

M E M O R A N D U M

Date: May 23, 2016

TO: Dave Bullock, Town Manager
THROUGH: Juan Florensa, Public Works Director
FROM: Mark Richardson, Streets, Facilities, Parks & Recreation Manager
SUBJECT: Proposed First Addendum to the Joint Project Agreement
Expansion and Development of Bayfront Park

Background

On December 8, 2015 the Sarasota County and the Town entered into a Joint Project Agreement for the design, engineering and construction of amenities and improvements to the Expanded Bayfront Park and entered, on that same date, into an Interlocal Agreement for the maintenance and use of the park.

Issue

An addendum to the Joint Project Agreement is proposed at this time for both parties to agree on the responsibilities of the restricted vehicle beach access and associated gate for emergency and maintenance use on the Gulf side of the Expanded Bayfront Park which the County would own and the Town would maintain and repair. The First Addendum to the Joint Project Agreement Expansion and Development of Bayfront Park is presented for review and discussion.

Recommendations

Staff recommends authorizing the Mayor to execute the Addendum to the Joint Project Agreement Expansion and Development of Bayfront Park agreeing to the responsibilities related to the vehicular beach access and associated gate.

Should you have any questions, please let me know.

Attachments: Proposed JPA Addendum.

**FIRST ADDENDUM TO THE
JOINT PROJECT AGREEMENT**
(Expansion and Development of Bayfront Park)

This First Addendum to the Joint Project Agreement (the "First Addendum"), entered into as the date of execution by both parties, forms part of that certain Joint Project Agreement (the "JPA"), dated November 8, 2015 (Contract No. 2016-083), entered into by and between Sarasota County, Florida, a political subdivision of the State of Florida (the "County") and the Town of Longboat Key, a municipal corporation of the State of Florida (the "Town") (collectively referred to as the "Parties") for the construction and development of Bayfront Park, located in the Town of Longboat Key within Sarasota County.

WITNESSETH

WHEREAS, the Town has owned and operated Bayfront Park, situated between Gulf of Mexico Drive and Sarasota Bay in Sarasota County for more than 30 years and, during that period, the Town maintained and expanded the Park as adjacent parcels have become available ("Original Bayfront Park"); and

WHEREAS, in 2007, the County acquired a 3.54-acre Gulf-to-Bay property, located within the municipal boundaries of the Town and immediately adjacent to the Original Bayfront Park (the "Bayfront Park Addition"). The Original Bayfront Park and the Bayfront Park Addition (together, referred to as the "Expanded Bayfront Park" or "Project") are more specifically described on Composite Exhibit "A" to the JPA, incorporated herein by reference; and

WHEREAS, the County and the Town, working with the community and stakeholders, developed an Expanded Bayfront Park concept plan ("Park Concept Plan"), which expanded the footprint of the Original Bayfront Park and added amenities for public recreational use (the "Project"); and

WHEREAS, on December 8, 2015, the County and Town entered into the JPA for the design, engineering and construction of amenities and improvements to the Expanded Bayfront Park and, on that same date, entered into "The Interlocal Agreement Between Sarasota County and the Town of Longboat Key Regarding the Expanded Bayfront Park Maintenance and Use"; and

WHEREAS, following continued discussions regarding amenities and maintenance needs for the Expanded Bayfront Park, the Parties agree that it would be in the best interests of the community to amend the JPA to provide for the construction of a restricted vehicle beach access driveway for emergency and maintenance use only ("Restricted Vehicle Beach Access") on the Gulf side of the Expanded Bayfront Park, which the County would own and the Town would maintain and repair.

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, it is agreed as follows:

Section 1. Incorporation

The recitals set forth above are incorporated herein in their entirety.

