TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members
From: Staff
Date: September 13, 2019
Subject: Memorandum of Agreement for the Brownfields Assessment Coalition Grant

Introduction

On June 5, 2019, the U.S. Environmental Protection Agency (EPA) announced that the Treasure Coast Regional Planning Council (TCRPC) had been selected for a Brownfields Coalition Assessment Grant in the amount of $600,000. Council was one of 149 communities selected nationally to receive 151 grants totaling $64.6 million in EPA Brownfields funding. The Coalition members in the successful grant proposal are TCRPC, the South Florida Regional Planning Council (SFRPC), and Biscayne Bay Waterkeeper Inc. (d/b/a Miami Waterkeeper). The funds will be used to undertake assessment activities at Brownfield sites and help expedite redevelopment of priority areas in Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, and Indian River counties.

As the grant recipient, TCRPC is responsible for administering the grant, being accountable to EPA for proper expenditure of the funds, and being the point of contact with the other Coalition members. A requirement of the grant award is execution of an agreement between Coalition members. A proposed Memorandum of Agreement to satisfy the grant award requirements is attached.

Recommendation

Council should authorize the Chair and Executive Director, in consultation with Council’s Attorney, to execute a final Memorandum of Agreement with the South Florida Regional Planning Council and Biscayne Bay Waterkeeper, Inc. (d/b/a Miami Waterkeeper).

Council Action – September 20, 2019

Commissioner Smith from Martin County moved approval of the staff recommendation. Commissioner O’Bryan from Indian River County seconded the motion, which carried unanimously.

Attachment
BROWNFIELDS ASSESSMENT COALITION
MEMORANDUM OF AGREEMENT BETWEEN
TREASURE COAST REGIONAL PLANNING COUNCIL, SOUTH FLORIDA
REGIONAL COUNCIL, AND BISCAYNE BAY
WATERKEEPER, INC. d/b/a MIAMI WATERKEEPER

THIS MEMORANDUM OF AGREEMENT, (hereinafter “Agreement”), is made and entered into as of the date of execution hereof by the last of the parties hereto to execute this Agreement and is by and between TREASURE COAST REGIONAL PLANNING COUNCIL (hereinafter “TCRPC”), SOUTH FLORIDA REGIONAL PLANNING COUNCIL (hereinafter “SFRPC”), and Biscayne Bay Waterkeeper, Inc., d/b/a MIAMI WATERKEEPER (hereinafter “MWK”); all collectively referred to herein as “Members” or, a reference to any one of them herein is in the singular as “Member.”

WHEREAS, through collaboration with the Members, the TCRPC applied for and received from the U.S. Environmental Protection Agency a Brownfields Coalition Assessment grant award, starting October 1, 2019 and ending September 30, 2022, totaling $600,000; and

WHEREAS, the Members have a mutual interest in continuing their collaboration and being a part of the Southeast Florida Brownfields Redevelopment Coalition (“COALITION”) to support environmental assessment activities; and

WHEREAS, brownfields assessment activities and brownfields redevelopment provides benefits and incentives to promote the redevelopment of underutilized and/or vacant brownfield properties and promotes the reuse of existing infrastructure and overall sustainability; and

WHEREAS, the aforesaid grant award will assist the Members, through the COALITION, to continue to support environmental assessment activities and brownfield redevelopment promotion.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Members agree as follows:

The foregoing recitals and WHEREAS clauses are true and correct and are incorporated herein by reference and are made a part hereof.

1. PURPOSE OF THE AGREEMENT:

The purpose of this Agreement is to document the roles and responsibilities of the Members involved in the COALITION, and to carry out the activities outlined in the U.S. Environmental Protection Agency (“EPA”) Cooperative Agreement No. BF-00D93919-0 (the “Cooperative Agreement”). The COALITION shall consist of the Treasure Coast Regional Planning Council, the South Florida Regional Planning Council, and Miami Waterkeeper. TCRPC shall serve as the Lead Agency for the COALITION.

2. RESPONSIBILITIES OF THE COALITION MEMBERS

On August 21, 2019, the EPA awarded the Cooperative Agreement to TCRPC. The grant period is October 1, 2019 through September 30, 2022. As the Lead COALITION Member, TCRPC is responsible to EPA for management of the Cooperative Agreement and TCRPC’s compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all
Members of the COALITION are in compliance with the terms and conditions of the Cooperative Agreement. All Members agree that they will comply with the terms and conditions of the Cooperative Agreement. All Members agree to cooperate with TCRPC and agree that they shall not perform any act, fail to perform any act, or refuse to comply with any TCRPC requests which would cause TCRPC to be in violation of the terms and conditions of the Cooperative Agreement. The Members further agree as follows:

A. It is the responsibility of TCRPC to provide timely information to the other COALITION Members regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

B. The contact information for the COALITION Members is as follows:

Treasure Coast Regional Planning Council
Stephanie Heidt, AICP
Economic Development & Intergovernmental Programs Director
421 SW Camden Avenue
Stuart, Florida 34994
772.221.4060
Email: sheidt@terpc.org

South Florida Regional Planning Council
Isabel Castro-Carballo
Executive Director
1 Oakwood Blvd. #250
Hollywood, Florida 33020
954.924.3653
Email: isabelc@sfrpc.com

Kelly Cox, Esq.
General Counsel
Biscayne Bay Waterkeeper, Inc.
d/b/a/ Miami Waterkeeper
2103 Coral Way, 2nd Floor
Miami, FL 33145
305.905.0856
Email: kelly@miamiwaterkeeper.org

C. Activities funded through the Cooperative Agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities (all collectively “Activities”). Of the COALITION Members, only TCRPC shall have the authority to retain consultant(s) and contractors to undertake various eligible Activities to be funded through the Cooperative Agreement. Any such contractors shall be procured in accordance with 40 CFR 31.36. No Member other than TCRPC shall have any authority to obligate or commit the funds from the Cooperative Agreement for any purpose.

