

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: **March 13, 2007**

☒ Consent ☐ Regular
☐ Ordinance ☐ Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve Contract No. 4600000676 with the South Florida Water Management District (District) for the Palm Beach County Delaware Scrub Restoration Project (Project), commencing upon execution of the agreement, for a period of one (1) year, in an amount not to exceed \$150,000;

B) approve Budget Amendment of \$75,000 in the Natural Areas Fund including a transfer from Reserves for \$75,000, for a total of \$150,000 in project cost for the Delaware Scrub Natural Area;

C) authorize the County Administrator, or his designee, to sign all future time extensions, task assignments, certifications, and other forms associated with this contract, and necessary minor amendments that do not change the scope of work or terms and conditions of this contract.

Summary: The Contract will provide \$75,000 of state funding, administered by the District on a reimbursement basis, for the Delaware Scrub Restoration Project. The total project cost is \$150,000. The County's cost share is \$75,000, which will be paid from the Natural Areas Fund. The project proposes to remove exotic plant species from the entire site and will further restoration activities on the wetland areas. The restoration project includes enhancement of both water quality and storage, and wetland habitat functions within the watershed by providing storm-water filtration areas and removing exotic vegetation that is invading the area.

District 1 (SF)

Background and Justification: The Delaware Scrub Restoration Project is partially funded by a state appropriation through the Loxahatchee River Preservation Initiative (LRPI). The Project will provide enhancement of water resources benefiting the Loxahatchee River, including natural water quality treatment, storm-water attenuation, and base-flow maintenance. Removal of invasive exotic vegetation will help ensure the long-term survival of diverse habitats and natural communities of listed plant and animal species found within the Delaware Scrub Natural Area.

Attachments:

1. Contract
2. Budget Amendment (1226)

Recommended by:

Department Director

2-9-07

Date

Approved by:

County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010
Capital Expenditures	_____	_____	_____	_____
Operating Costs	<u>\$150,000</u>	_____	_____	_____
External Revenues	<u>(\$75,000)</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$75,000</u>	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
Budget Account No.: Fund 1226 Department 380 Unit 3162 Object 3401
Program 380 3162 R&C 4399

B. Recommended Sources of Funds/Summary of Fiscal Impact

Cost Share Agreement Number 4600000676 with South Florida Water Management District and Reserves in the Natural Areas Fund.

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

OFMB 2-15-07 2/14/17 Contract Administrator 2/20/07
2/15/07 2/14/17 2/20/07

B. Legal Sufficiency:

Minor
Assistant County Attorney

C. Other Department Review:

Department Director



ORIGINAL

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
LOCAL GOVERNMENTAL AGREEMENT**

AGREEMENT NO. 4600000676

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

THIS AGREEMENT is entered into as of the _____ by and between the South Florida Water Management District (**DISTRICT**) and Palm Beach County Board of County Commissioners (**COUNTY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **COUNTY** for the Delaware Scrub Natural Area Restoration; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for the project in support of the Delaware Scrub Natural Area Restoration
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of one (1) year.
3. The total **DISTRICT** contribution shall not exceed the amount of Seventy Five Thousand Dollars and No Cents (\$75,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$75,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **COUNTY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

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4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **COUNTY** shall cost share in the total amount of Seventy Five Thousand Dollars and No Cents (\$75,000.00) in conformity with the laws and regulations governing the **COUNTY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date, unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.
9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
10. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.
16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **CITY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
- A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.
- B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.
- C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.
17. Whenever the **DISTRICT**'s contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:
- A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **COUNTY** as set forth in Exhibit "C". The **COUNTY** shall maintain all financial/non-financial records through:
- (1) Identification of the state or federal awarding agency, as applicable
 - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
 - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
 - (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
 - (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year
- B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **COUNTY**'s financial and non-financial records to the extent necessary to monitor the

COUNTY's use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Attn: Tom Conboy, Project Manager
Telephone No. (561) 682-6220

Attn: Patrick Wiener, Contract Specialist
Telephone No. (561) 682-6220

Address:
P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

**PALM BEACH COUNTY BOARD OF
COUNTY COMMISSIONERS--DERM**

Attn: Melissa Tolbert, Project Manager
Telephone No. (561) 233-2562

Address:
Palm Beach County
Department of Environmental Resources
Management
2300 N. Jog Road---4th Floor
West Palm Beach, FL 33411-2743

19. COUNTY recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
21. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, COUNTY or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
24. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.

26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in preceding paragraphs 1 – 24
 - (b) Exhibit "A" Statement of Work
 - (c) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____

Frank Hayden, Director of Procurement

SFWMD Procurement Approved

Rv: _____

Patrick H. Green

Date: _____

1-31-07

DMZ

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

Addie L. Greene

Title Chairperson

APPROVED AS TO FORM AND LEGAL SUFFICENCY

BY: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

BY: _____

Richard E. Walesky

Richard E. Walesky, Director
Department of Environmental Resources Mgmt.

