

**F. Consent Agenda - Parks and Recreation Department
ITEM 9.**



**AGENDA REPORT
July 23, 2019**

Amendment to Florida Forest Service Memorandum of Agreement #7304

SUBJECT:

Amendment to Florida Forest Service Memorandum of Agreement #7304
All Districts

FISCAL IMPACT:

There is no fiscal impact as a result of this action.

DEPT/OFFICE:

Parks and Recreation

REQUESTED ACTION:

Approve the Amendment to Memorandum of Agreement #7304 with Florida Forest Service to supervise the management and harvesting of timber from Environmentally Endangered Lands sites solely for habitat restoration and authorize the Chair to sign the Amendment.

SUMMARY EXPLANATION and BACKGROUND:

On October 15, 2002, the County entered into a Memorandum of Agreement with Florida Forest Service formally known as Division of Forestry, for sale of timber from timbering projects on County lands. Florida Forest Service has expertise in the area of pine management, harvesting and selling. They are willing to continue to assist the County in timber management/harvesting as a component of habitat restoration plans on Environmentally Endangered Lands Program managed sites.

Environmentally Endangered Lands Program staff will assist Florida Forest Service in marking areas of concern, with care given to avoid wetlands or other sensitive habitats, and help oversee the operations in order to assure the activity is conducted in an environmentally sensitive manner. Florida Forest Service will prepare the timber sales packages, mail to perspective bidders and be responsible for overseeing the harvesting information along with County staff. Florida Forest Service will obtain County staff approval prior to initiating any timber sale. This includes County staff approval of the entire timber sales bid package, including timber sales agreement, prior to mailing to perspective bidders.

Amendment to Contract #7304 restructures the revenue percentage received by County from 90% to 80% for preparing and administering the timber sale on County lands by the Forest Service and also updates outdated contact information for both County and Florida

Forest Service. The reduction in the County's revenue percentage is a mandated reduction by the State.

At this time, there are no plans to harvest timber on County lands.

CLERK TO THE BOARD INSTRUCTIONS:

Please return executed Memorandum of Agreement and Board Memo to the Environmentally Endangered Lands Program.

ATTACHMENTS:

Description

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

| | |
|---|---|
| 1. Contractor: FLORIDA FOREST SERVICE CONTRACT AMENDMENT | |
| 2. Fund/Account #: 1610 300100 | 3. Department Name: P&R-EEL Program |
| 4. Contract Description: FLORIDA FOREST SERVICE TIMBERING CONTRACT AMENDMENT | |
| 5. Contract Monitor: Jenny Warner | 7. Contract Type: INTERGOVT/STATE |
| 6. Dept/Office Director: Mary Ellen Donner | |

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

| <u>COUNTY OFFICE</u> | <u>APPROVAL</u> | | <u>SIGNATURE</u> | <u>DATE</u> |
|----------------------|--------------------------|-------------------------------------|------------------|-------------|
| | <u>YES</u> | <u>NO</u> | | |
| User Agency | <input type="checkbox"/> | <input checked="" type="checkbox"/> | _____ | _____ |
| Risk Management | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| County Attorney | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |

SECTION III - REVIEW AND APPROVAL TO EXECUTE

| <u>COUNTY OFFICE</u> | <u>APPROVAL</u> | | <u>SIGNATURE</u> | <u>DATE</u> |
|----------------------|-------------------------------------|--------------------------|--|-------------|
| | <u>YES</u> | <u>NO</u> | | |
| User Agency | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Jenny Ashbury <small>Digitally signed by Jenny Ashbury DN: cn=Jenny Ashbury, o=Brevard County, ou=County of Brevard, email=jashbury@brevard.net, c=US Date: 2019.05.21 10:43:04 -0400</small> | 05/21/2019 |
| Risk Management | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Matt Lairsey <small>Digitally signed by Matt Lairsey DN: cn=Matt Lairsey, o=Brevard County, ou=County of Brevard, email=mlairsey@brevard.net, c=US Date: 2019.05.21 15:28:10 -0400</small> | 06/03/2019 |
| County Attorney | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Esseesse, Alexander <small>Digitally signed by Esseesse, Alexander Date: 2019.05.21 15:28:10 -0400</small> | 05/21/2019 |

