

AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
PINELLAS COUNTY
FOR
LAKE SEMINOLE DREDGING PROJECT (N191)

This AGREEMENT, effective as of the 31st day of December 2016, by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," and PINELLAS COUNTY, a political subdivision of the State of Florida, whose address is 315 Court Street, Clearwater, Florida 33756, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the DISTRICT and the COUNTY entered into an agreement effective June 1, 2010 as amended October 1, 2011 for the design, permitting and implementation of whole lake sediment removal in Lake Seminole, which expired on December 31, 2016 hereinafter referred to as the "Expired Agreement"; and

WHEREAS, the parties hereto wish to enter into a new agreement, incorporating the terms and conditions of the Expired Agreement, and replacing certain terms and conditions with new terms and conditions to extend the contract period and modify the Project Schedule, update contract language applicable to the DISTRICT'S cooperatively funded projects and replace the DISTRICT'S Contract Manager.

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

1. Except as otherwise provided herein, the terms, covenants and conditions of the Expired Agreement incorporated herein by reference, are hereby ratified, approved and confirmed, and are binding upon the parties.
2. The Project Manager and Notices Paragraph is hereby amended to replace the DISTRICT'S Project Manager with the following:

Project Manager for the DISTRICT: Tom Burke, P.E.
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604

3. The Funding Paragraph is hereby amended to add Subparagraph 3.8 as follows:
 - 3.8 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement,

the COUNTY will continue to perform the PROJECT work in accordance with the Project Plan. The COUNTY is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the DISTRICT'S 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. The Failure to Complete Project Paragraph is hereby replaced in its entirety with the following:

5. REPAYMENT.

5.1 The COUNTY shall repay the DISTRICT all funds the DISTRICT paid to the COUNTY under this Agreement, if: a) the COUNTY fails to complete the PROJECT in accordance with the terms and conditions of this Agreement, including failing to complete construction in accordance with all permits as required by the Project Plan (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 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, including the duration of the operation and maintenance obligations set forth in 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 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 COUNTY may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.

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

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

- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.
5. The Contract Period Paragraph is hereby amended to extend the expiration date of December 31, 2016 to December 31, 2024.
6. The Liability Paragraph is hereby replaced in its entirety with the following:

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 Risk, Liability, and Indemnity Paragraph, including all subparagraphs, 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 Risk, Liability, and Indemnity Paragraph, including all subparagraphs, 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.
- 10.5 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

7. New Paragraph 27, Scrutinized Companies, is hereby added as follows:

27. SCRUTINIZED COMPANIES.

Pursuant to Section 287.135, F.S., a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S., or is engaged in a boycott of Israel; is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S.; or is engaged in business operations in Cuba or Syria, is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more. By signing this Agreement, COUNTY certifies that it is not participating in a boycott of Israel, is not on any of the aforementioned lists, and it does not have business operations in Cuba or Syria. The COUNTY agrees to notify the DISTRICT if placement on any of the aforementioned lists occurs or if COUNTY is engaged in a boycott of Israel or has business operations in Cuba or Syria. The DISTRICT may terminate this Agreement if the COUNTY is found to have submitted a false certification; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria. If the DISTRICT determines COUNTY submitted a false certification, the DISTRICT may bring a civil action against the COUNTY which may result in a penalty equal to the greater of \$2 million or twice the amount of this Agreement and all reasonable attorneys' fees and costs.

8. New Paragraph 28, Severability, is hereby added as follows:

28. SEVERABILITY.

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Notwithstanding the above, if a provision or provisions of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with Subparagraph 1 of the Repayment Paragraph. This Paragraph shall survive the expiration or termination of this Agreement.

9. The Project Plan Introduction section set forth in Exhibit "B" is hereby replaced in its entirety with the following:

INTRODUCTION

This design, development, and permitting of the dredging of Lake Seminole is Phase 1 of the whole lake sediment removal PROJECT. Phase 1 will comprise design and permitting consistent with the goals and objectives of the Lake Seminole Watershed Management

Plan (WMP) (2001), the state and federally approved Reasonable Assurance Plan (RAP) (2007), and the Lake Seminole Sediment Removal Feasibility Study (2006) for the removal of nuisance, nutrient rich sediments that have degraded water quality and lake habitats. This sediment removal PROJECT is the number one ranked alternative in the WMP for improving water quality and habitat and to meet the RAP goals.

The PROJECT has two phases. Phase 1 includes design and permitting of sediment removal within Lake Seminole and Phase 2 is construction and operations to remove approximately 903,500 cubic yards of organic sediments. During Phase 1 the COUNTY will contract with a CONSULTANT to perform engineering, survey, environmental, biological, Geographic Information System (GIS), public interaction, and technical support tasks for the development of a comprehensive whole-lake sediment removal design to protect, enhance, and restore water quality and natural systems. The CONSULTANT will prepare permit applications and assist in acquiring permits. In Phase 2, the County will hire a CONTRACTOR to perform sediment removal consistent with the design plans, specifications and permits.

10. The Project Schedule section set forth in Exhibit "B" is hereby replaced in its entirety with the following:

PROJECT SCHEDULE

ACTIVITY	COMPLETE
Consultant Notice to Proceed	01/05/2011
Preliminary Design Report	09/30/2011
Final Design and Permits	10/31/2013
Advertise Bid	05/31/2015
Bid and Contractor Selection	11/30/2016
Permit Modification and Design Phase Contract Finalization	07/31/2017
Commence Permit Modifications and Extensions	08/31/2017
Complete Permit Modification and Extensions	04/30/2018
Construction Phase Contract Finalization	07/31/2018
Commence Dredging Implementation	08/31/2018
Complete 25% of In-Lake Sediment Removal	10/31/2019
Complete 50% of In-Lake Sediment Removal	10/31/2020
Complete 75% of In-Lake Sediment Removal	10/31/2021
Complete Dredging Implementation	10/31/2022
Commence Stabilization and Closure of Sediment Placement Sites	12/31/2022
Complete Stabilization and Closure of Sediment Placement Sites	12/31/2023

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

11. The Project Budget section set forth in Exhibit "B" is hereby amended to add the following statement below the Project Funding table:

* The COUNTY will provide funding for all dredging costs beyond \$16,000,000.

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

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: Mark A. Hammond 7/26/17
Mark A. Hammond, P.E. Date
Director, Resource Management Division

PINELLAS COUNTY

By: Janet C. Long 7.18.17 Date
Janet C. Long, Chairman
Board of County Commissioners

Approved as to form:

Attest: Ken Burke, Clerk of the Circuit Court

By: [Signature]
Office of the County Attorney

By: Arlene J. Smithe
Deputy Clerk



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DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>MAM</u>	<u>4/25/17</u>
RISK MGMT	<u>N/A</u>	<u>N/A</u>
CONTRACTS	<u>CD</u>	<u>4/27/17</u>
BUREAU CHIEF	<u>[Signature]</u>	<u>4/27/17</u>
DIRECTOR	<u>[Signature]</u>	<u>4/27/17</u>
GOVERNING BOARD	<u>CD</u>	<u>1/24/17</u>