



## Staff Report

**File #:** 16-021A, **Version:** 1

**Agenda Date:** 2/23/2016

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### **Subject:**

Cooperative funding agreement with the Southwest Florida Water Management District for completion of a Watershed Management Plan (N734) for the Curlew Creek and Smith Bayou Watersheds.

### **Recommended Action:**

Approve the Cooperative Funding Agreement for a Watershed Management Plan (WMP) for the Curlew Creek and Smith Bayou Watersheds that will result in recommendations for water quality, drainage, and natural system improvement projects.

SWFWMD Agreement No. 16CF0000208; SWFWMD Funding: \$425,000, County Funding (including city contributions): \$425,000 - amount includes funding contributions from the Cities of Dunedin and Clearwater through a separate agreement.

The County's portion of the cost of the \$850,000 project is \$262,943.91 and is funded through the Surface Water Assessment.

### **Strategic Plan:**

Practice Superior Environmental Stewardship

3.1 Implement green technologies and practices where practical

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

Deliver First Class Services to the Public and Our Customers

5.1 Maximize partner relationships and public outreach

5.2 Be responsible stewards of the public's resources

### **Summary:**

This agreement provides funding from the Southwest Florida Water Management District (SWFWMD) to the County for the development and completion of a WMP for the Curlew Creek and Smith Bayou Watersheds, through and including: floodplain analysis, level of service determination, surface water resource assessment, and best management practices (BMPs) alternative analysis.

Additionally, staff and the County Attorney have reviewed the indemnification language contained in Section 9 of the Agreement and agree that it does not increase the liability to the County beyond an acceptable level of risk. Furthermore, SWFWMD will not modify their indemnification language as it is a standard requirement in their agreements.

### **Background Information:**

The Curlew Creek and Smith Bayou Watersheds are a combined 8,546-acre drainage basin located in the unincorporated northern portions of the County, as well as in the cities of Dunedin and

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Clearwater. The Curlew Creek and Smith Bayou system includes multiple tributaries with dominant land use categories in residential, commercial, and recreational open space. The main channels of Curlew Creek and Smith Bayou flow from east to west, ultimately discharging into St. Joseph Sound. The primary tributaries to Curlew Creek and Smith Bayou have existing poor water quality and are known to contribute significant sediment loadings into St. Joseph Sound. This project involves the development of a comprehensive WMP that will result in recommendations for water quality, drainage, and natural system improvement projects.

The overall watershed program includes five major elements: (1) digital topographic information, (2) watershed evaluation, (3) WMP, (4) implementation of BMPs, and (5) WMP database maintenance and watershed model updates. Implementing elements of the watershed management program with local governments is one of the WMP initiative strategies. The watershed management program provides a method of evaluating the capacity of a watershed to protect, enhance, and restore water quality and natural systems while achieving flood protection. The program also provides a method of measuring the effectiveness of the strategies and goals of the WMP initiative through data analysis, modeling, projection, and evaluation in order to reach the desired watershed condition.

**Fiscal Impact:**

The estimated cost of the project is \$850,000, with the County and the cities of Dunedin and Clearwater funding fifty percent (50%), or \$425,000. The County's portion (\$262,943.91) is funded through the Surface Water Utility Fee, and the remaining fifty percent (50%), or \$425,000 is funded by SWFWMD.

**Staff Member Responsible:**

Kelli Levy, Natural Resources Division Manager, Public Works

**Partners:**

SWFWMD

City of Clearwater (8%)

City of Dunedin (11%)

**Attachments:**

Cooperative Funding Agreement

Location Map

Email from SWFWMD regarding indemnification

COOPERATIVE FUNDING AGREEMENT (Type 3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS  
FOR  
CURLEW CREEK AND SMITH BAYOU WATERSHED MANAGEMENT PLAN (N734)

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 the PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, whose address is 315 Court Street, Clearwater, Florida 33756, hereinafter referred to as the "COOPERATOR."