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

| <u>CM DATABASE REQUIRED FIELDS</u> | <u>Complete</u> ✓ |
|--|--------------------------|
| Department Information | <input type="checkbox"/> |
| Department | <input type="checkbox"/> |
| Program | <input type="checkbox"/> |
| Contact Name | <input type="checkbox"/> |
| Cost Center, Fund, and G/L Account | <input type="checkbox"/> |
| Vendor Information (SAP Vendor #) | <input type="checkbox"/> |
| Contract Status | <input type="checkbox"/> |
| Contract Title | <input type="checkbox"/> |
| Contract Type | <input type="checkbox"/> |
| Contract Amount | <input type="checkbox"/> |
| Storage Location (SAP) | <input type="checkbox"/> |
| Contract Approval Date | <input type="checkbox"/> |
| Contract Effective Date | <input type="checkbox"/> |
| Contract Expiration Date | <input type="checkbox"/> |
| Contract Absolute End Data (No Additional Renewals/Extensions) | <input type="checkbox"/> |
| Material Group | <input type="checkbox"/> |
| Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract) | <input type="checkbox"/> |
| "Right To Audit" Clause Included in Contract | <input type="checkbox"/> |
| Monitored items: Uploaded to database (Insurance, Bonds, etc.) | <input type="checkbox"/> |



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 24, 2019

M E M O R A N D U M

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item F.9., Amendment to Memorandum of Agreement (MOA) #7304 with Florida Forest Service

The Board of County Commissioners, in regular session on July 23, 2019, executed and approved the Amendment to MOU #7304 with the Florida Forest Service to supervise the management and harvesting of timber from Environmentally Endangered Lands sites solely for habitat restoration. Enclosed is the executed MOA.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: EEL Program Manager



NICOLE "NIKKI" FRIED
COMMISSIONER

CONTRACT AMENDMENT

Please Respond To: Florida Forest Service
Forest Management
3125 Conner Boulevard
Tallahassee, FL 32399

April 1, 2019

Program Manager EEL Program
Parks & Recreation Department
91 East Drive
Melbourne, FL 32904

RE: Amendment of Contract # 7304 dated 10/15/02.

This letter, upon execution by both parties and attachment to the original contract shall serve to amend said contract. The contract shall be amended as follows:

The following sections of said agreement shall be amended:

All references to Division of Forestry or DOF shall now be Florida Forest Service or FFS.

Paragraph 3. shall now read as follows: For timber sale preparation and administration: The Florida Forest Service shall receive revenues from all timber sales it administers on behalf of the County pursuant to this MOA. Timber sale proceeds will be received from buyers in two checks. One check will be made payable to Brevard County for 80% of the timber sale proceeds. The other check shall be made payable to the Florida Department of Agriculture and Consumer Services for 20% of the timber sale proceeds. The COUNTY portion of the timber sale proceeds will be transferred to the county as they are received and reconciled, no later than seven (7) days of receipt by the FFS. If, at the completion of the sale, actual cost of sale preparation and administration exceeds the 20% of revenue that was paid to the Florida Forest Service; a request to transfer funds from the County to the FFS will be made. The County shall transfer these funds within forty five (45) days of the request. Sale preparation costs shall include the cost of field consultation with County staff, field reconnaissance to prepare the sale package, necessary timber cruising or marking, and purchase of expendable field supplies. The administrative fee shall include the cost of solicitation and receipt of bids, execution of contracts, and supervision of the sale while in progress. The County shall complete any road construction or repairs necessary to access and remove timber from the sites. The timber contractor will be responsible for any road repairs while the sale is in progress and will repair the roads to their original condition once the sale is complete. The County shall also assist FFS with field administration of timber sales due to the remote location of County properties. Such assistance will be mutually agreed upon in advance and included activities such as site visits and tallying trucks.

