

TAB 7



# City of Palmetto Agenda Item

**Meeting Date**

5/16/11

**Presenter:**

Allen R. Tusing

**Department:**

Public Works

**Title:**

SWFWMD Agreement for Palmetto Estuary Preserve Habitat Restoration II

The DPW is working with SWFWMD (SWIMM) to remove exotic species and enhance the estuarian flows of the preserve and to provide some treatment enhancement for Carr Drain a major outfall for the city. The design and work will be performed by the district and the city will provide dump trucks to haul the material away.  
This work will enhance the estuary and make it a more attractive habitat.

The only cost that will be incurred is the use of our truck and driver which is already budgeted and will not require any new dollars.

**Budgeted Amount:**

\$0.00

**Budget Page No(s):**

**Available Amount:**

\$0.00

**Expenditure Amount:**

\$0.00

**Additional Budgetary Information:**

**Funding Source(s):**

**Sufficient Funds Available:**  Yes  No

**Budget Amendment Required:**  Yes  No

**Source:**

**City Attorney Reviewed:**

Yes  
 No  
 N/A

**Advisory Board Recommendation:**

For  
 Against  
 N/A

**Consistent With:**

Yes  
 No  
 N/A

**Potential Motion/ Direction Requested:**

Approve the agreement for the Palmetto Estuary Preserve Habitat Restoration II with the Southwest Florida Water Management District and authorize the Mayor to sign the agreement.

**Staff Contact:**

Allen R Tusing

941-723-4580

atusing@palmettofl.org

**Attachments:**

Agreement for Palmetto Estuary Preserve Habitat Restoration II

COOPERATIVE AGREEMENT  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
AND  
CITY OF PALMETTO  
FOR  
THE PALMETTO ESTUARY PRESERVE HABITAT RESTORATION PROJECT  
PHASE II (W364)

THIS COOPERATIVE 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, for itself and on behalf of the Manasota Basin Board, hereinafter collectively referred to as the "DISTRICT," and CITY OF PALMETTO, a municipal corporation of the State of Florida, whose address is 516 8<sup>th</sup> Avenue West, Palmetto, Florida 34220-1209, hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, the DISTRICT and the CITY desire to combine their resources and efforts to perform coastal habitat enhancement, restoration, and/or creation of 7.86 acres of coastal habitats for the Tampa Bay estuarine ecosystem, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DISTRICT and the CITY would like to construct this PROJECT in accordance with the approved design and permits; and

WHEREAS, the DISTRICT and the CITY have agreed on the services and funding each shall contribute towards completing or accomplishing the PROJECT.

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

1. ACCESS. The CITY hereby grants permission to the DISTRICT to enter upon and use the CITY'S real property located on the west side of U.S. 41 on the north shore of the Manatee River, in Manatee County, as detailed in Figure 1, for the purpose of environmental restoration.
2. PROJECT MANAGER AND NOTICES. Each party hereby designates the employee set forth below as its respective Project Manager. Project Managers will assist with PROJECT coordination and will be each party's prime contact person. Notices and reports will be sent to the attention of each party's Project Manager by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth below. Notice is effective upon receipt.

Project Manager for the DISTRICT:

Mike Dalsis, Environmental Scientist  
Southwest Florida Water Management District  
7601 U.S. Highway 301 North  
Tampa, Florida 33637

Project Manager for the CITY:

Geoff Seiger  
City of Palmetto  
600 17<sup>th</sup> St. West  
Palmetto, Florida 34221

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

3. PROJECT SPECIFIC OBLIGATIONS. The DISTRICT and the CITY agree to perform the services and fulfill the obligations as specifically designated in Exhibit "A," attached hereto. The CITY specifically agrees to cooperate with the DISTRICT during construction and provide the land and accept the maintenance and monitoring responsibilities associated with the PROJECT in accordance with the Project Plan set forth in Exhibit "A." Any changes to the obligations and associated costs must be mutually agreed to in a formal written amendment approved by the DISTRICT and the CITY prior to being performed by either party, subject to the provisions of paragraph four (4) below.
4. FUNDING. The DISTRICT will be the lead party to this Agreement and will pay PROJECT costs for the design, permitting, construction, and construction management. The CITY agrees to be responsible for perpetual maintenance of enhanced/restored habitats after the PROJECT has been deemed complete.  
  
