

AGENDA ITEM SUMMARY

Department: Environmental Resources Management

Motion and Title: Staff recommends motion to:

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

Background and Justification: On November 18, 2014, the BCC approved Agreement ARQ-58 (R2014-1767) that provided \$200,000 for monitoring, reporting and perpetual maintenance of the mitigation areas at Snook Island/ Bryant Park. On June 2, 2015, Board of County Commissioners (BCC) approved Agreement ARX-05 (R2015-0725) with FDOT to provide \$60,000 for monitoring, reporting and perpetual maintenance of the Snook Island II mitigation area. The Amendment combines Agreements ARQ-58 and ARX-05 and reallocates remaining funds within both agreements for additional monitoring, reporting and maintenance of the mitigation areas at Snook Island/Bryant Park until June 30, 2022 and Snook Island II mitigation area until June 30, 2023. A not-to-exceed total amount of \$110,000 of funding is available for this additional work.

1. Grant Agreement
2. Resolution

Approved by: Fall 5/21/20
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs	110,000				
External Revenues	(110,000)				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

Does this item include the use of federal funds? Yes _____ No X

Budget Account No.: Fund ____ Department ____ Unit ____ Object ____
Program _____ Fund 1225-380-3094-3401 (\$59,980)
 Fund 3654-381-E459-4399 (\$50,020)

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

Florida Department of Transportation – CSFA 55.031

C. Department Fiscal Review:

S. Neary

C. Department Fiscal Review:


III. REVIEW COMMENTS

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

Robert R. Kewer 5/8/2020
 OFMB  5/7
 Legal Sufficiency:

Anne L. Jaworski 5/8/2020
 Contract Development and Control

B. Legal Sufficiency:

 5/20/2020
Assistant County Attorney

C. Other Department Review:

Department Director

ATTACHMENT 1

DUNS No.: 80-939-7102
CSFA No.: n/a

Contract No.: ARX-05
FM No: 419013-1-78-02
FEID No: VF-596-000-785

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
JOINT PARTICIPATION AGREEMENT
AMENDMENT NUMBER TWO

THIS Amendment Number Two made and entered into this _____ day of _____, 20____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County, located at 2300 North Jog Road, West Palm Beach, Florida 33411-2745, hereinafter referred to as the COUNTY.

WITNESSETH

WHEREAS, on June 19, 2015 the parties entered into a Joint Participation Agreement, hereinafter referred to as the Agreement, wherein the COUNTY agreed to provide certain improvements in connection with Financial Management (FM) Number 419013-1-78-02 for post construction monitoring and maintenance and perpetual maintenance in Palm Beach County, Florida, hereinafter referred to as Project; and

WHEREAS, the parties amended the Agreement on February 22, 2017 (Amendment Number One) and

WHEREAS, the parties desire to further amend the Agreement to indicate that the mitigation project for Southern Boulevard Bridge has been relocated from Bingham Island to Snook Island II and will be used to mitigate future impacts to seagrass and mangroves in Palm Beach County; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree to amend that certain Joint Participation Agreement dated June 19, 2015, as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The COUNTY is responsible for the post construction monitoring and perpetual maintenance of the Snook Island/ Bryant Park and Snook Island II mitigation projects. **Exhibit A** of the Agreement is deleted in its entirety and replace with **Exhibit A** of this Amendment, attached hereto and made a part hereof.
3. The Deliverables for both mitigation projects have been revised. **Exhibit B** of the Agreement is deleted in its entirety and replace with **Exhibit B** of this Amendment, attached hereto and made a part hereof.

4. This Amendment extends the term of the Agreement. Paragraph 2, of Amendment One, is amended to read as follows:

Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2023, whichever occurs first.

5. The DEPARTMENT agrees to pay the COUNTY an additional amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) for post construction monitoring and maintenance and perpetual maintenance of Snook Island/Bryant Park and Snook Island II mitigation projects. Paragraph 6, of the Agreement, is amended to read as follows:

The DEPARTMENT agrees to pay the COUNTY for services related to the Project as described in Exhibit A of this Amendment. The total Department's share toward the project is an amended amount of ONE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$110,000.00) for post construction monitoring and maintenance. The County shall provide quarterly progress report, to the Department, detailing all the services performed. In the event the post construction monitoring and maintenance cost of the Project exceeds the DEPARTMENT's participation of ONE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$110,000.00), any additional cost shall be the sole responsibility of the COUNTY.