Paragraph 6 shall now read as follows: The COUNTY's Project Manager is Program Manager EEL Program, Parks & Recreation Department, 91 East Drive, Melbourne, FL 32904, telephone, (321) 255-4466. The FFS Project Manager is Senior Forester, Florida Forest Service, Other Public Lands, 8392



NICOLE "NIKKI" FRIED
COMMISSIONER

CONTRACT AMENDMENT

Rock Lake Road, Brooksville, FL 34602, telephone (352) 540-6041. All project matters shall be directed to the Project Managers for appropriate action of disposition.

NO OTHER PROVISIONS OF THIS CONTRACT ARE AMENDED OR OTHERWISE ALTERED BY THIS AMENDMENT.

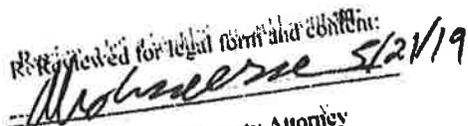

Joey B. Hicks
Director of Administration
Department of Agriculture
and Consumer Services

4/12/19
(Date)


(Signature) KRISTINE ISNARDI
CHAIR
(Title)
BREVARD COUNTY
(Company)
JULY 23, 2019
(Date)

ATTEST: 
SCOTT ELLIS, CLERK

As approved by Board 7/23/19

Reviewed for legal form and content:

(Assistant) County Attorney



MEMORANDUM OF AGREEMENT**Brevard County Parks and Recreation Department
Environmentally Endangered Lands Program and the
State of Florida
Department of Agriculture and Consumer Services
Division of Forestry**

This Agreement is made and entered into with Brevard County, Florida, hereinafter referred to as the COUNTY, and the State of Florida Department of Agriculture and Consumer Services, Division of Forestry, hereinafter referred to as the DOF.

WITNESSETH

WHEREAS, certain lands are owned by the COUNTY and managed through the COUNTY's Parks and Recreation Department, Environmentally Endangered Lands (EEL) Program; and

WHEREAS, certain lands acquired through the EEL Program were acquired in 50/50 partnership with the State of Florida using funds provided through Preservation 2000, Conservation and Recreation Lands (CARL) program; and

WHEREAS, lands acquired through the COUNTY's EEL Program are to be utilized for conservation and management of the natural resources, outdoor recreation, environmental education and related public purposes; and

WHEREAS, in the EEL Program Sanctuary Management Plan for these lands, provisions are made to provide for maintenance of the sites in a natural state and/or restore sites to enhance natural resource values; and

WHEREAS, several EEL sanctuaries require scrub restoration activities to include thinning of pine trees and prescribed burning; and

WHEREAS, the DOF has the expertise required to perform the services identified under this MOA and desires to assist the COUNTY in administering logging activities at selected EEL sanctuaries and train COUNTY staff to administer such activities in the future.

NOW, THEREFORE, the parties hereto, for and in consideration of the mutual covenants and agreements contained herein agree as follows:

1. The DOF shall plan, administer and supervise the harvest of timber on COUNTY lands in accordance with ATTACHMENT A, Scope of Services, attached hereto and made a part hereof.
2. To prepare a timber management feasibility assessment at the request of the COUNTY, reimbursement shall consist of billable hours to the project based upon the hourly rate for non-supervisory personnel as published in the DOF Fire Manual (currently \$20 per hour), plus vehicle mileage at the current State of Florida reimbursement rate plus any applicable per diem.
3. For timber sale preparation and administration the DOF shall receive revenues from all timber sales they administer on behalf of the COUNTY pursuant to this MOA. DOF will be paid a minimum of ten percent (10%) of the total sales revenue for cost of sale preparation and administration. Funds retained by DOF for sale preparation shall cover the cost of field consultation with COUNTY staff, field reconnaissance to prepare the sale, necessary timber cruising or marking, purchase of expendable field supplies, and preparation of the sale package. The sale preparation and administrative fee retained by the DOF shall cover the cost of solicitation and receipt of bids, execution of contract, and supervision of the sale while in progress. Once each sale is completed, DOF will subsequently remit to the COUNTY the total sales revenue accrued from these sales minus DOF's fee for sale preparation and administration. If the cost of sale preparation alone exceeds 7% of the total sales revenue, DOF will retain an administrative fee of 3% of the total sales revenue in addition to said sale preparation cost. If DOF hires a private

contractor to perform any of the above listed activities, DOF will pay the contractor's fee from their share of the revenues, as stated above. The COUNTY shall complete any road repairs necessary to access and remove timber from the sites above and beyond those road repairs the timber harvest contractor would be responsible for under the timber harvest contract. The COUNTY shall also assist DOF with field administration of timber sales. Such assistance will be mutually agreed upon in advance and include activities such as site visits and truck tallies.

