456,500	0	0	0	0	5,932,000

Project Description: Providing stormwater treatment for large areas, the County can meet state mandated Total Maximum Daily Load and National Pollutant Discharge Elimination System regulations & meet current water Quality treatment requirements for Stormwater discharges.

Project Classifications:

CIE Elements	Conservation Element
CIP Phase	Design
Location	Countywide
Originating Department	DEI Public Works
Other	Surface Water Project