

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: March 11, 2014

Consent

Regular

Workshop

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 a Project Agreement with the Florida Inland Navigation District (FIND) to reimburse the County for all construction costs associated with a Shoreline Stabilization Project along the Atlantic Intracoastal Waterway (ICW) adjacent to the Juno Dunes Natural Area;

B) approve a Budget Amendment in the Environmental Resources Capital Projects Fund in the amount of \$326,115 to recognize the Revenue from the Project Agreement with FIND; and

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

Summary: The Shoreline Stabilization Project will protect existing upland areas in the Juno Dunes Natural Area with a linear arrangement of limestone boulder revetments on the portion of the FIND property abutting the ICW. The three year Agreement provides for reimbursement of up to \$326,115 for management, engineering, permitting, design, surveying and placement of approximately 2,500 tons of boulders to stabilize approximately 930 feet of the shoreline. District 1 (SF)

Background and Justification: On August 19, 1997 the County entered into a management lease with FIND for this 30.15-acre property for an initial term of 25 years, with options to renew for additional 10-year terms (R97-1047D). Stabilization of the shoreline will reduce long-term maintenance costs associated with dredging in the ICW and protect existing upland areas in the Juno Dunes Natural Area from erosive wave activity.

Attachments:

1. Project Agreement
2. Budget Amendment (3654)

Recommended by:



Department Director

2-5-14

Date

Approved by:



County Administrator

2/18/14

Date

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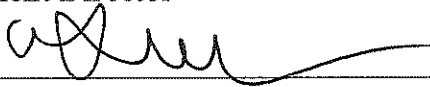
Recommended by:


Department Director

2-5-14

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Approved by:


County Administrator

2/18/14

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II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$326,115</u>	_____	_____	_____	_____
External Revenues	<u><\$326,115></u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?		Yes _____		No <u>X</u>	
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:

\$326,115 FIND Project Agreement

C. Department Fiscal Review:

H

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

J. H. [Signature]
 OFMB
 SC JS CC
 2/17 2/11

Dr. J. Jordan [Signature]
 Contract Development and Control
 2-12-14

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

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2/17 *2/11*

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B. Legal Sufficiency:

[Signature]
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C. Other Department Review:

 Department Director

**PROJECT AGREEMENT
BETWEEN PALM BEACH COUNTY AND
THE FLORIDA INLAND NAVIGATION DISTRICT
FOR
SHORELINE STABILIZATION PROJECT ALONG THE ATLANTIC INTRACOASTAL
WATERWAY ADJACENT TO THE JUNO DUNES NATURAL AREA IN THE TOWN OF
JUNO BEACH**

This Project Agreement ("Agreement") is made and entered into on this ____ day of _____, 2014, by and between the Florida Inland Navigation District, a special taxing District existing under the laws of the State of Florida (the "District"), and Palm Beach County, a political subdivision of the State of Florida (the "County"), hereinafter collectively referred to as "the parties."

WITNESSETH:

WHEREAS, the District is the owner in fee of an approximately 30.15-acre tract of real property located within the boundaries of the Town of Juno Beach in Palm Beach County, Florida, designated as MSA 614B and more specifically described in that Deed recorded in the public records of Palm Beach County, Florida at Book 658 and Page 430 (hereinafter the "District Property"); and

WHEREAS, since August 19, 1997, the County has leased the District Property from the District and managed the property as part of the Juno Dunes Natural Area (the "Natural Area" formerly known as the Juno Hills Natural Area), and the parties have amended the lease agreement so that the County may continue to manage the District Property as part of the Natural Area; and

WHEREAS, the parties wish to complete a shoreline stabilization project consisting of a linear arrangement of limestone boulder revetments and breakwaters on the portion of the District Property abutting the Atlantic Intracoastal Waterway (and the adjacent waters belonging to the state) to prevent silting in the Atlantic Intracoastal Waterway and to restore and protect existing upland areas in the Natural Area (hereinafter referred to as the "Project"); and

WHEREAS, the County has the expertise and the ability to manage and oversee the Project and the District desires to pay the County (on a reimbursement basis) to complete the Project; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the parties expressly acknowledge, the parties to this Agreement agree as follows:

1. **RECITALS.** The parties hereto acknowledge and agree that the recitals set forth above are true and correct, and are fully incorporated into this Agreement.