4. This MOA shall become effective on the date of execution by both parties and shall only be terminated by a written request by either the COUNTY or DOF.
5. It is understood by both parties that the COUNTY lands shall be managed in a manner consistent with the approved EEL Program's Sanctuary Management Manual.
6. The COUNTY's Project Manager is Zachary Prusak, Land Manager, EEL Program, Parks & Recreation Department, 5560 North U.S. Highway I, Melbourne, Florida 32940, telephone (321) 255-4466. The DOF's Project Manager is the Senior Forester, Florida Division of Forestry, Other State Lands, 5458 North Highway 17, DeLeon Springs, FL 32130, telephone (386) 985-7814. All project matters shall be directed to the Project Managers for appropriate action or disposition.
7. The COUNTY represents that it has the right to agree to resource management activities necessary to facilitate the sale of forest products on COUNTY lands by the DOF.
8. The COUNTY, or its duly authorized agents, shall have the right to inspect the COUNTY timber project areas and the works and operations thereon of the DOF in any matter pertaining to this MOA.
9. This MOA and any rights and privileges contained herein are for the sole use of the DOF and shall not be assigned or transferred to another party without prior written approval of the COUNTY. The DOF shall have the right to enter and occupy COUNTY lands for the purposes necessary to meet its designated responsibilities, including protection of those lands. The DOF's agents and employees shall take all reasonable measures to provide security against damage, degradation and unauthorized uses of the COUNTY lands.
10. The DOF shall report twice every calendar year to the COUNTY on items related to its timber management activities on the COUNTY lands during the year.
11. The COUNTY and DOF agree that this MOA shall confer upon the DOF the right to implement silvicultural treatments necessary to facilitate the sale of timber on the COUNTY lands. The DOF shall investigate any and all claims of injury or damage either for or against the COUNTY or the DOF pertaining to forest resource management activities conducted on the COUNTY lands by the DOF and shall notify the COUNTY regarding the legal action deemed appropriate to remedy such damages or claims.
12. The COUNTY and DOF hereto agree that each party shall be solely responsible for the negligent or wrongful acts of its employees and agents during the course of normal working conditions. However, nothing contained herein shall be construed as an indemnity or constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.
13. This MOA shall be effective upon execution by both parties, and shall remain in full force and effect until terminated as provided herein. Either party may terminate this Agreement for cause or convenience by giving sixty (60) days notice in writing to the other party of its intent to do so.

14. Upon such termination invoked by either the DOF or the COUNTY, and upon cessation of timber operations on said COUNTY lands, by the DOF, the DOF agrees to remove any improvements placed or made by the DOF at DOF's sole cost and expense.
15. To the extent required by law, the DOF will be self-insured against, or will secure and maintain during the life of this MOA, Worker's Compensation Insurance for all of its employees connected with the work of this project. Such self-insurance coverage shall comply fully with the Florida Worker's Compensation law. In case any class of employees engaged in hazardous work under this MOA is not protected under Worker's Compensation statutes, the DOF shall provide adequate insurance satisfactory to the COUNTY, for the protection of its employees not otherwise protected.
16. The DOF warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the DOF's officers, employees, servants and agents while acting within the scope of their employment with the DOF.
17. This MOA represents the entire agreement of the parties. Any alterations, variations, changes, modifications, waivers of provisions of this MOA shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this MOA, unless otherwise provided herein.

IN WITNESS WHEREOF, the Florida Department of Agriculture and Consumer Services, Division of Forestry, and the Brevard County, Parks and Recreation Department, Environmentally Endangered Lands Program, have caused this MOA to be duly executed and effective as of the date last written below.