WITNESSETH:

WHEREAS, the COOPERATOR proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the project consists of completing a Watershed Management Plan (WMP) for the Curlew Creek and Smith Bayou Watersheds in Pinellas County, through and including floodplain analysis, Level of Service determination (LOS), Surface Water Resource Assessment (SWRA), and Best Management Practices (BMPs) alternative analysis, 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 COOPERATOR in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the COOPERATOR, 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:  
Ben Allushuski  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604

Project Manager for the COOPERATOR:  
Robert McWilliams  
Pinellas County Watershed Management Division  
22211 US 19 N., Building 10  
Clearwater, Florida 33765

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 attached hereto as an exhibit or, if applicable, the refined budget as set forth in subparagraph 4 of the Funding Paragraph. 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 COOPERATOR shall perform the services necessary to complete the PROJECT in accordance with the COOPERATOR'S Project Plan. 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 COOPERATOR prior to being performed by the COOPERATOR. The COOPERATOR shall be solely responsible for managing and controlling 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 Eight Hundred Fifty Thousand Dollars (\$850,000). The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with subparagraph 1 of this Funding



Paragraph and anticipates funding PROJECT costs up to Four Hundred Twenty Five Thousand Dollars (\$425,000), and shall have no obligation to pay any costs beyond this anticipated maximum amount. The COOPERATOR 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 COOPERATOR recognizes that the DISTRICT has approved \$225,000 for the PROJECT through Fiscal Year 2016. The additional funds identified in this Agreement are contingent upon the approval of such amounts by the DISTRICT'S Governing Board, in its sole discretion, in its annual budgets for future fiscal years. The COOPERATOR'S payment of any financial obligation under this Agreement is subject to appropriation by the COOPERATOR'S Board of legally available funds.
- 3.2 The COOPERATOR shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the COOPERATOR for the DISTRICT'S share of allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan. Reimbursement for expenditures of contingency funds is contingent upon approval by the DISTRICT. If a reimbursement request includes the expenditure of contingency funds, the COOPERATOR shall provide sufficient documentation to the DISTRICT to explain the basis of the expense. The DISTRICT shall not reimburse the COOPERATOR 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 COOPERATOR for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COOPERATOR, but at no point in time shall the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COOPERATOR. The parties acknowledge that the DISTRICT'S reimbursement percentage stated above is subject to change if the percentage of the DISTRICT'S anticipated funding amount is changed due to subsequent Governing Board approvals, but amounts approved by the DISTRICT in its annual budget shall not be reduced after the COOPERATOR has paid PROJECT costs of incurred obligations approved by the DISTRICT pursuant to subparagraph 4 of this Funding Paragraph and are otherwise reimbursable by the DISTRICT under this Agreement.
- 3.3 Unless otherwise stated in this Agreement, any federal, state, local or grant monies received by the COOPERATOR for this PROJECT shall be applied to equally reduce each party's share of PROJECT costs. The COOPERATOR shall provide the DISTRICT with written documentation detailing its allocation of any such funds appropriated for this PROJECT. This subparagraph shall survive the expiration or termination of this Agreement.
- 3.4 The COOPERATOR may contract with consultant(s), contractor(s) or both to accomplish the PROJECT. The COOPERATOR 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 COOPERATOR 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 COOPERATOR 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 COOPERATOR 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](mailto: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 COOPERATOR for contingency expenses within a reasonable time to accommodate the process provided for in subparagraph 2 of this Funding Paragraph.

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 COOPERATOR 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 COOPERATOR 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 COOPERATOR with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the COOPERATOR until such time as the COOPERATOR demonstrates that the PROJECT shall achieve the required resource benefits, to provide the COOPERATOR 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 COOPERATOR for any purpose not specifically identified in the Scope of Work Paragraph. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the COOPERATOR are not reimbursable by the DISTRICT and may not be included in the COOPERATOR'S share of funding contributions under this Agreement.