All funding obligations of the DISTRICT and CITY are contingent upon funds being budgeted for commencement or continuation of the PROJECT by the DISTRICT Governing Board and Manasota Basin Board and the CITY Council respectively.
5. COMPLETION DATES. The DISTRICT will commence construction of the PROJECT by August 31, 2011, will complete construction by August 31, 2012 and will otherwise meet the milestones established in this Agreement, as may be extended by the DISTRICT. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the DISTRICT, the DISTRICT'S obligations to meet the time frames provided in this Agreement will be suspended for the period of time the condition continues to exist. During such suspension, this Agreement will remain in effect. The suspension of the DISTRICT'S obligations provided for in this provision will be the DISTRICT'S sole remedy for the delays set forth herein.
6. CONTRACT PERIOD. This Agreement will be effective upon execution by the parties and will remain in effect through June 30, 2015, or upon satisfactory completion of the PROJECT, whichever occurs first, unless amended in writing by the parties.
7. PROJECT RECORDS AND DOCUMENTS. Each party, upon request, will permit the other party to examine or audit all PROJECT related records and documents during or following completion of the PROJECT. Each party will maintain all such records and documents for at least three (3) years following completion of the PROJECT. Each party will 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, will be upon the asserting party.

8. REPORTS. Both parties will provide the other party with copies of any and all reports, models, studies, maps or other documents resulting from the PROJECT.
9. LIABILITY. Each party hereto agrees to indemnify and hold the other harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and expense, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees, contractors and agents related to its performance under this Agreement. The indemnified party will have the right to approve counsel selected by the indemnifying party. This provision does not constitute a waiver of either party's sovereign immunity or extend either party's liability beyond the limits established in Section 768.28, F.S. Additionally, this provision will not be construed to impose contractual liability on either party for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S.
10. 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 advance notices or copies to the other party. This provision will not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.
11. PROJECT RECOGNITION. The parties agree to recognize all funding sources, the CITY, the DISTRICT and, if applicable, Basin Board funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition will be mutually approved. All signage must be mutually approved as to form, content and location, and must be in accordance with local sign ordinances.
12. LAW COMPLIANCE. Each party will comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement. If the PROJECT involves design services, the DISTRICT'S professional designers and the DISTRICT'S regulation and projects staff will 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.
13. 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.
14. SUBCONTRACTORS. Nothing in this Agreement will be construed to create, or be implied to create, any relationship between the CITY and any subcontractor of the DISTRICT.
15. THIRD PARTY BENEFICIARIES. Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.

16. GOVERNING LAW. All aspects of this Agreement are governed by Florida law and venue will be in Hernando County, Florida.
17. COMPENSATORY TREATMENT AND MITIGATION. This PROJECT will not be used by the CITY or any other entity as compensatory water quality treatment or wetland mitigation for any projects located within or outside of the contributing drainage basin area. This paragraph will survive the termination or expiration of this Agreement.
18. ENTIRE AGREEMENT. This Agreement and the attached exhibit 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.
19. DOCUMENTS. The following document is attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority will first be given to the language in the body of this Agreement, then to Exhibit "A."

Exhibit "A" - Project Plan

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: \_\_\_\_\_  
David L. Moore, Executive Director Date

CITY OF PALMETTO

By: \_\_\_\_\_  
Shirley Groover Bryant, Mayor Date

COOPERATIVE AGREEMENT  
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SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
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FOR  
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DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<i>mm</i>	<i>4/13/11</i>
RISK MGMT	<i>PIA</i>	
CONTRACTS	<i>Jmk</i>	<i>4/14/11</i>
RES MGMT DIR	<i>JEA</i>	<i>4/14/11</i>
DEPUTY EXEC DIR	<i>Q</i>	<i>4/14/11</i>
GOVERNING BOARD	<i>PIA Jmk</i>	

## **EXHIBIT "A"**

### **Project Plan**

#### **Project Description**

This PROJECT will be cooperatively implemented between the DISTRICT and the CITY. While the DISTRICT will take the lead for the coastal habitat PROJECT, the CITY will assume the lead for the public park/preserve planning and implementation. The sites will be available for passive recreational purposes provided such uses will not disturb or degrade the environmental quality of the enhanced/restored/created coastal habitats. This Phase Two PROJECT is intended for the creation of high quality estuarine native habitat in addition to enhancement of coastal hammock habitat that is currently dominated by non-native and nuisance vegetation. Phase One was completed in 2000 and restored approximately 30 acres of estuarine and coastal upland habitat. The Phase Two PROJECT involves the design and construction of approximately 0.5 acres of wetland creation, 4.5 acres of wetland enhancement, and the enhancement of 3.0 acres of the surrounding uplands. Construction activities may include removal of non-native and nuisance vegetation, and regrading of the site to elevations proper for the rehydration of stranded wetland communities. Upland and wetland plants will be added to the site to provide soil stabilization and to aid in recolonization of disturbed areas.