WITNESSES

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES
CHARLES BRANSON, COMMISSIONER

Alicia Cox
Angela B. Rains

BY: Mike Gresham
MIKE GRESHAM, DIRECTOR
DIVISION OF ADMINISTRATION

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 19th day of Sept., 2002, by MIKE GRESHAM, as Director, Division of Administration, Department of Agriculture and Consumer Services, who is personally known to me and who did take an oath.



Karen A. Meyer
MY COMMISSION # CC949622 EXPIRES
October 20, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

Karen A. Meyer
Notary Public
My Commission Expires: _____

ATTEST:

Scott Ellis
SCOTT ELLIS, CLERK

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONER

BY: _____
TRUMAN SCARBOROUGH JR., CHAIR

AS APPROVED BY THE BOARD ON October 15, 2002

ATTACHMENT A Scope of Services

Brevard County is desirous of managing selected county-owned lands acquired through the Environmentally Endangered Lands (EEL) Program for scrub restoration. The goal of the scrub restoration project is to improve the quality of the scrub habitat on County-owned lands, which are important areas for the Florida scrub-jay and other scrub-associated species.

Within the restoration areas slash and long leaf pine trees will be removed leaving one to two pines per acre. The older, healthy, long-leaf and slash pine trees will remain as a seed source for pine regeneration while providing an optimal, open canopy habitat preferred by scrub species.

The DOF agrees to perform the tasks stated below. As part of DOF's work, DOF agrees to train COUNTY staff in all aspects of the tasks outlined below with the end result being that COUNTY personnel will be trained to independently conduct these tasks at the completion of this MOA.

The identified tasks are as follows:

1. Provide assistance to COUNTY staff in marking the timber that is to be removed for restoration purposes. In natural stands, the leave trees shall consist of healthy, mature long leaf pine and/or slash pine, with a preference to the long leaf pine. In all cases, leave the old flat-topped long leaf pines, large overtopped long leaf (>10 in. d.b.h.) and any cat-faced pines within the sale areas. In slash pine plantations, thin the existing stands to begin the restoration process. Timber harvesting combined with a prescribed burning program in these plantations will be the quickest way to increase biodiversity and return these stands to a more natural condition.
2. Any environmentally sensitive area, such as wetlands, that is encountered while marking the timber must be recorded and documented. Do not mark any timber in such areas that could potentially damage or destroy the area. Areas of concern include, but are not limited to, pitcher plant bogs, seepage slopes, herb bogs, wet-weather ponds, archaeological sites, and threatened or endangered plant or animal habitations (e.g. inactive or active red-cockaded woodpecker cavity trees). All timber sales operations must be conducted in accordance with the most current Florida Silviculture Best Management Practices Manual.
3. The DOF agrees at a minimum to assist and administer the needed timber sales within the EEL Sanctuary network during the term of this MOA. These sales would include reducing merchantable pine basal area for scrub jay habitat restoration.
4. The DOF will prepare timber sale packages, mail the packages to prospective bidders, and be responsible for overseeing the harvesting operation along with COUNTY staff. Timber revenues will be received by the DOF and revenues (less the 10% administrative fee) returned to the COUNTY at the end of each sale.
5. The DOF will obtain COUNTY approval prior to initiating any timber sale. This will include COUNTY approval of the entire timber sale bid package, including the timber sale agreement, prior to mailing to prospective bidders.
6. The DOF agrees that all Brevard COUNTY regulations applicable to lands acquired through the EEL Program will be adhered to. These regulations are:
 - a. Management of the lands shall be for conservation of the natural resources and to provide environmental education and passive recreation opportunities.
 - b. No off-road motorized vehicles are allowed; except for authorized land management activities.
 - c. No hunting is allowed, except by special permit or agreement, issued through Brevard County's EEL Program.
 - d. No collecting of plants or animals (dead or alive), for any purposes, is allowed except by special permit or agreement issued by the Brevard County EEL Program.
 - e. No pets are allowed.
 - f. No illegal activities are allowed.
 - g. No dumping is allowed.