Project	FM#	Fiscal Year	Amount
FDOT Bridge repair/ replacement Projects	419013-1-78-02	16/17	\$60,000.00
		19/20	<u>\$50,000.00</u>
			\$110,000.00

All provisions, covenants, terms and conditions of the Agreement between the parties theretofore entered on June 19, 2015 and amended on February 22, 2017, as originally set forth therein, which are not hereby expressly amended or modified and not in conflict with the terms hereof, are hereby ratified and confirmed and shall remain the same and be unaffected by these presents.

THIS SPACE WAS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, this Amendment is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No. _____, hereto attached.

PALM BEACH COUNTY, Florida, A
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: DAVE KERNER
TITLE: MAYOR
_____ day of _____, 20____

BY: _____
STEVEN C. BRAUN, P.E.
DIRECTOR OF TRANSPORTATION DEVELOPMENT

ATTEST: SHARON R. BOCK
CLERK & COMPTROLLER

LEGAL REVIEW:

BY: _____
(SEAL) CIRCUIT COURT

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED:

BY: _____
COUNTY ATTORNEY
DATE: _____

BY: _____
DISTRICT PROGRAM MANAGEMENT ENGINEER

APPROVED AS TO TERMS AND CONDITIONS:

BY: 
DIRECTOR, ENVIRONMENTAL RESOURCES MANAGEMENT

EXHIBIT A
SCOPE OF SERVICES
FM # 419013-1-78-02

The DEPARTMENT entered into two Agreements with the COUNTY (Contract APJ-29 & ARR-96) for the design, permitting, and construction of the FDOT Snook Island/ Bryant Park and Snook Island II mitigation areas, respectively. The DEPARTMENT and the COUNTY agreed to enter into subsequent Joint Participation Agreements (JPAs) upon completion of the Snook Island/Bryant Park and Snook Island II construction to monitor and maintain the mitigation areas for 5 years upon completion of all construction requirements (Contract ARQ-58 & ARX-05), respectively.

The Snook Island/Bryant Park mitigation monitoring activities (Contract ARQ-58) were scheduled for completion on June 30, 2019. The COUNTY requested additional time to complete the final monitoring report; therefore, Contract ARQ-58 was extended for an additional six (6) months until December 30, 2019. Upon review of the seagrass mitigation area, it was determined that this Project would not meet seagrass success criteria as listed in the Project permits. Based on coordination between the COUNTY and the regulatory agency, South Florida Water Management District (SFWMD), it was agreed that the COUNTY needed to monitor the Snook Island/Bryant Park mitigation area for an additional three (3) years to fulfill the permit success criteria, before the DEPARTMENT receives seagrass mitigation credits. The additional three (3) years of monitoring will be added to this scope of services for the Snook Island II mitigation monitoring and maintenance, Contract ARX-05.

The Agreement ARX-05 and this Amendment will provide funds to the COUNTY for the additional three (3) years of monitoring required on the Snook Island/Bryant Park (ARX-05) mitigation project and five (5) years of monitoring and maintenance on the Snook Island II mitigation project as required in the project environmental permits. The monitoring activities for both projects will be combined in one report and submitted to the regulatory agencies annually.

The Snook Island/Bryant Park and Snook Island II projects provide seagrass and mangrove mitigation credits to the DEPARTMENT to compensate for Southern Boulevard Bridge and various past, on-going and future roadway & bridge construction project impacts to seagrass and mangroves in Palm Beach County.

The COUNTY will be paid for actual costs incurred for monitoring and maintenance fees after the submission of invoices and the listed deliverables in **Exhibit B**, to the DEPARTMENT. The work to be performed pursuant to this Agreement includes the following listed services:

POST-CONSTRUCTION MONITORING AND MAINTENANCE PROGRAM

The monitoring duties will include three (3) additional years (5 years already completed) of annual post-construction monitoring on the Snook Island/Bryant Park project and include 5 years of annual post-construction monitoring for the Snook Island II mitigation project. Monitoring will include the submittal

of annual reports to the regulatory agencies in accordance with the permitting requirements and provide a copy of the reports to the DEPARTMENT. The maintenance activities shall be at a frequency to maintain the project below 5% coverage of exotic vegetation as per the permit conditions.

