



**BOARD OF COUNTY COMMISSIONERS**

**DATE:** September 11, 2014

**AGENDA ITEM NO.** 21

**Consent Agenda** ☒

**Regular Agenda** ☐

**Public Hearing** ☐

**County Administrator's Signature:**

**Subject:**

Approval of Amendment 1 of the Grant Funding Agreement with the Southwest Florida Water Management District (SWFWMD) in the amount of \$500,000.

**Department:**

Parks and Conservation Resources

**Staff Member Responsible:**

Paul Cozzie, Director

**Recommended Action:**

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS APPROVE, THE CHAIR SIGN, AND THE CLERK ATTEST AMENDMENT 1 TO THE GRANT FUNDING AGREEMENT WITH SWFWMD IN THE AMOUNT OF \$500,000 FOR THE FORT DE SOTO HYDROLOGICAL RECIRCULATION PHASE 2 PROJECT.

**Summary Explanation/Background:**

Pinellas County and SWFWMD executed a grant funding agreement on June 16, 2010 in the amount of \$500,000 for the Fort De Soto Park Hydrological Recirculation Phase 2 Project. This project will provide for the construction of box culverts to open a portion of a filled causeway and re-establish tidal circulation at Fort De Soto Park. Commencement of the project was significantly delayed due to an Army Corps of Engineers (ACOE) project involving the scanning of the park, inclusive of the project site, for unexploded ordnance. Since Fort De Soto Park was a former defense site, it was important to have the ACOE project completed and a finding of no significant issues prior to commencement of the recirculation project. The delay in the SWFWMD funded project, due to the ACOE project, resulted in the expiration of the original grant funding agreement for this project. The amendment extends the timeframe for project completion, adds several paragraphs and modifies several paragraphs of the original funding agreement. The amendment modifies items such as the SWFWMD change of project manager, mailing address for invoices and timelines. New additions to the contract include: new language for dispute resolution over the contract; repayment language for failure to complete project; and new language regarding risk, liability and indemnity. Additionally, new paragraphs were added for severability and scrutinized companies.

Indemnification provisions contained in the agreement were approved by the County Administrator pursuant to authority granted in Resolution 06-70.

**Fiscal Impact/Cost/Revenue Summary:**

Grant funding of up to \$500,000. Cash match of up to \$500,000 from Capital Improvement Program; Culture and Recreation, Countywide Parks Projects. Operation and maintenance is anticipated to be minimal.

**Exhibits/Attachments Attached:**

Contract Review Slip  
Amendment 1 (Agreement 10C00000086-A)  
Grant Funding Agreement (Agreement 10C00000086)  
County Administrator Approval of Indemnification Provisions

**NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP**

<b>PROJECT:</b> Ft. De Soto Ecological Enhancement/Recirculation Phase II	
<b>CONTRACT NO.:</b> <u>10C00000086</u>	<b>ESTIMATED EXPENDITURE / REVENUE:</b> \$500,000 (Circle or underline appropriate choice above.) Up to

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:**

Legal: **please approve as to form.**

Time extension on contract due to delays from project by Army Corps of Engineers.

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
<b>Originator:</b> <i>PC</i> Paul Cozzie	6/12/14	<i>PC</i>		
<b>Risk Mgmt:</b> Virginia Holscher <i>PHH 6-20-14</i>	6/20/14	<i>GH</i>	Public Entity to Public Entity	<i>PC</i>
<b>Finance:**</b> Cassandra Williams	6/24/14	<i>CBW</i>		
<b>OMB:**</b> Bill Berger	6/27/14	<i>Z</i>	Included in CIP budget, but grant See <del>finding may be in the budget</del> <del>project report for the project</del> attached project budget detail report.	<i>PC</i>
<b>Legal:</b> Miles Belknap	7/30/14	<i>MD</i>	SHFWMD Atty advised in writing to remove or modify information in accordance with Res. 06-07 (attached)	<i>PC</i>
<b>Assistant County Administrator or Executive Director:</b> Joe Lauro	7/30/14	<i>JL</i>		

Please return to Debbie Chayet in OMB By July 3 2014.

All inquiries should be made to Debbie Chayet ext.582-2521.