Exhibit "A"
STATEMENT OF WORK
Palm Beach County
Department of Environmental resources Management
Delaware Scrub Natural Area Restoration
Loxahatchee River Preservation Initiative

1. INTRODUCTION

Palm Beach County Department of Environmental Resources Management (ERM) in Partnership with the Town of Jupiter has purchased the Delaware Scrub property for preservation and restoration. This 15.80 acre parcel is located on Indiantown Road. The site consists of approximately 13 acres of upland scrub and 2 acres of wetlands. The wetland areas include a cypress dome and a portion of the shoreline to Jones Creek, a tributary to the Southwest Fork of the Loxahatchee River and a cypress dome. The natural communities are mostly undisturbed except for the invasion of exotic vegetation. Management of the site will include removing exotics and will further the objective of restoring the wetlands on the site. The restoration project includes enhancement of both water quality and storage, and wetland habitat functions within the watershed by providing storm water filtration areas and removing exotic vegetation that is invading the area.

The invasive, exotic plant species *Melaleuca* and Old-World climbing fern have become major infestations, while Brazilian pepper and guava have become lesser infestations in the watershed's wetlands and uplands. These infestations have reduced the ability of the wetlands to filter and store water, and have reduced their habitat value for wildlife, including several listed species (e.g., Large-flowered Rosemary, *Conradina grandiflora*, and Giant Wild Pine, *Tillandsia utriculata*) known to occur in the area.

2.0 OBJECTIVE


The objective of the Delaware Scrub Natural Area restoration is to remove the exotic vegetation, which will improve the functionality of the wetlands and allow them to store more water. This will help attenuate storm water surges to the Loxahatchee River while also improving the quality of the surface water reaching the river. It will also help extend the base flows to the river and help re-establish suitable habitat conservation areas for listed species.

3.0 SCOPE OF WORK

This project will include treatment and removal of exotic vegetation from the site. The western half of the site and the perimeter (except Jones Creek) are moderately to highly impacted by exotics. Approximately 1.3 acres are *Melaleuca*. The technique will be to mechanically remove this exotic species. Since there is more cypress to work around and the soils in and around the *Melaleuca* are softer, this will require cautious and meticulous equipment operation. The *Lygodium* initially will be treated with herbicides and then mechanically removed. The remainder of the site (5 acres in the western half and 10 acres of scrub/scrubby flatwoods on the east side) will be treated /removed by ground crews.

4.0 WORK BREAKDOWN STRUCTURE

Palm Beach County ERM shall be the responsible party for the tasks that follow. Most of the work will be contracted out to exotic vegetation removal vendors. ERM will use annual contracts where possible and will follow Palm Beach County's bidding policies and procedures, as well as the State of Florida requirements related to Competitive Consultants Negotiation Act, if necessary.



Task 1 LRPI Project Sign

The County will install a single face, 4' x 8' x ½" PVC overlay with the LRPI logo and project name.

Deliverable: The County shall provide the District a picture of the project sign installed by March 2007.

Task 2 Ground Control Treatment of Exotic Vegetation

The County's contractor will treat/remove the exotic non-native vegetation on site.

Deliverable: The County shall provide the District a report that will include invoices and photos taken before, during, and after project completion by May 2007.

Task 3 Mechanical Treatment of Exotic Vegetation

Heavy equipment will be used to treat areas infested with *Melaleuca* and *Lygodium*.

Deliverables: The County shall provide the District a report that will include invoices and photos taken before, during, and after project completion by August 2007.

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EXHIBIT "B"

PAYMENT AND DELIVERY SCHEDULE

Palm Beach County shall forward an invoice with appropriate documentation to the South Florida Water Management District following submission of all the deliverables in an amount of up to \$75,000. Palm Beach County shall be responsible for all aspects of managing and completing the project described in Exhibit A.

If the total consideration for this AGREEMENT is subject to multi-year funding allocations, funding for each applicable fiscal year of this AGREEMENT will be subject to Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this AGREEMENT shall terminate upon expenditure of the current funding, notwithstanding other provisions in this AGREEMENT to the contrary.

Task	Deliverable	Date	PBC	SFWMD	Total
Task 1	LRPI project Sign	March 2007	\$250	\$250	\$500
Task 2	Ground Control Treatment of Exotic Vegetation	May 2007	\$59,750	\$59,750	\$119,500
Task 3	Mechanical Treatment of Exotic Vegetation	August 2007	\$15,000	\$15,000	\$30,000
TOTAL			\$75,000	\$75,000	150,000

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2007 -

0596

BGEX - 380- 0207070000000000999

BGRV - 380- 0207070000000000283

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA**

**BUDGET AMENDMENT
FUND 1226 Natural Areas Fund**

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED 12/28/2006	REMAINING BALANCE
<u>REVENUES</u>							
<u>Natural Areas Management</u>							
380-3162 4399 Oth Physical Environment Rev	208,000	208,000	75,000		283,000		
TOTAL RECEIPTS & BALANCES	14,888,593	15,338,841	75,000	0	15,413,841		
<u>EXPENDITURES</u>							
<u>Reserve-Natural Areas Stwdship</u>							
380-3195 9909 Res-Improvement Progrm	8,515,977	2,124,380		75,000	2,049,380		2,049,380
<u>Natural Areas Management</u>							
380-3162 3401 Other Contractual Services *	726,932	1,526,932	150,000	0	1,676,932	896,206	780,726
TOTAL APPROPRIATIONS & EXPENDITURES	14,888,593	15,338,841	150,000	75,000	15,413,841		

**OFFICE OF FINANCIAL MANAGEMENT
& BUDGET**

**INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted**

Signatures & Dates

Bill Bellini 2-9-07
John Del 2-15-07

**BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF**

**March 13, 2007
Deputy Clerk to the
Board of County Commissioners**