



Staff Report

File #: 15-314, **Version:** 1

Agenda Date: 10/20/2015

Subject:

Cooperative Funding Agreement with Southwest Florida Water Management District for Brooker Creek Preserve Hydrologic Restoration.

Recommended Action

Approval of the Cooperative Funding Agreement with Southwest Florida Water Management District (SWFWMD) for Brooker Creek Preserve Hydrologic Restoration.

Approval of request for an exemption of Pinellas County Resolution No. 06-70 relating to contractual indemnification by the County with SWFWMD for Brooker Creek Hydrologic Restoration.

Cooperative Funding Agreement #15C00000093 in the amount of \$350,000, with \$350,000 County match and is effective upon execution of the Chairman of the Governing Board of SWFWMD. Approval of authority for the Chairman to sign and the Clerk to Attest.

Strategic Plan:

Practice Superior Environmental Stewardship

3.2: Preserve and manage environmental lands, beaches, parks, and historical assets.

3.3: Protect and improve the quality of our water, air and other natural resources.

Summary:

This project will rehydrate wetlands, restore natural hydrology via filling of ditches and swales, replace and/or upgrade drainage pipe, treat invasive exotic plants and provide installation of site appropriate native restoration plants at Brooker Creek Preserve. This project implements Best Management Practices (BMP) outlined in the Brooker Creek Watershed Alternative BMP Analysis jointly prepared for SWFWMD and the County in December 2009. It also implements the current land management plan of the Brooker Creek Preserve. This project will result in improved habitat and biodiversity in the preserve and will provide downstream water quality improvement for Lake Tarpon.

Background Information:

The Cooperative Funding Agreement currently contains task deadlines in the performance schedule (Exhibit "A", page 3) that are not achievable. Per SWFWMD, these task deadlines may be readily modified after the agreement is executed. Paragraph 1.1 in the agreement allows SWFWMD's contract manager to approve requests to extend a project task deadline set forth in the agreement. Per SWFWMD, this process has been used successfully with other agreements where the first milestone in the schedule could not be met because the contract has not been executed. SWFWMD is agreeable to this process for this grant agreement.

Pinellas County actively pursues cooperative funding from SWFWMD and other sources to pay for

important projects. 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 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 projects.

Fiscal Impact:

Grant revenue of \$350,000 is matched by Capital Improvement Program (CIP) funds of \$350,000 for a total project cost of \$700,000. CIP is budgeted in Environmental Conservation Projects Program; Habitat Restoration/Enhancement. Future operations and maintenance costs are anticipated to be minimal as this project will improve erosion areas and may reduce current maintenance.

Staff Member Responsible:

Paul Cozzie, Director, Parks and Conservation Resources

Partners:

Southwest Florida Water Management District

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP**PROJECT: Brooker Creek Preserve Hydrologic Restoration****CONTRACT NO.: 15C00000093****ESTIMATED EXPENDITURE / REVENUE: \$350,000***(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:**Please expedite.**

Legal: please approve as to form.

Note per D. Chayet: dates on page 3 of Exhibit A will be modified once a Board Agenda date has been established.

REVIEW SEQUENCE	DATE	INITIAL / SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: Paul Cozzie	9/3/15	PC		
Finance:** Cassandra Williams	9/3/15	CW		
OMB:** Bill Berger	9/9/15	B	See attached.	
Risk Mgmt: Virginia Holscher	9/10/15	GH on 9/10/15 VH	PE to PE - NO INS. Required -	
Legal: Brendan Mackesey	9/15/15	BM	indemnity request denied, but existing clause OK (comparisons w/ Res 06-70)	
Assistant County Administrator: Paul Sacco	9/17/15	PS		

Please return to Debbie Chayet By September 18, 2015.
All inquiries should be made to Debbie Chayet ext.582-2521.

