



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

DATE: October 10, 2018

TO: Olga Wolanin, Superintendent-Water Division Compliance, Utilities Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 10-10-18*

FROM: Katharine M. Zamboni, Assistant County Attorney *KMZ*

RE: **Cooperative Funding Agreement for Toilet Rebate Project - Phase 12 (N982)
Request for Legal Services (RLS); CAO Matter No. 2018-0503**

Pursuant to the above Request for Legal Services (RLS), the Utilities Department requested legal review of a proposed Cooperative Funding Agreement (CFA) between Manatee County and the Southwest Florida Water Management District (SWFWMD). There were no specific legal issues raised in the RLS. Therefore, I have limited my review to identifying legal issues that could give rise to claim or case against the County. I express no opinion as to the business judgment of entering into the Agreement.

I have reviewed the proposed CFA and find it to be legally sufficient and consistent with Resolution R-07-31, which authorizes financial incentives for indoor water conservation projects. The form and content of the agreement are very similar to previous CFAs between the County and SWFWMD for this multi-year project, with some revisions, which I have highlighted below.

First, the proposed CFA for Phase 12 includes new language that permits the County to submit required reports via email to the Contract Manager. As a result of this additional language, I recommend that staff request SWFWMD to include the Contract Manager's email address with the contact information provided in paragraph 1.

Second, subparagraph 3.4 contains a new requirement that the County obtain SWFWMD's "input" as to whether contractor costs are "allowable" under the Agreement, *prior to posting solicitations* for a contract. Previous versions of the CFA for this project required that the County obtain SWFWMD's approval *prior to entering into an agreement* with a contractor. Failure to comply with this provision could affect the County's ability to be reimbursed for contractor costs.

* Board Certified in Construction Law

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Third, SWFWMD has eliminated subparagraph 14.2, which appeared in previous CFAs and required the County to provide a report to SWFWMD indicating whether each contractor or subcontractor is a minority-owned or woman-owned or small business enterprise. As a result, the proposed CFA does not include an Exhibit B for such a report.

Fourth, the proposed CFA contains a new paragraph 15 for Scrutinized Companies. While it is highly unlikely the County would ever appear on a list of scrutinized companies, staff should be aware of this new provision.

Fifth, paragraph 21 on Governing Law changes the exclusive venue for resolving disputes under the CFA from Hernando County to Hillsborough County. While this Office generally counsels against agreeing to venue outside of Manatee County, based on past experiences with this multi-year project, SWFWMD will not agree to change the venue to Manatee County.

Next, paragraph 23 on Counterparts is also a new provision, which is standard contract language. This paragraph specifically enables the parties to execute different signature pages without affecting the effectiveness of the contract.

Finally, the signature page provided contains a stamp over SWFWMD's signature block indicating that the agreement cannot be executed until after the FY2019 budget is approved. I recommend that staff request a new signature page from SWFWMD that does not contain that stamp. At the same time, staff should request that the County's signature block be modified to conform with this Office's standard layout for the Commission Chairperson's signature as follows:

MANATEE COUNTY, a political subdivision of the State of Florida

By: its Board of County Commissioners

By: _____
Chairperson

Date: _____

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

Ms. Wolanin
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I trust this response adequately addresses your request. Should you have any further questions, please do not hesitate to contact this Office.

KMZ

Copies to: Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Deputy County Administrator
C. Mike Gore, Director, Utilities Department
Mark Simpson, Deputy Director, Utilities Department