PERPETUAL MAINTENANCE

The COUNTY shall perform site maintenance in perpetuity upon completion and acceptance of the Snook Island/Bryant Park and Snook Island II projects by the regulatory agencies and release of all mitigation credits from the regulatory agencies.

EXHIBIT B
METHOD OF COMPENSATION & DELIVERABLES
FM # 419013-1-78-02

POST-CONSTRUCTION MONITORING AND MAINTENANCE AND PERPETUAL MAINTENANCE

The DEPARTMENT'S total contribution for the anticipated additional three (3) years of monitoring on the Snook Island/Bryant Park mitigation site, five (5) years of monitoring and maintenance on the Snook Island II project and perpetual maintenance for the COUNTY's Snook Island/Bryant Park and Snook Island II project is an amount not to exceed ONE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$110,000.00).

The wetland monitoring reports for the Snook Island/Bryant Park and Snook Island II projects shall be delivered on an annual basis. The COUNTY shall be paid for actual costs incurred for the Project, upon submission and acceptance of deliverables from the COUNTY. The deliverables are as follows for annual reports:

- 1) A copy of the annual wetland monitoring and maintenance reports for the Snook Island/Bryant Park project and the Snook Island II project combined one report.
- 2) A copy of acknowledgement of receipt and acceptance from regulatory agencies for monitoring reports.

Final annual report for the Snook Island/Bryant Park and Snook Island II project:

- 1) A copy of the annual wetland monitoring and maintenance reports.
- 2) A copy of acknowledgement of receipt and acceptance from regulatory agencies for monitoring reports.
- 3) Letter from regulatory agencies with final approval and acceptance of the Project

Upon completion of all monitoring reports and acceptance from the regulatory agencies with final approval and acceptance of the Project, the COUNTY agrees to maintain the Snook Island/Bryant Park and Snook Island II project in perpetuity as required by the environmental permits.

ATTACHMENT 2

RESOLUTION NO. R-2020 _____

**RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA
APPROVING JOINT PARTICIPATION AGREEMENT
AMENDMENT NUMBER TWO WITH THE STATE OF
FLORIDA DEPARTMENT OF TRANSPORTATION FOR
THE MONITORING AND MAINTENANCE OF THE SNOOK
ISLAND/BRYANT PARK MITIGATION AREA.**

WHEREAS, the Florida Department of Transportation (FDOT) and Palm Beach County (County) entered into a Joint Participation Agreement (JPA) on June 19, 2015, for the purpose of providing post-construction monitoring and maintenance and perpetual maintenance of a FDOT mitigation project; and

WHEREAS, the JPA was amended on February 22, 2017 (R2017-0905), for the purpose of extending the Agreement until June 30, 2020; and

WHEREAS, FDOT and the County are desirous to further amend the Joint Participation Agreement (JPA) for the purpose of the continuation of the post-construction monitoring and maintenance and perpetual maintenance of Snook Island/Bryant Park and Snook II mitigation area; and

WHEREAS, through JPA Amendment Number Two, the County will provide additional time and reallocate funding for monitoring and maintenance to this mitigation area; and

WHEREAS, the improvements are in the best interest of both the County and FDOT and it would be more practical, expeditious, and economical for the County to perform such activities.

(Intentionally Left Blank)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, that the following be established:

- 1. The recitations set forth herein above are true, accurate and correct, and are incorporated herein.
- 2. The Board of County Commissioners approves the JPA Amendment Number Two with FDOT and authorizes the Mayor to sign on behalf of the Board.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, was as follows:

Commissioner Dave Kerner, Mayor	_____
Commissioner Robert S. Weinroth, Vice Mayor	_____
Commissioner Hal R. Valeche	_____
Commissioner Gregg K. Weiss	_____
Commissioner Mary Lou Berger	_____
Commissioner Melissa McKinlay	_____
Commissioner Mack Bernard	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2020.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Scott A. Stone
Assistant County Attorney

By _____
Deputy Clerk