** See Contract Review Process

OMB Contract Review

Contract Name	Brooker Creek Preserve Hydrologic Restoration		
CATS#	47956	Contract #	15C00000093

Mark all Applicable Boxes:

Type of Contract									
CIP	<input checked="" type="checkbox"/>	Grant	<input checked="" type="checkbox"/>	Other		Revenue	<input checked="" type="checkbox"/>	Project	<input checked="" type="checkbox"/>

Contract information:

New Contract (Y/N)	Y	Original Contract Amount	\$350,000
Fund(s)	3001	Amount of Change	NA
Cost Center(s)	413100	Contract Amount	\$350,000
Program(s)	3009	Amount Available	Total: \$350,000
Account(s)		Included in Applicable Budget? (Y/N)	Y
Project (s)	000077B		
Fiscal Year(s)	FY16		

Description & Comments

(What is it, any issues found, is there a financial impact to current/next FY, does this contract vary from previous FY, etc.)

This is an agreement between Pinellas County and Southwest Florida Water Management District (SWFWMD) to provide matching funding of up to \$350,000 for a project which consists of wetland hydrologic restoration to improve hydraulic conveyance, water quality, and natural systems .

PCR has this budget in the CIP budget under project 000077A, which includes Penny for Pinellas funding of \$453,000 available. Any cost above the initial estimate of \$700,000 (with \$350,000 coming from the grant) will be paid by Pinellas County without a change to the agreement with SWFWMD.

Analyst: **Jim Abernathy**

Ok to Sign: ☒

Instructions/Checklist

1. Upon receipt of a contract and notification in County Admin Tracking System (CATS) review the Agenda and Contract for language and accuracy. Make sure there are available funds, the dept is not overextending itself, was it planned, etc.
2. Complete the form above using the contract document and the County accounting & budgeting systems.
3. Use the "Description & Comments" section to give a brief summary of the contract and include your thoughts and pertinent information.
4. Print the form, initial, and leave folder on the Director's desk.
5. Login to CATS and click in the cell next to your name. A date will appear and click on the date you completed your review. Choose save and close the CATS system.

COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
PINELLAS COUNTY
FOR
BROOKER CREEK HYDROLOGIC RESTORATION (W307)

THIS COOPERATIVE FUNDING 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 PINELLAS COUNTY, a municipal corporation 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 wetland hydrologic restoration project to improve hydraulic conveyance, water quality, and natural systems, 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 below. Notice is effective upon receipt.

Contract Manager for the DISTRICT:

Michael J. Dalsis
Southwest Florida Water Management District
7601 U.S. 301 North
Tampa, Florida 33637-6759

Project Manager for the COUNTY:

Lisa Baltus
Pinellas County Parks & Conservation
Resources
12520 Ulmerton Road
Largo, Florida 33774

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 Seven Hundred Thousand Dollars (\$700,000). The DISTRICT agrees to fund PROJECT costs up to Three Hundred Fifty Thousand Dollars (\$350,000) and shall have no obligation to pay any costs beyond this 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'S payment of any financial obligation under this Agreement is subject to annual 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.
- 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 The parties will provide each other with written documentation detailing their 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 15436
Brooksville, Florida 34604-5436

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 Subparagraph 3.2 of this 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 provide the COUNTY with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the COUNTY until such time as the COUNTY demonstrates that the PROJECT shall achieve the required resource benefits, to provide the COUNTY with an opportunity to cure the deficiencies.
- 3.7 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, Florida Statutes (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 Brooker Creek Hydrologic Restoration (W307) agreement between the Southwest Florida Water Management District and Pinellas County (Agreement No. 15C00000093), 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 (not including DISTRICT funds) and \$__ 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 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 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 and complete the PROJECT and meet the task deadlines in accordance with the project schedule set forth in Exhibit "A," including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1.1 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. 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 Subparagraph 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.
 - 5.1 Notwithstanding the above, the parties acknowledge that if the 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.
 - 5.2 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.

