



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE: 04/07/09

SUBJECT: ROSE BAY FUNDING AGREEMENT

DEPARTMENT: CITY MANAGER

RECOMMENDED MOTION:

To approve the revised Funding Agreement with St. John's River Water Management District for disbursement and utilization of funds for the Rose Bay Restoration Project and authorize the Mayor and City Manager to execute necessary documents.

SUMMARY:

The City Council previously authorized and appropriated \$1 million toward the \$4 million sponsor match shortfall to complete the Rose Bay Watershed Restoration Project. A Memorandum of Understanding and Funding Agreement were also executed. The St. Johns River Water Management District (District) requested that the District, City, Volusia County and Florida Inland Navigation District (FIND) formalize the partnership by each committing \$1 million toward the unmet sponsor match. Each partnering agency, with the exception of FIND, executed the agreement. FIND has indicated that they will fund only that portion of the unmet match which exceeds \$3 million, up to a total amount of \$1 million. The District still anticipates a total project cost of \$4 million.

The attached agreement has been updated by the District to reflect the change made by FIND. It still limits the City's contribution to no greater than \$1 million. Staff recommends approval.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Shannon M. Lewis <i>[Signature]</i>	Date 03/30/09
FINANCE DEPARTMENT	<i>[Signature]</i> Approved as to Budget Requirements	Date 3/30/09
CITY ATTORNEY	<i>[Signature]</i> Approved as to Form and Legality	Date 3/31/09
CITY MANAGER	<i>[Signature]</i> Approved Agenda Item For:	4/7/09

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

Due to the FIND grant funding stipulation the project unmet sponsor cost can not be distributed as written in the existing contracts. While the District, County and City will now contribute 33% of the initial cost instead of the 25% originally agreed to, the construction contract is written to be awarded in stages so the maximum amount of dredge sediment material can be removed while the total project cost to the District and each partner will not exceed the approved \$1million limit.

REQUEST

Please bring revised Funding Agreements for the City of Port Orange and Volusia County to provide \$1,000,000 each to the District for the USACE Rose Bay 206 Program funding partnership for approval at the April 14, 2009 meeting of the District Governing Board.

ROSE BAY ECOSYSTEM RESTORATION FUNDING AGREEMENT

This Agreement is entered into this ____ day of _____ 2009, between the City of Port Orange ("Port Orange") and St Johns River Water Management District (the "District") (collectively the "Parties").

BACKGROUND

The Rose Bay Restoration project is a multi-agency watershed restoration initiative and United States Army Corps of Engineers (USACE) Section 206 Rose Bay Ecosystem Restoration Project (the "Rose Bay Restoration"). It involves several Florida governmental entities including Port Orange and the District as well as Volusia County and the Florida Inland Navigation District. The remaining project components are the reconstruction of a historical spoil containment site and habitat restoration dredging.

SJRWMD, as the Section 206 Project local non-federal sponsor, has a cost share obligation of 35 percent of the project costs up to a total project cost of approximately 9.23 million dollars and 100 percent of the costs thereafter. The USACE pre-construction engineering cost estimate has determined that due to rising costs the legislated federal funding cap limit to the Section 206 Program projects there will be an anticipated unmet sponsor match of up to \$4,000,000 to complete the spoil site construction and conduct the restoration dredging.

Port Orange and Volusia County have agreed to jointly and equally share the unmet sponsor obligation with the District in an amount up to but not to exceed \$1,000,000 per entity. The Florida Inland Navigation District will fund any remaining amount not to exceed \$1,000,000 for a total cumulative amount from all partners not to exceed \$4,000,000. The purpose of this Agreement is to memorialize the agreement between Port Orange and the District.

Accordingly, the Parties agree as follows:

TERM

1. This Agreement is effective when executed by both parties. Unless either terminated earlier as provided herein or extended upon mutual agreement of the Parties, the Agreement expires on September 30, 2010.

RESPONSIBILITIES

2. The City agrees to provide the District with one million dollars for a total projected unmet local sponsor obligation equal to or more than \$3,000,000 for the Rose Bay Restoration.
3. The City agrees to provide these funds within 30 days of the District's written request. The time of the District's request is dependent upon when the District is obligated to

provide the local sponsor match to the USACE. The District expects to make such request on or before June 30, 2009.

4. The District agrees to refund to the City any amount received from the City that exceeds one third of the actual unmet local sponsor obligation of less than \$3,000,000 upon receipt of the excess funds from USACE.
5. If the City initially provides the District less than one million dollars based on a projected unmet local sponsor match of less than \$3,000,000 and the actual unmet local sponsor match exceeds the projected local sponsor match, the City agrees to provide the District additional funds representing one third of the unmet sponsor match (not to exceed a total of one million dollars when combined with those funds initially provided to the District).
6. Paragraphs four and five survive the termination or expiration of this Agreement.
7. The District agrees to apply all funds received from the City pursuant to this Agreement to the USACE Section 206 Rose Bay Ecosystem Restoration Project.

ADDITIONAL TERMS

8. This Agreement may be terminated by either Party on ten days written notice and prior to the District's transmittal of funds to the USACE if the bids in response to the USACE's solicitation for the construction of the spoil material containment area and the first phase of dredging of the Rose Bay Project exceed the amount available, based on a local sponsor match of \$4,000,000 and sufficient additional funds are not secured to meet the excess.
9. The Parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of the work under this Agreement.
10. The District and the City designate the following Project Managers:

For the District:
Paul Haydt, Division of Project Management
St. Johns River Water Management District
4049 Reid Street,
Palatka, Florida 32177
Telephone: (386) 329-4303
phaydt@sjrwmd.com

For the City:
Kenneth W. Parker,
City Manager
1000 City Center Circle
Port Orange, FL 32129

11. All notices to the parties under this Agreement shall be in writing and sent via certified mail to each Project Manager at the names and addresses specified above. All notices shall be considered delivered upon receipt. Should either party change its address or project manager, immediate written notice of the new address shall be promptly sent to the other parties.

12. Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. In addition, each party is subject to the provisions of section 768.28, Florida Statutes.
13. This Agreement embodies the entire understanding and agreement of the Parties with respect to the matters covered by this Agreement and supersedes all prior agreements and understandings between the Parties with respect to such matters.
14. This Agreement can be changed only by a written instrument referencing this Agreement and signed by both parties. Further, this Agreement is subject to the terms and conditions of the Rose Bay Restoration Project Cooperation Agreement between the USACE and the District and the Noticed General Permit associated with the Rose Bay Restoration.
15. Each party agrees that the other party or their duly authorized representatives shall, until the expiration of five years after the completion of this Agreement, have access to examine the other party's documents, papers, and records related to this Agreement.
16. The laws of the State of Florida govern this Agreement. Venue for any litigation shall be in Volusia County, Florida.
17. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. The delivery by facsimile of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

[Signatures are on the following page]

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this agreement to be executed in its name by its Executive Director and the City Of Port Orange has caused this agreement to be executed in its name by its appropriate representative, all on the day and year below written.

CITY OF PORT ORANGE, FLORIDA

By: _____
Allen Green, Mayor

Date: _____

Attest:

By: _____
Kenneth W. Parker, City Manager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Allen Green and Kenneth W. Parker, as Mayor and City Manager, respectively, of the City of Port Orange, Florida, a municipal corporation, who acknowledge that they are duly authorized to execute the foregoing Memorandum of Understanding on behalf of the city. They are [] personally known to me.

Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and Expiration of commission term:

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: _____
Kirby B. Green III, Executive Director
St. Johns River Water Management District

Date: _____

Approved as to form

William Abrams
Assistant General Counsel, SJRWMD