All work will be completed and any applicable reports submitted in accordance with final design and permit. The PROJECT will be complete when the DISTRICT and the CITY mutually agree that all components of the Project Plan have been successfully performed.

#### **Project Tasks**

The DISTRICT will:

- A. Make site visits with the CITY to finalize a restoration plan that maximizes the existing natural features, while enhancing the overall natural wetland and upland habitats for the parcel.
- B. Engage and fund the professional services of an environmental consulting firm to perform, where applicable, the design and permitting for the hydrologic restoration and habitat enhancement, inclusive of construction management.
- C. Serve as an agent for the CITY when acquiring the necessary environmental permits for hydrologic restoration and habitat enhancement.
- D. Administer and supervise any consultants or contractors it engages under this Agreement.
- E. Perform construction and excavation of wetland features and revegetation, including three (3) year post-construction quarterly maintenance, under either alternative outlined in paragraphs (1) and (2). The DISTRICT'S decision to select the construction alternative is at its discretion and subject to availability of DISTRICT staff and other DISTRICT concerns.
  - (1) The DISTRICT may elect to use DISTRICT personnel and equipment to construct the PROJECT.



(2) The DISTRICT may elect to retain the services of a private contractor to construct the PROJECT. Under this alternative, the DISTRICT and the CITY shall participate in the selection process.

F. Prior to the completion of the PROJECT, the DISTRICT will be responsible for any maintenance grading necessary to maintain the integrity of the site. The DISTRICT will be responsible for construction management and confirmation of as-built plans.

The CITY will:

- A. Make site visits with the DISTRICT to finalize a restoration plan that maximizes the existing natural features, while enhancing the overall native wetland and upland habitats for the parcel.
- B. Provide access to the PROJECT site (Figure 1) for the DISTRICT and any of its agents, contractors, employees, or any other party directly involved in the design, funding, construction of the PROJECT and any entities the CITY engages for follow-up monitoring purposes.
- C. Participate in the competitive selection of private restoration contractors if required.
- D. Provide in-kind services towards the implementation of the PROJECT. These services will be in the form of survey assistance, provision of haul trucks, receiving excess fill from wetland creation and spoil mound removal, clearing of non-native vegetation, staff time and resources or construction assistance at the CITY'S discretion.
- E. Be responsible for any additional costs for restoration or enhancement initiated by the CITY beyond the scope of work described in the DISTRICT'S construction plans and for any additional structures or services such as interpretive centers, maintenance etc. which is not directly related to habitat restoration.
- F. Be responsible for maintenance of enhanced/restored habitats after the PROJECT has been deemed complete. Maintenance is inclusive of all project components and will include removal of non-native plant species that may grow within the PROJECT site; where feasible, removal of non-natives will be manual, inclusive of hand tools and chain saws; at a minimum, biannual removal of new and re-sprouts should be performed until native vegetation sufficiently covers open ground and can out compete/exclude non-native vegetation. Control of non-natives will be compatible with the intent of the PROJECT, so the use of heavy machinery and widespread use of herbicides will be discouraged. This provision will survive the expiration or termination of this Agreement and will be binding upon the CITY in perpetuity.
- G. Be responsible for any post-PROJECT reporting that may be required by the permitting agencies.

### **Performance Schedule**

Complete Permitting and Design	June 30, 2011
Commence Construction	August 31, 2011
Complete Construction	August 31, 2012
Begin Maintenance Period	June 30, 2012
Complete Maintenance Period	June 30, 2015

### **Project Budget**

PROJECT costs are dependent upon final designs and construction methods. The DISTRICT anticipates total project cost to be \$130,000.



# Figure 1 Palmetto Estuary Preserve Habitat Restoration Project Phase Two



Southwest Florida  
Water Management District

### Legend

— Project Boundary

0 112.5 225 450  
Feet

Dept: SWIM  
Date: 2/23/2011  
Aerial Year: 2010