Section 2. Construction of Restricted Vehicle Beach Access

- 2.1** Pursuant to Section 2 of the JPA, the County Administrator and the Town Manager have mutually approved modifications to the Park Concept Plan for the construction of the Restricted Vehicle Beach Access, situated on the County-owned portion of the Expanded Bayfront Park, as depicted on the Amended Park Concept Plan, attached hereto as Revised Exhibit B and incorporated herein. The Amended Park Concept Plan supersedes and replaces the Park Concept Plan, attached as Exhibit B to the JPA. The cost of the Restricted Vehicle Beach Access shall be solely allocated to the Town.
- 2.2** In consultation with the County, the Town shall design, obtain necessary permits, competitively bid and perform construction administration for the Restricted Vehicle Beach Access, as depicted on the Amended Park Concept Plan. The Town will obtain all the rights necessary for the performance of work under this First Addendum. In the event the County, as owner of Bayfront Park Addition, is required to apply for certain permits, it shall do so in a timely manner. The County shall review and approve all elements of the design and construction for the Restricted Vehicle Beach Access and, at the discretion of the County, may participate in any procurement process or oversight related to the construction of the Restricted Vehicle Beach Access in partnership with the Town.
- 2.3** In consultation with Wannemacher Jensen Architects, the Town requested that the conceptual design budget for the Project be amended to include the costs for the Restricted Vehicle Beach Access. The costs for the design, construction and maintenance of the Restricted Vehicle Beach Access shall be allocated solely to the Town. The Amended Conceptual Budget is attached hereto as Revised Exhibit C and incorporated herein, and shall replace Exhibit C to the JPA.
 - 2.3.1** Pursuant to the Amended Conceptual Budget, the total Project cost is estimated to be \$3,869,886.00 with landscaping and irrigation costs to be determined ("Project Costs").
 - 2.3.2** As indicated in the Amended Conceptual Budget, 43% of the Project Costs, or approximately \$1,688,505.00, is attributable to the Bayfront Park Addition, excluding Restricted Vehicle Beach Access costs ("County Project

Costs”) and the balance of \$2,181,381.00 is attributable to redevelopment of the Original Bayfront Park and the construction of the Restricted Vehicle Beach Access (“Town Project Costs”).

- 2.4** Subject to funding limitations set forth below, the County has agreed to provide funding for the County Project Costs and for a portion of the Town Project Costs, for a total County contribution to Project Funding of an amount not to exceed \$2,000,000.00, or 67% of the Project Cost, whichever is less (“County Project Funding”). The County Project Funding is derived from three restricted funding sources and must be allocated as follows:
- 2.4.1** Infrastructure Surtax Funds: up to \$650,000.00 to be used toward design and construction costs of the Project pursuant to Section 212.055(2), Florida Statutes;
 - 2.4.2** Neighborhood Parkland Funds: up to \$1,300,000.00 to be used for “start-up” activities, as defined in County Resolution No. 2013-155, on the Bayfront Park Addition only; and
 - 2.4.3** Tourist Development Tax Proceeds: up to \$50,000.00 to be used for the ADA-compliant pedestrian beach access and the Observation Deck, as shown on the Amended Park Concept Plan.
- 2.5** The Town shall require the contractor(s) to procure and maintain during the life of the Project all insurance necessary to protect the Town and the County in amounts as determined by the Town. Such insurance policies shall name both the Town and the County as additional insureds and shall indemnify both the Town and the County, their agents, employees, commissioners, officers and volunteers from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, omission or default of the Project contractor(s) arising out of or in any way connected with the Project. The Town shall further require the contractor(s) to execute and record in the public records a payment and performance bond for the benefits of the Town and the County as dual obligees pursuant to Section 255.05 Florida Statutes.
- 2.6** The Town shall commence and complete the Project and meet the task deadlines in accordance with the Amended Project Schedule set forth in Revised Exhibit D, attached hereto and incorporated herein, as may be revised by any extensions of time mutually agreed upon in writing by the Town and the County. The Revised Exhibit D supersedes and replaces Exhibit D to the JPA.

Section 3. County Funding Disbursement.

The County Funding Disbursement shall be as stated in the JPA.

Section 4. Maintenance and Use of the Expanded Bayfront Park.

Simultaneous with the execution of this First Addendum, the Parties shall execute a separate agreement entitled "First Amendment to the Interlocal Agreement Between Sarasota County and the Town of Longboat Key Regarding the Expanded Bayfront Park Maintenance and Use", ("First Amendment to Interlocal Agreement") which shall provide for the duties and responsibilities of the County and the Town with respect to the ongoing maintenance and use of the Expanded Bayfront Park, including the Restricted Vehicle Beach Access.

Section 5. Failure to Complete

In the event the Town fails to complete the Project pursuant to the Project Schedule and any extensions thereto, the County reserves the right to terminate the JPA and this First Addendum at no further cost to County and to complete that portion of the Project on the Bayfront Park Addition.

Section 6. No pledge of faith and credit

No provision of this First Addendum shall be construed or interpreted as creating a pledge of the faith and credit of the County or Town within the meaning of any constitutional debt limitation. The parties acknowledge that the scope, term and duration of this First Addendum are reasonable. No provision of this First Addendum shall be construed or interpreted as delegating governmental powers, or as a donation or a lending of the credit of the County or Town, within the meaning of the Florida Constitution. No provision of this First Addendum shall be construed to pledge or to create a lien on any class or source of the County's or Town's moneys, nor shall any provision of this First Addendum restrict to any extent prohibited by law any action or right of action on the part of any future County Commission or Town Commission. To the extent of any conflict between this Section and any other provision of this First Addendum, this Section shall take priority.