- 5.3 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. The COUNTY shall be responsible for the perpetual operation and maintenance of the completed PROJECT facilities, to ensure the proper hydraulic operation of the PROJECT, and to conform to all the conditions specified in the environmental permits issued for the PROJECT, in such a manner that the Measurable Benefit required under the Agreement is achieved. In the event the PROJECT is not operated and maintained for a minimum of twenty (20) years, 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 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. Within thirty (30) days after construction is completed, the COUNTY shall provide the DISTRICT with construction record drawings, signed and sealed by a professional engineer, certifying that the Measurable Benefit has been achieved. The COUNTY shall provide the DISTRICT with an operation and maintenance plan that ensures the Measurable Benefit will be maintained. Every two (2) years following the completion of the PROJECT, the COUNTY shall generate a report describing the operations and maintenance activities that took place during the reporting period that certifies that the Measurable Benefit set forth in the Project Plan has been maintained. The COUNTY'S obligation to generate reports shall continue until the expiration of the 20-year operation and maintenance period.
- 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 maintained.
7. CONTRACT PERIOD. This Agreement shall be effective upon execution, and shall remain in effect through December 31, 2018, 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. Quarterly reports shall be submitted to the DISTRICT'S Contract Manager no later than forty-five (45) days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31.
- 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. Additionally, one (1) set, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies. The COUNTY shall submit all water resource data collected under this Agreement to the DISTRICT for upload to DISTRICT databases, and to the Florida Department of Environmental Protection's (FDEP) database for water quality data in accordance with Rule 62-40.540, Florida Administrative Code (F.A.C.).
- 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 30%, 60%, 90% and proposed final design, including supporting documentation, for review by the DISTRICT, in order for the DISTRICT to verify that the proposed design meets the requirements of the PROJECT, as set forth in Exhibit "A." The DISTRICT shall provide a written response to the COUNTY within ten (10) business days of receipt of the proposed 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. 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 for any projects. In the event the PROJECT is used for compensatory water quality treatment or mitigation for another project in violation of this Paragraph, the COUNTY shall repay the DISTRICT all funds the DISTRICT paid to the COUNTY under this Agreement. The PROJECT can be used for self-mitigation due to impacts specifically associated with the construction of the PROJECT.
23. GOVERNING LAW. This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively 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, 8.2, and 9.2, Paragraphs 5, 6, 8, 10, 14, 17, 22, 23 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

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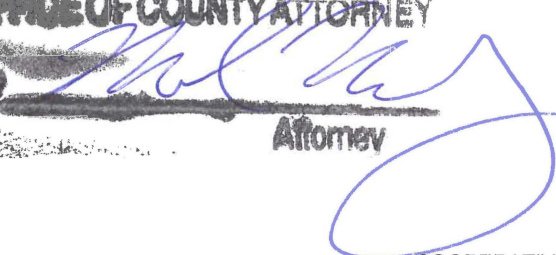
IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

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

PINELLAS COUNTY

By: _____
John Morroni Chair Date

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

Attorney

COOPERATIVE FUNDING AGREEMENT (3)
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
PINELLAS COUNTY
FOR
BROOKER CREEK HYDROLOGIC RESTORATION (W307)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>mem</u>	<u>7/10/15</u>
RISK MGMT	<u> </u>	<u> </u>
CONTRACTS	<u>RJ</u>	<u>7-16-15</u>
BUREAU CHIEF	<u> </u>	<u>7/27/15</u>
DIRECTOR	<u>MAH</u>	<u>7/27/15</u>
GOVERNING BOARD	<u> </u>	<u> </u>

EXHIBIT "A" COUNTY'S PROJECT PLAN

PROJECT DESCRIPTION

The Pinellas County Parks & Conservation Resources Department manages 8,700-acre Brooker Creek Preserve, located in the far northeastern part of the COUNTY. The Brooker Creek watershed covers roughly 46 square miles and extends into Hillsborough and Pasco counties in addition to the project site in Pinellas County. Runoff from the Brooker Creek Watershed drains into Lake Tarpon, a SWIM waterbody. The Brooker Creek Watershed BMP Improvement project consists of the implementation of BMP's identified in the Brooker Creek Watershed Alternative BMP Analysis jointly prepared for the DISTRICT and COUNTY in December 2009. It also implements the current land management plan of the Brooker Creek Preserve. The PROJECT includes enhancement of approximately 500 acres of adjacent wetlands through approximately 1.7 miles of ditch fill.

The PROJECT will result in improved habitat and biodiversity in Brooker Creek Preserve and will provide downstream water quality improvement for Lake Tarpon. The PROJECT consists of designing, permitting and constructing channel crossings, wetlands rehydration, filling of ditches and swales, replacement and/or upgrade of drainage pipe, treatment of invasive exotic plants, and limited planting for erosion control.