D. The TCRPC, as Lead COALITION Member, will procure the consultant(s) in compliance with 40 CFR 31.36 requirements. The Lead COALITION Member will issue
the Request for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection of the award of contracts. TCRPC will consult with the other COALITION Members in making selections of consultants and contractors and negotiating the terms of agreements with such contractors and consultants. Although it is unlikely that subgrants will be made, TCRPC may award subgrants to other Members under 40 CFR 31.37 for assessment projects in their geographic areas. Subgrantees are accountable to TCRPC for proper expenditure of funds.

E. The TCRPC, as Lead COALITION Member, in consultation with the other Members, will work to develop a site selection process based on agreed upon factors. TCRPC will select eligible sites utilizing this process and will ensure that a minimum of five sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to EPA for prior approval to ensure eligibility.

F. Upon designation of the specific sites, it will be the responsibility of TCRPC to work with the COALITION Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of this COALITION Member, at its expense, to obtain all required permits, easements, and/or access agreements as may be necessary to undertake Activities at the selected site. If this COALITION Member does not have the capacity to perform these activities, TCRPC may, at the expense of this COALITION Member, assist in securing necessary site access agreements and permits.

G. The TCRPC, as Lead COALITION Member, is responsible for ensuring that other activities as negotiated in the workplan, such as community outreach and involvement, are implemented in accordance with a schedule agreed upon by TCRPC and the COALITION Member in whose geographic area the site to be assessed is located.

3. **DURATION OF THIS AGREEMENT:**

Except as otherwise set forth herein, this Agreement once becoming effective shall continue in force through September 30, 2022 ("Expiration Date").

If EPA terminates the Cooperative Agreement prior to the Expiration Date with or without cause, this Agreement shall terminate, however, each of the Members shall be obligated to perform and complete obligations under the Cooperative Agreement which relate to the period prior to such termination.

4. **EXECUTION IN COUNTERPARTS:**

This Agreement may be executed in multiple counterparts each of which shall be deemed an original and all of such counterparts shall, together, constitute one and the same Agreement, and the signature of any Member to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

5. **ASSIGNMENT:**

This Agreement may not be assigned in whole or in part, except by the written mutual consent of all of the Members.
6. **SEVERABILITY:**

If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement.

7. **GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the laws of the State of Florida and the Members agree that any litigation with respect to this Agreement shall be brought only in the State courts of Palm Beach County, Florida unless otherwise required by law.

8. **SUCCESSORS AND ASSIGNS:**

This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Members.

9. **MISCELLANEOUS:**

This Agreement may be modified only by an instrument in writing signed by the Members. Except as to the EPA, nothing herein shall be construed to give any rights hereunder to anyone other than the Members. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Member to be charged therewith and shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver. The terms “hereof” “herein” “hereof” “hereunder” and any similar words refer to this instrument in its entirety. Nothing contained in this Agreement shall be construed as making the Members partners, or being engaged in a joint venture with one another. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. An executed facsimile or electronic copy of this Agreement shall be considered for all purposes an original.

10. **INDEMNIFICATION:**

Each Member shall be liable for its own actions and negligence and, to the extent permitted by law, Miami Waterkeeper shall indemnify, defend and hold harmless TCRPC and SFRPC against any actions, claims or damages arising out of Miami Waterkeeper’s negligence in connection with this Agreement, and TCRPC and SFRPC shall indemnify, defend and hold harmless Miami Waterkeeper against any actions, claims, or damages arising out of their respective negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, including limits on attorney’s fees, 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. Nothing contained in this Agreement shall be construed as any Members’ consent to be sued.
IN WITNESS WHEREOF, the Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

ATTEST:

By: ____________________________

TREASURE COAST REGIONAL PLANNING COUNCIL

By: ____________________________

Susan Adams, Chairperson

Date: ____________________________ 2019

By: ____________________________

Thomas J. Lanahan, Executive Director

Date: ____________________________ 2019

By: ____________________________

Keith W. Davis, General Counsel
(for Form and Legal Sufficiency)
IN WITNESS WHEREOF, the Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

ATTEST:                      SOUTH FLORIDA REGIONAL PLANNING COUNCIL

By:                          By:

__________________________  Greg Ross, Chairman

Date: _______________ 2019

By:                          By:

__________________________  Isabel Cosio Carballo, Executive Director

Date: _______________ 2019

By:  

Samuel S. Goren, Esquire, General Counsel
(for Form and Legal Sufficiency)
IN WITNESS WHEREOF, the respective Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

ATTEST:  

Biscayne Bay Waterkeeper, Inc.  
d/b/a/ MIAMI WATERKEEPER:

By: ___________________________  

By: ___________________________  
  Kelly Cox, Esquire, General Counsel

Date: _________________ 2019