- 3.8 Each COOPERATOR invoice must include the following certification, and the COOPERATOR 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 COOPERATOR'S matching funds, as represented in this invoice, are directly related to the performance under the Curlew Creek and Smith Bayou Watershed Management Plan (N734) agreement between the Southwest Florida Water Management District and the Pinellas County Board of County Commissioners (Agreement No. 16CF0000208), are allowable, allocable, properly documented, and are in accordance with the approved project budget. This invoice includes \$\_\_ of contingency expenses. The COOPERATOR 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 COOPERATOR'S share to \$\_\_ / \$\_\_ respectively."

- 3.9 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the COOPERATOR will continue to perform the PROJECT work in accordance with the Project Plan. The COOPERATOR 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 COOPERATOR'S continuation of the PROJECT work as required under this provision shall not constitute a waiver or any legal remedy available to the COOPERATOR concerning the dispute.

#### 4. COMPLETION DATES.

The COOPERATOR shall commence and complete the PROJECT and meet the task deadlines in accordance with the project schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with subparagraph 1 of the Project Contacts and Notices Paragraph. 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 COOPERATOR, the COOPERATOR'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

COOPERATOR 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 COOPERATOR'S obligations provided for in this provision shall be the COOPERATOR'S sole remedy for the delays set forth herein.

5. REPAYMENT.

- 5.1 The COOPERATOR shall repay the DISTRICT all funds the DISTRICT paid to the COOPERATOR under this Agreement, if a) the COOPERATOR 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 COOPERATOR has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement, c) the COOPERATOR fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with subparagraph 1 of the Project Contacts and Notices Paragraph, 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 . Should any of the above conditions exist that require the COOPERATOR to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.
- 5.2 Notwithstanding the above, the parties acknowledge that if the PROJECT fails to meet the Measurable Benefit specified in this Agreement, the COOPERATOR may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.
- 5.3 In the event the COOPERATOR is obligated to repay the DISTRICT under any provision of this Agreement, the COOPERATOR shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.4 The COOPERATOR shall pay the attorneys' fees and costs incurred by the DISTRICT, including appeals, as a result of COOPERATOR'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Provision, including all subparagraphs, shall survive the expiration or termination of this Agreement.

6. CONTRACT PERIOD.

This Agreement shall be effective October 1, 2015, and shall remain in effect through December 31, 2018, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the COOPERATOR, whichever occurs first, unless amended in writing by the parties. The COOPERATOR 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.



7. PROJECT RECORDS AND DOCUMENTS.

Upon request by the DISTRICT, the COOPERATOR 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 COOPERATOR 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. This Paragraph shall survive the expiration or termination of this Agreement.

8. REPORTS.

8.1 The COOPERATOR 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 COOPERATOR 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.

8.2 Upon request by the DISTRICT, the COOPERATOR 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. This subparagraph shall survive the expiration or termination of this Agreement.

8.3 The COOPERATOR shall provide the DISTRICT with each deliverable set forth in the Project Plan for review by the DISTRICT, including any supporting documentation. The DISTRICT shall provide a written response to the COOPERATOR and the COOPERATOR shall respond to the DISTRICT'S questions and concerns within the timeframes set forth in the Project Plan.

8.4 The COOPERATOR shall provide the data, reports and documents referenced in this provision at no cost to the DISTRICT.

9. RISK, LIABILITY, AND INDEMNITY.

9.1 To the extent permitted by Florida law, the COOPERATOR 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 COOPERATOR 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 COOPERATOR does not in any way constitute an agency relationship between the DISTRICT and the COOPERATOR.