PROJECT TASKS

Key tasks to be performed by the COUNTY:

1. **DESIGN AND PERMITTING** – The COUNTY shall provide for survey, geotechnical services, design plans, and technical specifications for construction. The COUNTY shall prepare and submit all necessary permit applications and obtain necessary approvals.
2. **BID AND CONTRACTOR SELECTION** – The COUNTY shall procure a contractor to implement the PROJECT based on the final design plans and approved permits.
3. **CONSTRUCTION** – The COUNTY shall construct the PROJECT in conformance with the final design plans, specifications and approved permits.
4. **CONSTRUCTION ENGINEERING AND INSPECTION (CEI)** – The COUNTY shall review all shop drawings, complete engineering inspections and monitor all phases of construction by means of survey, observations, and materials testing. The COUNTY shall provide the DISTRICT with inspection documents and photographs.
5. **AS-BUILT SURVEY AND RECORD DRAWINGS** – The COUNTY shall obtain the certification of construction of the completed PROJECT from the Engineer of Record and forward it to the DISTRICT. The COUNTY shall obtain an As-Built Survey signed and sealed and certified to the DISTRICT by a licensed Florida professional surveyor and mapper. The COUNTY shall obtain Record Drawings, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer, following completion of construction.

6. OPERATION AND MAINTENANCE – As required by the Operation and Maintenance paragraph of the Agreement, the COUNTY shall prepare an Operation and Maintenance Plan, to include a maintenance schedule, detailing the inspection and maintenance activities to ensure optimum performance of the PROJECT improvements.

RESOURCE BENEFIT

Hydrologic restoration of approximately 500 acres of wetlands within the 46 square miles of the Brooker Creek Watershed, part of the Tampa Bay Watershed. The PROJECT also includes targeted treatment of invasive nonnative vegetation and limited planting for erosion control on approximately 10 acres.

MEASURABLE BENEFIT

Ditch fill for approximately 1.7 miles with improved channel crossings will enhance an estimated 500 acres of adjacent wetland within the 46 square miles of the Brooker Creek Watershed, part of Tampa Bay, a SWIM priority water body.

DELIVERABLES

- Quarterly Status Reports
- Minutes of kick-off, pre-application and progress meetings
- Design plans, at 30%, 60%, 90% and proposed final design levels; include electronic, CAD and GIS files at proposed final design*
- Estimate of proposed construction cost at 30% design
- Engineer's opinion of probable cost at 60%, 90% and proposed final design and final construction drawings
- Technical Specifications at 60%, 90% and proposed final design
- Operation and Maintenance Plan
- Copy of all required federal, state and local environmental permit application packages and final permits
- Construction bid packages for cost approval (prior to posting)
- Copy of contract with consultant and contractor (for cost approval, prior to execution)
- Copy of executed contract with consultant and contractor
- Copy of Notice-to-Proceed to contractor
- Copy of Construction Permits
- Digital photos of stages of construction
- Construction inspection reports and construction certification
- As-Built Survey signed and sealed by a licensed Florida professional surveyor and mapper
- Construction record drawings, to include Resource Benefit calculations and methodology, signed and sealed by a professional engineer, including electronic and CAD
- One (1) set, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies. The COUNTY shall submit all water resource data collected under this Agreement to the DISTRICT for upload to DISTRICT databases, and to the Florida Department of Environmental Protection's (FDEP) database for water quality data in accordance with Rule 62-40.540, Florida Administrative Code (F.A.C.).
- Minority/Women Owned and Small Business Utilization Report
- Upon DISTRICT request, bi-annual Operation and Maintenance Report

*See Additional Information below

ADDITIONAL INFORMATION

Spatial Reference and GIS Deliverable Requirements:

- GIS files shall be in the form of GIS shapefiles or geodatabase feature classes created with points, closed polylines, and polygons free of annotations that break line continuity, and shall include, but not be limited to, spot elevations of key site features (i.e. trees, poles, pipes, invert elevations, outfall structure control elevations and downstream inverts), planting plans, PROJECT footprint boundary, created contours, and drainage basin shapefiles
- All survey and mapping services and deliverables shall be certified as meeting or exceeding, in quality and precision, the standards applicable for this work, as set forth in Chapter 472, F.S.
- Horizontal Datum will be referenced to the Florida State Plane Coordinate System, West Zone (0902), Units US Survey Feet, North American Datum of 1983 (2011) including the most recent NSRS adjustment.
- Vertical Datum will be referenced to the North American Vertical Datum of 1988 (NAVD 88), Units US Survey Feet, using the most recent geoid model to compute orthometric heights based on GPS derived ellipsoid heights.
- Metadata must be provided for GIS deliverables and must be delivered in an ESRI ArcCatalog compatible XML format. Each data layer in the deliverable requires its own metadata XML file.
- Metadata must be compliant with the Federal Geographic Data Committee's (FGDC) Content Standard for Spatial Metadata. All metadata must pass through the USGS metadata parser at <http://geo-nsdi.er.usgs.gov/validation/> with no errors.

PERFORMANCE SCHEDULE

DESCRIPTION	COMMENCE	COMPLETE
Design & Permitting	10/15/15	10/15/16
Bidding & Contract Award	04/01/17	06/30/17
Construction and Construction Engineering & inspection (CEI)	07/01/17	04/30/18

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

PROJECT BUDGET

DESCRIPTION	DISTRICT	COUNTY	TOTAL
Design & Permitting	\$27,532.00	\$27,532.00	\$55,064.00
Construction	\$294,820.50	\$294,820.50	\$589,641.00
Construction Engineering & Inspection (CEI)	\$18,647.50	\$18,647.50	\$37,295.00
Invasive Nonnative Plant Treatment	\$9,000.00	\$9,000.00	\$18,000.00
TOTAL	\$350,000.00	\$350,000.00	\$700,000.00

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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

Indemnity Removal Request

Morrissey, Joseph A

From: Mackesey, Brendan
Sent: Tuesday, September 15, 2015 5:42 PM
To: Morrissey, Joseph A
Subject: FW: Pinellas County Brooker Creek Hydrologic Restoration Agreement (No. 15C00000093)

Please print -- thanks

From: MaryBeth McNeil [mailto:MaryBeth.McNeil@swfwmd.state.fl.us]
Sent: Tuesday, September 15, 2015 3:29 PM
To: Mackesey, Brendan <bmackesey@co.pinellas.fl.us>
Cc: Chayet, Deborah J <dchayet@co.pinellas.fl.us>; Michael Dalsis <Mike.Dalsis@swfwmd.state.fl.us>
Subject: RE: Pinellas County Brooker Creek Hydrologic Restoration Agreement (No. 15C00000093)

Hi Brendan,

The District will not agree to delete or revise its indemnification clause that is included in the above-referenced agreement. This is the District's standard indemnification clause that is included in all of our cooperative funding agreements.

Please let me know if you require anything further.

Mary Beth

Mary Beth McNeil
Assistant General Counsel
Southwest Florida Water Management District
7601 Highway 301 North
Tampa, Florida 33637-6759
813-985-7481, ext. 2139

From: Mackesey, Brendan [mailto:bmackesey@co.pinellas.fl.us]
Sent: Monday, September 14, 2015 8:16 PM
To: MaryBeth McNeil <MaryBeth.McNeil@swfwmd.state.fl.us>
Cc: Chayet, Deborah J <dchayet@co.pinellas.fl.us>; Michael Dalsis <Mike.Dalsis@swfwmd.state.fl.us>
Subject: Pinellas County Brooker Creek Hydrologic Restoration Agreement (No. 15C00000093)

Hi Mary Beth,

The Pinellas County Attorney's Office is currently reviewing an agreement between SWFWMD and the County named in the subject line.

As outlined in County Resolution 06-70, the County does not indemnify other parties under most circumstances and is required to request that any such indemnity language be removed.

Please confirm whether SWFWMD will delete the indemnification language in Sections 10.1 and 10.2 of the Agreement. For your reference, County Resolution 06-70 is attached.

Thanks,
Brendan

Brendan P. Mackesey
Assistant County Attorney
PH:(727) 464-3354 / FAX (727)464-4147
bmackesey@pinellascounty.org

All government correspondence is subject to the public records law.