\*\* See Contract Review Process

AGREEMENT  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
PINELLAS COUNTY  
FOR  
FORT DESOTO ECOLOGICAL ENHANCEMENT/RECIRCULATION PHASE 2 (W363)

This AGREEMENT, effective as of the 31st day of December 2013, 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 DISTRICT and the COUNTY entered into an Agreement effective June 16, 2010, for the construction of a span bridge or box culverts to open a portion of the filled causeway that connects the maintenance area to the main island at Fort DeSoto Park in Pinellas County (Agreement No. 10C00000086), which expired on December 31, 2013; and

WHEREAS, the parties hereto wish to enter into a new Agreement, incorporating the terms and conditions of the expired Agreement No. 10C00000086, and replace certain terms and conditions of the expired agreement with new terms and conditions.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby mutually agree as follows:

1. Except as otherwise provided herein, the terms, covenants and conditions of Agreement No. 10C00000086 are incorporated herein by reference, are hereby ratified, approved and confirmed, and are binding upon the parties hereto.
2. Paragraph 2, Project Manager and Notices, of Agreement No. 10C00000086, is hereby replaced to the extent that the DISTRICT'S Project Manager is Nicole Mytyk.
3. Subparagraph 3.2 of Agreement No. 10C00000086 is hereby replaced to the extent that the address for the DISTRICT'S Accounts Payable Section is as follows:

Accounts Payable Section  
Southwest Florida Water Management District  
Post Office Box 15436  
Brooksville, Florida 34604-5436

4. New Subparagraph 3.8 is hereby added to Paragraph 3, Funding, of Agreement No. 10C00000086, as follows:

3.8 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 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 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.

5. Paragraph 4, Completion Dates, of Agreement No. 10C00000086, is hereby replaced to the extent that the PROJECT will be completed by May 31, 2016.

6. Paragraph 5, Failure to Complete Project, of Agreement No. 10C00000086, is hereby replaced with new Paragraph 5, Repayment, as follows:

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.
7. Paragraph 7, Contract Period, of Agreement No. 10C00000086, is hereby replaced to the extent that the expiration date is now July 31, 2016.
8. Paragraph 10, Liability, of Agreement No. 10C00000086, is hereby replaced with new Paragraph 10, Risk, Liability, and Indemnity, as follows:
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.
9. Paragraph 24, Survival, of Agreement No. 10C00000086, is hereby replaced to the extent that Paragraphs 8, 14, 17, and 28 are now included.
10. New Paragraphs 27, Scrutinized Companies, and 28, Severability, are hereby added to Agreement No. 10C00000086, as follows:

27. 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.

28. 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.

11. Exhibit "B," Paragraph 3, Project Schedule, of Agreement No. 10C00000086, is hereby replaced with the following:

PROJECT SCHEDULE

Commence Design	December 31, 2010
Commence Construction	May 31, 2015
Complete Construction	April 30, 2016
As-Builts and Final Project Report Completion	May 31, 2016

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.

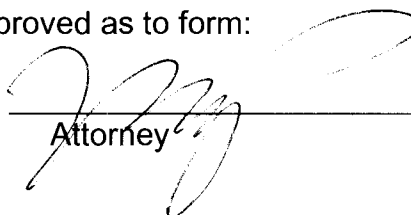
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: \_\_\_\_\_  
Mark A. Hammond, P.E. Date  
Director, Resource Management Division

PINELLAS COUNTY

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

Approved as to form:

By:  \_\_\_\_\_  
Attorney

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

By: \_\_\_\_\_  
Deputy Clerk

AGREEMENT  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
PINELLAS COUNTY  
FOR  
FORT DESOTO ECOLOGICAL ENHANCEMENT/RECIRCULATION PHASE 2 (W363)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	MBM	5/19/14
RISK MGMT	NPA	
CONTRACTS	YME	5/20/14
BUREAU CHIEF	PA	5/20/14
DIRECTOR	MAH	6/2/14
GOVERNING BOARD	NPA gmk	

**TO:** Mark S. Woodard, County Administrator

**FROM:** Paul Cozzie, Director, Parks and Conservation Resources

**SUBJECT:** Request for Exemption to Pinellas County Resolution No. 06-07 Relating to Contractual Indemnification by the County to the Agreement with the Southwest Florida Water Management District (SWFWMD) for the Fort De Soto Ecological Enhancement/Recirculation Phase 2

**DATE:** August 14, 2014

**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 AGREEMENT WITH SWFWMD FOR FORT DE SOTO ECOLOGICAL ENHANCEMENT/RECIRCULATION PHASE 2.

**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.

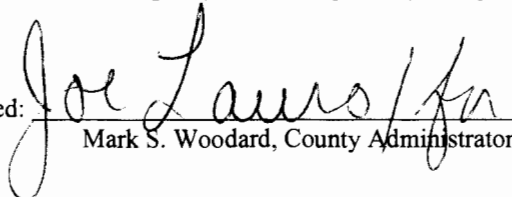
Pinellas County pursues agreements with SWFWMD and other sources to pay for vital infrastructure improvements. The SWFWMD has begun the process of revising the terms of their agreements in an effort to reduce the risks associated with granting funding to their cooperating agencies. In an effort to maintain consistency with all of their cooperating agencies, SWFWMD will not make changes to their agreement for an individual cooperating agency. 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 agreements.

There is a potential loss in funding from SWFWMD for this project in the amount of \$500,000.00

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:

  
Mark S. Woodard, County Administrator

Date: 8/14/14

Attachments:

Contract Review Slip

Agreement No. 10C00000086-A

Resolution No. 06-70