- 9.2 The COOPERATOR 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 COOPERATOR'S officers, employees, contractors and agents related to its performance under this Agreement.
- 9.3 This Risk, Liability and Indemnity Paragraph, including all subparagraphs, shall not be construed as a waiver of the COOPERATOR'S sovereign immunity or an extension of COOPERATOR'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Risk, Liability and Indemnity Paragraph, including all subparagraphs, will not be construed to impose contractual liability on the COOPERATOR for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the COOPERATOR to be sued by third parties in any manner arising out of this Agreement.
- 9.4 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.
- 9.5 This Risk, Liability and Indemnity Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 10. 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.

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 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.

12. DISTRICT RECOGNITION.

The COOPERATOR 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 COOPERATOR 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.

13. LAW COMPLIANCE.

The COOPERATOR 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 COOPERATOR'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.

14. 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 COOPERATOR to make good faith efforts to encourage the participation of minority owned and women owned and small business enterprises, both as prime contractors and subcontractors, in the performance of this Agreement, in accordance with applicable laws.

14.1 If requested, the DISTRICT shall assist the COOPERATOR by sharing information to help the COOPERATOR in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.

14.2 The COOPERATOR 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 an exhibit to this Agreement. 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.

15. 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. This Paragraph shall survive the expiration or termination of this Agreement.

16. 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 COOPERATOR.

17. THIRD PARTY BENEFICIARIES.

Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.

18. LOBBYING PROHIBITION.

Pursuant to Section 216.347, F.S., the COOPERATOR is prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

19. PUBLIC ENTITY CRIMES.

Pursuant to Subsection 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 COOPERATOR agrees to include this provision in all contracts issued as a result of this Agreement.

20. GOVERNING LAW.

This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hernando County, Florida. This Paragraph shall survive the expiration or termination of this Agreement.

21. 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 1 of the Repayment Paragraph. This Paragraph shall survive the expiration or termination of this Agreement.

22. ENTIRE AGREEMENT.

This Agreement and the attached exhibit(s) 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.

23. DOCUMENTS.

The following document(s) is/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" Project Plan

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

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 Armstrong, P.G. Date  
Assistant Executive Director

PINELLAS COUNTY

By: \_\_\_\_\_  
Charlie Justice, Chairman Date  
Board of County Commissioners

Approved as to form: Attest: Ken Burke, Clerk of the Circuit Court

By: \_\_\_\_\_ By: \_\_\_\_\_  
Pinellas County Attorney Deputy Clerk

COOPERATIVE FUNDING AGREEMENT (Type 3)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS  
FOR  
CURLEW CREEK AND SMITH BAYOU WATERSHED MANAGEMENT PLAN (N734)

## EXHIBIT "A" PROJECT PLAN

### 1. PROJECT DESCRIPTION

The PROJECT is a multi-year funded project to perform the Watershed Evaluation and Watershed Management Plan elements of the DISTRICT'S Watershed Management Program (WMP) for the Curlew Creek and Smith Bayou Watershed. The watershed covers a total area of approximately 8,546 acres located within Pinellas County as well as the cities of Dunedin and Clearwater and ultimately discharges into St. Joseph Sound.

The WMP will provide a model update, floodplain delineation, and Best Management Practices (BMP) alternative analysis for the Curlew Creek and Smith Bayou Watershed in Pinellas County. The following elements of the DISTRICT'S Watershed Management Program are to be performed: (1) Watershed Evaluation, (2) Watershed Management Plan – Floodplain Analysis, and (3) Watershed Management Plan – Flood Protection Level of Service Determination, Surface Water Resource Assessment, and BMP Alternative Analysis. These elements are defined as PROJECT tasks listed below in Section 3. PROJECT tasks are to be accomplished according to the performance schedule and budget table listed below in Section 6 and Section 7, respectively.

### 2. MEASURABLE BENEFIT

Complete a Watershed Management Plan (WMP) for the Curlew Creek and Smith Bayou Watersheds in Pinellas County, through and including floodplain analysis, Level of Service determination (LOS), Surface Water Resource Assessment (SWRA), and Best Management Practices (BMPs) alternative analysis. FY2016 funding will be used to start the Watershed Evaluation.

