

OFFICE OF THE COUNTY ATTORNEY



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MEMORANDUM

DATE: June 20, 2019

TO: Damon Moore, Ecological Resources Program Manager, Parks and Natural Resources Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 6-20-19*

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

RE: **Subaward Grant Agreement Between Manatee County and Tampa Bay Estuary Program
Request for Legal Services; CAO Matter No. 2019-0288**

The Parks and Natural Resources Department requested legal review of a Subaward Grant Agreement between Manatee County and the Tampa Bay Estuary Program (TBEP) for a coastal upland habitat restoration project for Robinson Preserve to be funded by the Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component.

Brief Answer:

I have reviewed the draft grant agreement. I recommend revising the draft as reflected in the attached mark-up.

Discussion:

I recommend that the Department request the revisions reflected in the attached mark-up. My substantive comments are further explained below:

- WHEREAS clauses: I recommend including one or more additional "whereas" clauses to explain the source of the federal funding.
- Section 2: There is a reference to the additional RESTORE Council terms and conditions to be included as Exhibit "B." This exhibit has not been provided and

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therefore the reference to this exhibit must be deleted, unless the exhibit is provided and reviewed before the agreement is executed. In addition, I recommend adding language to the end of section 2 to allow the time frames set forth in the Scope of Work to be suspended in the event of an emergency.

- Section 3: I recommend deleting “unqualified” and adding language to clarify that the County’s Project Manager does not have authority to amend the contract and to provide that any changes to the designation of a project manager be provided to other party in writing.
- Section 4: In subparagraph d, I recommend inserting that if the County fails to submit a final invoice within 60 days of the end of the agreement, the County’s right to payment is forfeited only if it is due to inexcusable neglect to cover situations that may be beyond the County’s ability to control.
- Section 7: I deleted the first reference to the Americans with Disabilities Act because this law is identified in a later paragraph regarding a number of federal nondiscrimination laws. I also moved the reference to EPA’s procurement regulations to this section because those are federal regulations, rather than a requirement of Florida Statutes.
- Section 12: I deleted the reference to the Freedom of Information Act (FOIA) because the County is not a federal entity and is not subject to the requirements of FOIA.
- Section 22: I recommend deleting the requirement that the County obtain written consent of TBEP before subcontracting any portion of the work. .
- Section 24: I recommend deleting the language that could subject the County to an onerous penalty for breaching the agreement.
- Section 26: I recommend that venue for any legal action be in Manatee County because that is where the project is located.

It should be noted that because this grant is a subaward of federal funding, there are a number of federal laws and regulations that govern the grant and future contracts used to complete the grant project. Staff must carefully review each and every statute, regulation, policy document and form referenced in the grant agreement to ensure staff understands its obligations and is capable of complying with the requirements before the agreement is presented to the Board for execution. By way of example, Section 7, subparagraph c.8 requires that all documents created by the County are to be printed on recycled paper and indicate as such on each document. If staff has any questions about a particular statute, regulation, policy document, form or any requirement, staff should seek clarification before the agreement is executed.

Conclusion:

The draft grant agreement, with the revisions reflected in the attached redline, is legally sufficient and consistent with the purpose of Robinson Preserve and management goals to restore native habitat on the property.

I trust this response has adequately addressed your question. Should you have any further questions, please do not hesitate to contact this Office.

KMZ
Enclosure

Copies to: Cheri Coryea, County Administrator
John Osborne, Deputy County Administrator
Karen Stewart, Acting Deputy County Administrator
Charlie Hunsicker, Director, Parks and Natural Resources Department