Section 7. Ownership of Park Facilities and Recreation Amenities.

All current and future Park Facilities and Recreation Amenities and other improvements located on the Original Bayfront Park site shall be the property of the Town and all current and future Park Facilities and Recreation Amenities located on the Bayfront Park Addition site, including the Restricted Vehicle Beach Access, shall be the property of the County.

Section 8. Insurance and Indemnification.

The Town and County agree to maintain liability insurance coverage for the duration of this First Addendum and to defend, indemnify and save harmless the other party, its agents, officials and employees against all injuries, deaths, losses, damage claim suits, liabilities, judgments, costs, attorney fees and expenses which may accrue against the other party as a consequence of the intentional or negligent acts of the indemnifying party's employees, agents or licensees. Nothing contained in this Section shall constitute a waiver of sovereign immunity or of the limitations on liability provided to either party under the Florida Constitution or general law. Further, the parties acknowledge that the County is self-insured and the Town participates in a pooled self insurance program. In the event of any threatened or impending action that may give rise to a claim by one party against the other for actions related to this First Addendum, the party seeking indemnification for such claim must promptly give notice to the other party in writing by certified mail. The indemnity provided herein shall not apply to any settlement agreement entered into by one party without the consent of the indemnifying party. The terms of this Section shall survive the termination of the First Addendum.

Section 9. Reports and Audits.

The Reports and Audits requirements shall be as stated in the JPA.

Section 10. Notification

The Town and County shall notify each other in writing if any changes to the Amended Park Concept Plan are necessary during engineering or construction of Project. In such circumstances, the parties shall provide such notification to the following designees:

If to the County: Carolyn Brown, Director,
Parks, Recreation and Natural Resources
1660 Ringling Blvd, 5th Flr
Sarasota, FL 34236

If to the Town: David R. Bullock, Town Manager
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Section 11. Dispute Resolution.

In the event of a dispute between the Town and County regarding the delivery of services under this First Addendum, the Town Manager and the County Administrator or their designated representatives shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the Town Manager and the County Administrator. The decision of the Town Manager and County

Administrator regarding the dispute shall be final. In the event the Town Manager and County Administrator are unable to agree, the matter shall be referred to the respective Commissions to be resolved in a joint meeting. This process shall substitute for the dispute resolution process set forth in Chapter 164, Florida Statutes.

Section 12. Force Majeure.

- 12.1** Except for any payment obligation by either party, if either the County or Town is unable to perform, or is delayed in its performance of any of its obligations under this JPA by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the County or Town to correct the adverse effect of such event of Force Majeure.
- 12.2** An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay the County or Town from performing any of its obligations (other than payment obligations) under this First Addendum:
- 12.2.1** Strikes and work stoppages unless caused by a negligent act or omission of either party;
 - 12.2.2** Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, explosions, landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather;
 - 12.2.3** Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockages, insurrection, riots, civil disturbances, or national or international calamities; and
 - 12.2.4** Suspension, termination or interruption of utilities necessary to the performance of the obligation.
- 12.3** In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to diligently proceed to correct the adverse effect of any Force Majeure. The terms of this Section shall survive the termination of this JPA.

Section 13. Entire Understanding.

This First Addendum, the First Amendment to the Interlocal Agreement, the JPA and the "Interlocal Agreement Between Sarasota County and the Town of Longboat Key Regarding the Expanded Bayfront Park Maintenance and Use" embody the entire understanding of the Parties

regarding the subject matter hereof, and there are no further or other agreements or understandings, written or oral, in effect between parties relating to the subject matter hereof. The JPA may be further amended or modified only by an instrument of equal formality executed by authorized representatives of the County and the Town.

Section 14. Severability.

If any provision of this First Addendum or any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this First Addendum which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this First Addendum, and to this end the provisions of this First Addendum are declared to be severable.

Section 15. Mutual Benefit.

This First Addendum is for the mutual benefit of the named parties only and nothing in this First Addendum either expressed or implied is intended or shall be construed to confer upon or give any contractor, bidder, or other vendor, or any of their officers or employees, or any other person, corporation or governmental entity other than the parties themselves, any right, remedy, or claim under or by reason of this First Addendum.

Section 16. Validity and Conflict.

To the extent this First Addendum conflicts with the recitals or provisions contained within the JPA, this First Addendum shall prevail.

Section 17. Effective Date

The Effective Date of this First Addendum shall be the date of the last signatory hereto.

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IN WITNESS WHEREOF, the Parties hereto have executed this First Addendum to the Joint Project Agreement on the dates indicated below.