### 3. PROJECT TASKS

The COOPERATOR shall:

Perform the work in accordance with the DISTRICT Scope of Work Task Descriptions in the "Watershed Management Program Guidance Documents", effective as of the date of the COOPERATOR'S issuance of a work order to its consultant. These guidance documents can be found at: [ftp://ftp.swfwmd.state.fl.us/pub/GWIS/WMP\\_Guidance\\_Documents/ \(WMP\\_Guidance.zip\)](ftp://ftp.swfwmd.state.fl.us/pub/GWIS/WMP_Guidance_Documents/(WMP_Guidance.zip)). The following is a list of elements to be included unless otherwise noted. Elements and tasks not included, and elements and tasks to be updated from existing information will be specifically noted.

- 3.1 Project Development. The development of a detailed project plan to include scope of work, deliverables, approach, level of effort, schedule, staff allocation, assumptions, quality assurance and communication plan; attend kick-off meeting.

#### 3.1.1 Data Collection and Initial Evaluation

- 3.1.2 Draft Project Plan
- 3.1.3 Kick-off Meeting
- 3.1.4 Final Project Plan
- 3.2 Watershed Evaluation. The systematic acquisition of watershed features and their assessment to gain an understanding of the complexity of the Watershed. It consists of tasks related to the creation of a Geographic Information System (GIS) database and associated analyses for developing information about watershed features.
  - 3.2.1 Assembly and Evaluation of Watershed Data
  - 3.2.2 Hydrologic and Hydraulic Feature Database
  - 3.2.3 Preliminary Model Features
  - 3.2.4 Peer Review of Watershed Evaluation
  - 3.2.5 Final Approved Watershed Evaluation Deliverables
  - 3.2.6 Project Management
- 3.3 Watershed Management Plan – Floodplain Analysis. Consists of tasks related to the management of surface water resources. The tasks are related to develop a watershed model, and identifying associated floodplains.
  - 3.3.1 Watershed Model Parameterization
  - 3.3.2 Peer Review of Watershed Model Parameterization
  - 3.3.3 Final Approved Watershed Model Parameterization Deliverables
  - 3.3.4 Watershed Model Development and Floodplain Delineation
  - 3.3.5 Peer Review of Watershed Model Development and Floodplain Delineation
  - 3.3.6 Approved Floodplain Analysis Deliverables for Preliminary Floodplain Open House
  - 3.3.7 Preliminary Floodplain Open House and Response to Public Comments
  - 3.3.8 Final Approved Floodplain Analysis Deliverables
  - 3.3.9 Project Management
- 3.4 Watershed Management Plan – Flood Protection Level of Service (FPLOS) Determination, Surface Water Resource Assessment (SWRA) and BMP Alternatives Analysis and Recommendations. Consists of tasks related to identify and provide alternatives to flooding areas utilizing the results from the Floodplain Analysis. The tasks are related to developing a Level of Service (LOS) determination to identify roads and structures affected by flooding; and Best Management Practice Alternatives Analysis to provide potential solutions to the affected areas identified during the FPLOS Determination.
  - 3.4.1 FPLOS Determination
  - 3.4.2 BMP Alternatives Analysis and Recommendations
  - 3.4.3 Project Management

#### **4. DELIVERABLE REVIEW TIMES**

The DISTRICT shall provide a written response to the COOPERATOR within 20 business days of receipt of each deliverable specified below including supporting documentation. The COOPERATOR shall respond to the DISTRICT'S questions and



concerns within 20 business days of receipt by the COOPERATOR.