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THE FLORIDA INLAND NAVIGATION DISTRICT
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1. **RECITALS.** The parties hereto acknowledge and agree that the recitals set forth above are true and correct, and are fully incorporated into this Agreement.

2. **PURPOSE OF AGREEMENT/PROJECT.** The parties wish to set forth their desire for the County to complete a shoreline stabilization project consisting of a linear arrangement of limestone boulder revetments and breakwaters on the portion of the District Property abutting the Atlantic Intracoastal Waterway (and the adjacent waters belonging to the state) to prevent silting in the Atlantic Intracoastal Waterway and to restore and protect existing upland areas in the Natural Area and for the District to reimburse the County for the costs of the Project. The Project consists of placement of approximately 2,500 tons of limestone boulders, aligned in a linear arrangement to stabilize approximately 930 feet of the shoreline of the District Property.

3. **PROJECT COST.** The estimated cost of the Project is as follows:

CONSTRUCTION COST ESTIMATE			
ITEM	UNIT COST \$	AMOUNT	TOTAL \$
Turbidity	90/day	10 days	\$900
Mob/demob rock	24,000	1 each	\$24,000
Filter cloth	80/ton	2,500 tons	\$200,000
Transport (9 miles)	9/sy	4,344 SY	\$39,100
	0.75/ton-mile	20,307 ton-miles	\$15,230
TOTAL			\$279,230

PROJECT COST ESTIMATE			
	DISTRICT COSTS	COUNTY COSTS	TOTAL COSTS
Construction (cost base bid)	\$ 279,230	-0-	\$ 279,230
As-built topographic survey (for permit)	\$ 5,000	-0-	\$ 5,000
Engineering, design, permitting, contract administration, construction oversight (15% of construction cost)	\$ 41,885	-0-	\$ 41,885
TOTAL ESTIMATED COST	\$ 326,115	-0-	\$ 326,115

3. **TERM/EFFECTIVE DATE.** This Agreement shall commence upon execution by both parties and shall continue in full force and effect for a period of three (3) years from the date of execution by the parties.

4. **COUNTY'S OBLIGATIONS.**

A. The COUNTY shall be responsible for all management, engineering, permitting, design, surveying and construction necessary to complete the Project.

2. **PURPOSE OF AGREEMENT/PROJECT.** The parties wish to set forth their desire for the County to complete a shoreline stabilization project consisting of a linear arrangement of limestone boulder revetments and breakwaters on the portion of the District Property abutting the Atlantic Intracoastal Waterway (and the adjacent waters belonging to the state) to prevent silting in the Atlantic Intracoastal Waterway and to restore and protect existing upland areas in the Natural Area and for the District to reimburse the County for the costs of the Project. The Project consists of placement of approximately 2,500 tons of limestone boulders, aligned in a linear arrangement to stabilize approximately 930 feet of the shoreline of the District Property.

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B. The County shall provide the following deliverables for the Project to the District: environmental resource permits; project design drawings, technical specifications and construction contract; and as-built drawings of the completed project.

C. Upon completion of specific deliverables, the County shall submit invoices for payment to the District. Each invoice shall include a reference to this Agreement, identify the Project, and identify the amount due and payable to the County. The invoice(s) shall be itemized in sufficient detail for audit and shall be supported by copies of any corresponding contractor's invoices. The County's last invoice to the District shall explicitly provide that the invoice is the "Final Invoice" for the Project.

D. If the Project costs exceed the estimate of \$326,115, the County shall seek and obtain written approval from the District before proceeding with the Project.

5. **DISTRICT'S OBLIGATIONS.**

A. The District shall reimburse the County for all costs to complete the Project, which is estimated to be approximately \$326,115.

B. Upon receipt of an invoice from the County, the District shall pay the invoice amount in full within forty-five (45) days. All payments made to the County shall be by check made payable to the Palm Beach County Board of County Commissioners, shall be clearly marked to identify the Project, and shall be mailed to the address provided in Paragraph 6 herein to the attention of the Project Manager.