TOWN OF LONGBOAT KEY, FLORIDA

By: _____
Jack G. Duncan, Mayor

Date: _____

ATTEST:

Trish Granger
City Clerk

Approved as to form and correctness:

Town Attorney

ATTEST:
KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners
of Sarasota County, Florida

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

By: _____
Chair

Date: _____

Approved as to form and correctness:

By: _____
County Attorney

REVISED EXHIBIT B
Amended Park Concept Plan



REVISED EXHIBIT C

Amended Conceptual Budget

JON F. SWIFT CONSTRUCTION

PROJECT : Bayfront Park
 LOCATION : Longboat Key, Fl
 FILE NAME : Conceptual Budget

DATE : 05/03/16
 PROJ # : 2015.109
 PAGE : 1 OF 2

DESCRIPTION	TOTAL	Sarasota County Prop Breakout	County's Percentage of Total
Conceptual Design Budget			
Existing - Remains as is			
Shuffleboard			
Demolition			
Parking/Pavements	\$149,175	14,917.50	10.00%
Basketball court	\$25,415		
Site Improvements			
Clear/prep site	\$149,175	65,637.00	44.00%
Fine Grade site	\$198,900	87,516.00	44.00%
Excavate/Fill/Retention Ponds	\$303,875	133,705.00	44.00%
Asphalt roadway	\$171,275	62,857.93	36.70%
Asphalt parking	\$0	w/above	
Traffic/Parking Markings, Signage	\$11,824	2,364.70	20.00%
Roadway Crosswalks	\$19,550	3,910.00	20.00%
Shell area - Kayak dropoff	\$16,299	0.00	
Bridges - Wood structures	\$46,465	23,232.63	50.00%
Conc sidewalks - Town	\$145,056	15,593.52	10.75%
Conc sidewalks - County	\$75,625	28,359.38	37.50%
Shell Sidewalk - 6 ft wide		0.00	100.00%
Restroom Structures	\$191,253	95,626.70	50.00%
Pavilion Structure	\$46,963	0.00	0.00%
Picnic table areas	\$30,940	15,470.00	50.00%
Dumspster enclosure	\$6,630	0.00	0.00%
Basketball court w/fence	\$25,415	0.00	0.00%
Pickleball court	\$14,365	0.00	0.00%
Kayak Storage Structure	\$0	0.00	0.00%
Dog Park (small & large)	\$66,411	0.00	0.00%
Storm Water System	\$270,725	119,091.93	43.99%
Site Lighting - Poles	\$93,925	37,570.00	40.00%
Park Wi-Fi system	\$0	0.00	40.00%
Playground Equip	\$128,775	128,775.00	100.00%
Beach Access Modifications (Pedestrian)	\$306,000	306,000.00	100.00%
Beach Access Modifications (Vehicular)	\$44,158	44,157.50	100.00%
Pier Improvements Allowance	\$111,826	44,730.40	40.00%
Landscape/Irrigation			
Large Trees	\$534,225	213,690.00	40.00%
	TBD		
Small Trees Palm Trees		TBD	TBD
Ornamental Shrubs/Grasses Existing Area		TBD	TBD
Enhancements Landscape Shrubs 36"oc Sod		TBD	TBD
Playground Rubber Surface Mulch			
Irrigation			

REVISED EXHIBIT C, Cont.
Amended Conceptual Budget

JON F. SWIFT CONSTRUCTION

PROJECT : **Bayfront Park**
LOCATION : **Longboat Key, Fl**
FILE NAME : **Conceptual Budget**

DATE : 05/03/16
PROJ # : 2015.109
PAGE : 2 OF 2

DESCRIPTION	TOTAL	Sarasota County Prop Breakout
Conceptual Design Budget		
RECAP		
sub-total	3,184,243	1,443,205
Contractor General Conditions	303,375	128,076
Estimate Contingency	183,017	77,264
sub-total	3,670,635	1,648,545
Contractor OH&P	132,834	56,079
Insurance/SubBonds/P&P Bond	66,417	28,039
Total Construction Budget	\$3,869,886	\$1,732,663
Total Construction & AE Budget	3,869,886	1,732,663
Cost Breakdown		
Sarasota County Property	1,732,663	
Longboat Key Property	2,137,223	
Total Construction & AE Budget	3,869,886	

REVISED EXHIBIT D

Amended Project Schedule

Project Activity	Quarter (1st, 2nd, 3rd, 4th)	Year
Design	4 th / 1 st / 2 nd	2015 - 2016
Permitting	1 st / 2 nd / 3 rd	2016
Bidding	2 nd / 3 rd	2016
Commencement of Construction	2 nd	2016
Completion of Construction	2 nd	2017

(For additional reference to Project Schedule, see Section 2.6 of the JPA)



End of Agenda Item