- 4.1 Project Development Document
- 4.2 Watershed Evaluation
- 4.3 Watershed Model
- 4.4 Updated WMP Geodatabase (GWIS version 1.6 data schema)
- 4.5 LOS Determination
- 4.6 BMP Alternative Analysis
- 4.7 Watershed Management Plan

## **5. PROJECT DELIVERABLES**

- 5.1 Quarterly Status Reports
- 5.2 Project Development Document
- 5.3 Watershed Evaluation
- 5.4 Watershed Model
- 5.5 Updated WMP Geodatabase (GWIS version 1.6 data schema)
- 5.6 LOS Determination
- 5.7 BMP Alternative Analysis
- 5.8 Watershed Management Plan
- 5.9 Copy of Contract with consultant in accordance with Subparagraph 3.4
- 5.10 One (1) set, electronic and hardcopy, of any final reports
- 5.11 Minority/Women Owned and Small Business Utilization Report

## **6. PROJECT SCHEDULE**

TASK DESCRIPTION	START DATE	COMPLETION DATE
Contract with Watershed Consultant	10/01/2015	03/01/2016
Project Development	03/01/2016	05/01/2016
Watershed Evaluation	05/01/2016	07/01/2017
Watershed Management Plan - Floodplain Analysis	07/01/2017	12/01/2017
District and Peer Review	12/01/2017	02/01/2018
Public Meeting/Presentation to Governing Board	02/01/2018	04/01/2018
Watershed Management Plan - FPLOS, SWRA & BMPs	04/01/2018	12/31/2018

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

The remainder of this page intentionally left blank.

## 7. PROJECT BUDGET

TASK DESCRIPTION	DISTRICT	COOPERATOR	TOTAL
Project Development	\$12,500	\$12,500	\$25,000
Watershed Evaluation	\$180,000	\$180,000	\$360,000
Peer Review	\$75,000	\$75,000	\$150,000
Watershed Management Plan - Floodplain Analysis	\$42,500	\$42,500	\$85,000
Public Meeting/Presentation to Governing Board/Revise Floodplain Results	\$5,000	\$5,000	\$10,000
Watershed Management Plan - FPLOS, SWRA & BMPs	\$110,000	\$110,000	\$220,000
TOTAL	\$425,000	\$425,000	\$850,000

Budget amounts for tasks can be adjusted by the DISTRICT Contract Manager in accordance of subparagraph 1.2.

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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. 4133.