C. Within five business days of receipt from the County, the District's Project Manager shall review and if acceptable approve in writing the final project design plans for the Project.

6. **PROJECT MANAGERS.**

A. The Executive Director of the District shall serve as the District's Project Manager for this Project. All correspondence, requests for inspections, and invoices for payment shall be directed to him at 1314 Marcinski Road, Jupiter, Florida 33477; Facsimile: 561-624-6480.

B. The Director of the County's Department of Environmental Resources Management shall serve as the County's Project Manager for this Project. All correspondence shall be directed to him at 2300 North Jog Road, 4th Floor, West Palm Beach, Florida 33411-2743; Facsimile: 561-233-2414.

7. **NOTICES.** All formal notices between the parties shall be deemed received if delivered by hand delivery, facsimile (with confirmation of delivery receipt), or certified mail, return receipt requested, to the party's Project Manager identified in Paragraph 6 of this Agreement. Should any party change its address, written notice of such new address shall promptly be sent to the other party. A copy of all such notice shall also be sent to the following counsel by U.S. Mail:

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Shannon Fox, Esq., Palm Beach County Attorney's Office, 301 North Olive Avenue, 6th Floor, West Palm Beach, Florida 33401; and Peter Breton, Moyle, Flanigan, Katz, Breton, White & Krasker, 625 North Flagler Drive - 9th Floor, West Palm Beach, FL 33401.

8. **INDEPENDENT CONTRACTOR.** Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

9. **EQUAL OPPORTUNITY.** The parties agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity, or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.

10. **INDEMNIFICATION.** Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend and hold harmless the District against all actions, claims or damages arising out of the County's negligence in connection with the Agreement and any amendment hereto, and the District shall indemnify, defend and hold harmless the County against all actions, claims or damages arising out of the District's negligence in connection with the Agreement and any amendment hereto. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

11. **INSURANCE.** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, the County and the District acknowledge to be insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the Legislature. The County and the District agree to maintain or to be insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, either party shall provide an Affidavit or Certificate of Insurance evidencing insurance and/or sovereign immunity status, which the other party agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve the County or the District of its liability and obligations under the Agreement or any amendments thereto.

12. **TERMINATION.** If a party fails to fulfill its obligations under this Agreement in a timely and proper manner, the party not in default shall have the right to terminate the Agreement by giving written notice of the deficiency and the party's intent to terminate if not corrected. The party in default shall then have sixty (60) days from receipt of notice to correct the stated deficiency. If the defaulting party fails to correct the deficiency within this time and unless otherwise agreed by the parties, the party not in default may exercise the right to terminate the Agreement.

Shannon Fox, Esq., Palm Beach County Attorney's Office, 301 North Olive Avenue, 6th Floor, West Palm Beach, Florida 33401; and Peter Breton, Moyle, Flanigan, Katz, Breton, White & Krasker, 625 North Flagler Drive - 9th Floor, West Palm Beach, FL 33401.

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13. **FUNDING CONTINGENCY.** The County's performance and obligations under the Agreement and any amendments hereto are contingent upon an annual appropriation by the Board of County Commissioners. The District's performance and obligations under the Agreement and any amendments hereto are contingent upon an annual appropriation by the District's Governing Board. Notwithstanding this contingency, the District shall diligently pursue the approval and procurement of its funding obligation.

14. **ENFORCEMENT COSTS.** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties provided, however, this clause pertains only to the parties hereto.

15. **RECORDS.** The parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and nonfinancial 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. The parties 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 date of final payment under this Agreement and upon reasonable notice, time and place. In the event that the parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the parties.

16. **SEVERABILITY.** In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement, and the same shall remain in full force and effect.

17. **WAIVER/BREACH.** It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant or provision.

18. **DISPUTES.** Disputes under this Agreement may be resolved by the parties' Project Managers named in Paragraph 6 of this Agreement. If the Project Managers are unable to reach a resolution, the parties may select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties. The parties agree that each party shall be responsible for its respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.

19. **CONSTRUCTION.** No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement including but not limited to any citizen or employee of the county and/or the District.

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19. **CONSTRUCTION.** No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement including but not limited to any citizen or employee of the county and/or the District.

20. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.

21. **COMPLIANCE WITH LAW.**

A. The parties shall comply with any applicable federal, state and local rules and regulations in providing services under this Agreement. The parties further agree to include this provision in any subcontracts issued as a result of this Agreement.

B. The parties, by their execution of this Agreement, acknowledge and attest that neither they nor, to the best of their knowledge, any of their suppliers, contractors, or consultants who shall perform work on the Project are on the convicted vendor list. The parties further understand and accept that this Agreement shall be either void or subject to immediate termination by the other parties in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, Florida Statutes. In the event of such termination, the party not in default shall not incur any liability to the defaulting party for any work or materials furnished.

C. The parties warrant that they have not employed or retained any person, other than a bona fide employee working solely for the party, to solicit or secure this Agreement. Further, the parties warrant that they have not paid or agreed to pay any person, other than a bona fide employee working solely for the party, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, any party may terminate this Agreement without liability and, in its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

22. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by Florida law. Venue for any legal proceedings shall be in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and the parties hereby expressly waive any other venue or jurisdiction.

23. **AMENDMENTS.** This Agreement may only be amended by written Agreement executed by the parties hereto with the same formality used to execute this Agreement

24. **ENTIRETY OF AGREEMENT.** This Agreement, including attached exhibits and specifications, embodies the entire Agreement and understanding of the parties and supersedes all prior oral and written communications between them.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first written above.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

BY: _____
Priscilla A. Taylor, Mayor

DATE: _____

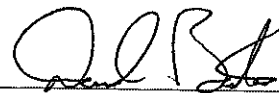
DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO
TERMS AND CONDITIONS:

BY: 
Assistant County Attorney


Robert Robbins, Director
Palm Beach County Dept. of
Environmental Resources Management

DATE: 2/14/14

DATE: _____

(SEAL)

LEGAL FORM APPROVED BY
DISTRICT COUNSEL:

DISTRICT:
BOARD OF COMMISSIONERS OF THE
FLORIDA INLAND NAVIGATION DISTRICT

BY: _____

BY: _____
Chair

DATE: _____

DATE: _____

ATTEST:

Secretary

(SEAL)

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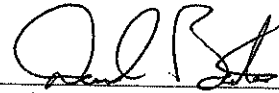
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Chair

DATE: _____

DATE: _____

ATTEST:

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(SEAL)

2014-

0410

BGEX - 381 - 020414*0758

BGRV - 381 - 020414*0258

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT

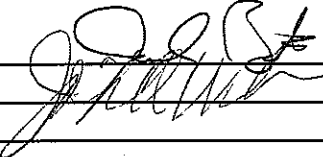
Fund 3654 Environmental Resources Capital Projects

ACCOUNT NAME AND NUMBER	ORIGINAL	CURRENT	INCREASE	DECREASE	ADJUSTED ENCUMBERED		REMAINING
	BUDGET	BUDGET			BUDGET	/ Expended	
<u>REVENUES</u>							
381-E457 Juno Dunes FIND MSA 614B 4399-Other Physical Environmental Reven	0	0	326,115	0	326,115	0	326,115
TOTAL RECEIPTS & BALANCES	5,528,414	6,136,160	326,115	0	6,462,275		
<u>EXPENDITURES</u>							
381-E457 Juno Dunes FIND MSA 614B 3401 Other Contractual Services	828,311	828,311	326,115		1,154,426	2,870	1,151,556
TOTAL APPROPRIATIONS & EXPENDITURES	5,528,414	6,136,160	326,115	0	6,462,275		

Environmental Resources
Management

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

Signatures & Dates



2/12/14

cc 2/11

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

March 11, 2014

Deputy Clerk to the
Board of County Commissioners

2014- 0410

BGEX - 381 - 020414*0758

BGRV - 381 - 020414*0258

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT

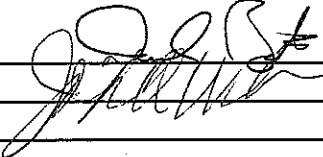
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Management

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Signatures & Dates



2/12/14

oe 2/11

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

March 11, 2014

Deputy Clerk to the
Board of County Commissioners