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													

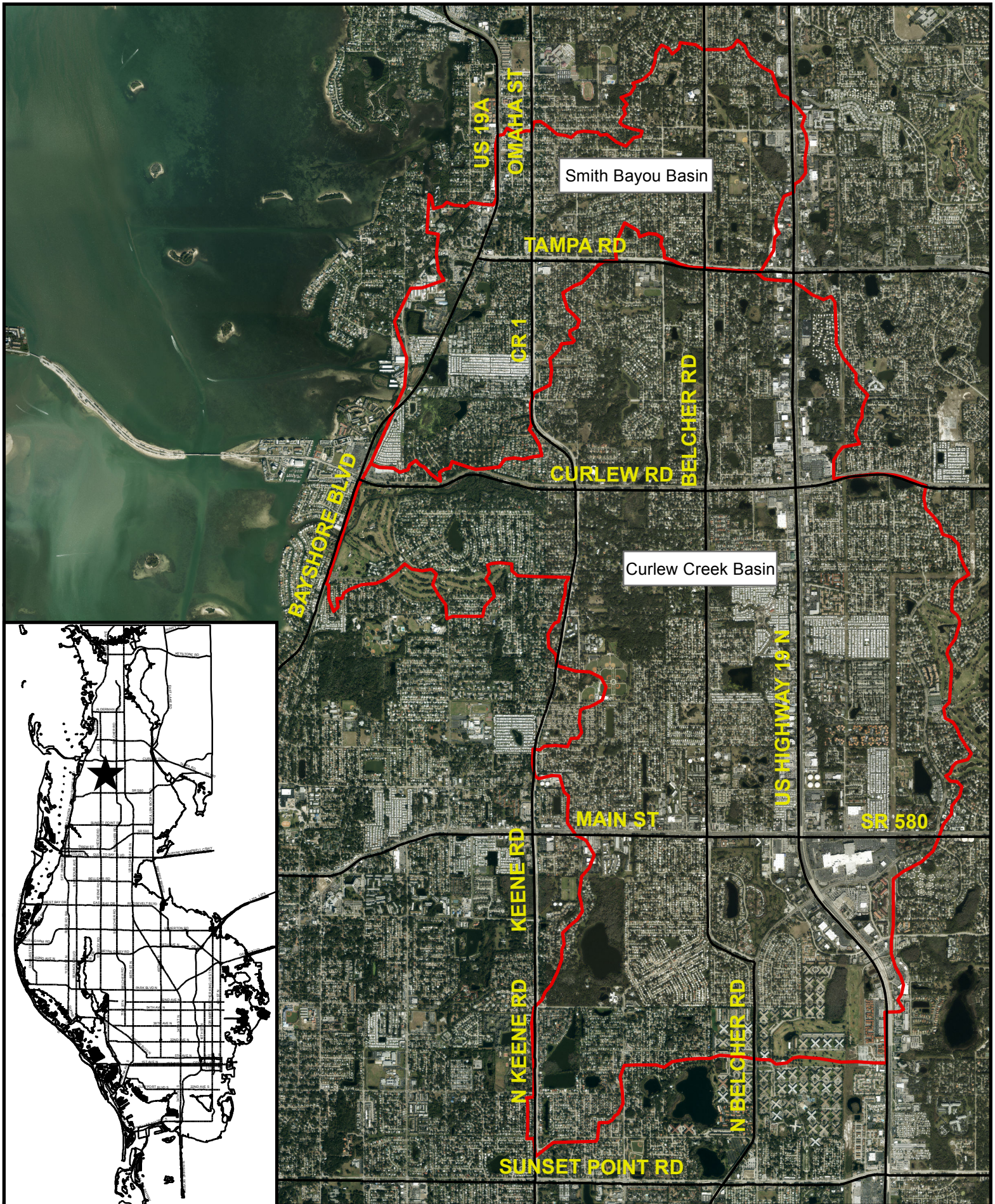
\* ☐ Our organization does not collect minority status data.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_





Curlew Creek and Smith Bayou Location



**From:** [MaryBeth McNeil](#)  
**To:** [Mackesey, Brendan](#)  
**Cc:** [Morrissey, Joseph A](#); [Celeste, Merry E](#)  
**Subject:** RE: Cooperating Funding Agreement Between SWFWMD and Pinellas County No. 16CF0000208  
**Date:** Monday, January 25, 2016 9:32:05 AM

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Hi Brendan,

Unfortunately, the District will not agree to delete or modify the indemnity provisions in this cooperative funding agreement. These are standard provisions and are included in all of the District's cooperative funding agreements.

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. 4657

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**From:** Mackesey, Brendan [mailto:[bmackesey@co.pinellas.fl.us](mailto:bmackesey@co.pinellas.fl.us)]  
**Sent:** Friday, January 22, 2016 2:12 PM  
**To:** MaryBeth McNeil <[MaryBeth.McNeil@swfwmd.state.fl.us](mailto:MaryBeth.McNeil@swfwmd.state.fl.us)>  
**Cc:** Morrissey, Joseph A <[jmorrissey@co.pinellas.fl.us](mailto:jmorrissey@co.pinellas.fl.us)>; Celeste, Merry E <[mceleste@co.pinellas.fl.us](mailto:mceleste@co.pinellas.fl.us)>  
**Subject:** Cooperating Funding Agreement Between SWFWMD and Pinellas County No. 16CF0000208

Hi Mary Beth,

The Pinellas County Attorney's Office is currently reviewing an agreement between SWFWMD and the County identified in the subject line. Section 9 of the Agreement (Risk, Liability, and Indemnity) contains language dictating that the County indemnify SWFWMD.

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 Section 9 of the Agreement. For your reference, a copy of the Agreement and County Resolution 06-70 is attached. Note that I will be on vacation next week, so please include Senior Assistant County Attorney Joe Morrissey and Contract Services Supervisor Merry Celeste – both of whom are cc'd – on your response.

Thanks,  
Brendan

**Brendan P. Mackesey**

Assistant County Attorney

PH:(727) 464-3354 / FAX (727)464-4147

[bmackesey@pinellascounty.org](mailto:bmackesey@pinellascounty.org)

*All government correspondence is subject to the public records law.*



## OMB Contract Review

Contract Name	Cooperative funding agreement with the Southwest Florida Water Management District for completion of a Watershed Management Plan (N734) for the Curlew Creek and Smith Bayou Watersheds				
GRANICUS	16-021A	Contract #		Date:	1/13/16

Mark all Applicable Boxes:

Type of Contract									
CIP		Grant		Other	x	Revenue		Project	

Contract information:

New Contract (Y/N)	Y	Original Contract Amount	N/A
Fund(s)	1094	Amount of Change	N/A
Cost Center(s)	436065	Contract Amount	\$850,000 Total Contract amount (\$130,000 FY16)
Program(s)	2205	Amount Available	\$130,000
Account(s)	5310033	Included in Applicable Budget? (Y/N)	Yes
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 agreement provides funding from SWFWMD to the County for the development and completion of a Watershed Management Plan for the Curlew Creek and Smith Bayou Watersheds, through and including: floodplain analysis, level of service determination, surface water resource assessment, and best management practices (BMPs) alternative analysis.

**Financial Impact:** The estimated cost of the project is \$850,000, with the County and the city of Dunedin and Clearwater funding fifty percent (50%), or \$425,000. The County's portion is funded through the Surface Water Utility Fee (Watershed Management cost center within the Natural Resources division of Public Works), and the remaining fifty percent (50%), or \$425,000 is funded by SWFWMD. The participation by Clearwater and Dunedin will be handled in separate agreements. The project's costing is broken down as follows:

FY16-\$130,000 (\$65,000 County/Clearwater/Dunedin portion)  
FY17-\$450,000 (\$225,000 County/Clearwater/Dunedin portion)  
FY18-\$270,000 (\$135,000 County/Clearwater/Dunedin portion)  
FY16 amount is consistent with the approved budget.

Analyst:  
Yana Matiyuk

Ok to Sign: ☒

### Instructions/Checklist

1. Upon receipt of a contract and notification in Granicus, 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 Staff Report section to give a brief summary of the contract and include your thoughts and pertinent information.
4. Upload to Granicus as a numbered attachment.

## Risk Management Contract Review

Contract Name	Cooperative funding agreement with the Southwest Florida Water Management District for completion of a Watershed Management Plan (N734) for the Curlew Creek and Smith Bayou Watersheds						
Bid/Contract#		Granicus	16-021A	PID #			
Department	Public Works	Project Mgr	Kelli Levy		Date In	1/19/2016	
Contract Mgr		RUSH?		Pre-Review?		Date Out	1/19/2016
Purchasing Contact				Term			Amount
							\$425,000.00
Type of Contract (select both)	Funding/Grant Agreement		Non-Purchasing		Method of Review	Granicus	
Limitation of Liability?		Indemnification Language?	Y		If PE to PE, \$768.28?	Y	
JPA:	Choose an item	Name of JPA:					

Required Coverages	Add'l Language / Exclusions	Limits	Justification
Choose an item.			Public Entity to Public Entity Funding ONLY
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Choose an item.			
Discussed scope & suggested insurance requirements with			
Date/Time/Comments:			
NOTES: Curlew Creek and Smith Bayou Watershed Funding Agreement for the Management plan. No Insurance Requirements.			
Reviewed By			Date
			1/19/2016
<input type="checkbox"/> Ready for Signature		Authorized By Virginia E. Holscher, Director	