

BEFORE THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

DAVID DUNN-RANKIN,

Petitioner,

v.

DOAH Case No. 13-4728

App. ID No. 681134

ERP No. 44011678.005

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT and
CITY OF VENICE,

Respondents.

_____ /

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between DAVID DUNN-RANKIN ("Dunn-Rankin"), whose address is 217 The Esplanade South, Venice, Florida 34285; the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT ("District"), whose address is 2379 Broad Street, Brooksville, Florida 34604; and the CITY OF VENICE ("City"), whose address is 401 West Venice Avenue, Venice, Florida 34285 (collectively referred to herein as the "Parties").

WITNESSETH THAT:

WHEREAS, the District is the administrative agency charged with the responsibility to conserve, protect, manage, and control water resources within its geographic boundaries and to administer and enforce Chapter 373, Florida Statutes

("F.S.") and related rules under Chapter 40D, Florida Administrative Code ("F.A.C.");
and

WHEREAS, the City is a municipality established, organized and constituted in Sarasota County, Florida pursuant to Chapter 11776, Laws of Florida (1925); and

WHEREAS, Dunn-Rankin is an individual who owns real property located at 217 The Esplanade South, Venice, Florida 34285, which real property lies within the City's boundaries; and

WHEREAS, on May 7, 2013, the City applied for an environmental resource permit ("ERP") to authorize the construction of a new surface water management system serving a drainage/retrofit water quality improvement project, known as "Modification to Venice Outfalls 1 & 2," along the Gulf of Mexico shoreline in the City of Venice ("Project"), which was assigned Application ID No. 681134 (the "Application");
and

WHEREAS, the Project is designed to improve the poor water quality conditions resulting from two existing storm sewer outfalls that discharge urban runoff directly into the Gulf of Mexico, and consists of two pumps that will divert storm runoff from the existing storm sewers into a series of proposed off-line retention areas for treatment;
and

WHEREAS, on September 11, 2013, the District issued ERP No. 44011678.005 (the "Permit") to the City authorizing the construction of the Project; and

WHEREAS, on September 20, 2013, the District received a timely request for administrative hearing (“Petition”) from Dunn-Rankin concerning the District’s issuance of the Permit; and

WHEREAS, on October 7, 2013, the District issued an Order of Dismissal without Prejudice (“Order”), dismissing the Petition on the grounds that it was not in substantial compliance with the requirements of Section 120.569(2)(c), Florida Statutes (“F.S.”), and Rule 28-106.201(2), Florida Administrative Code (“F.A.C.”); and

WHEREAS, on October 11, 2013, Dunn-Rankin filed a timely Amended Petition requesting an administrative hearing concerning the District’s issuance of the Permit; and

WHEREAS, on October 31, 2013, the District issued a Second Order of Dismissal without Prejudice, dismissing the Amended Petition on the grounds that it was not in substantial compliance with the requirements of Section 120.569(2)(c), F.S., and Rule 28-106.201(2), F.A.C; and

WHEREAS, on November 13, 2013, Dunn-Rankin filed a timely Second Amended Petition concerning the District’s issuance of the Permit; and

WHEREAS, on November 15, 2013, the District issued a Third Order of Dismissal without Prejudice, dismissing the Second Amended Petition on the grounds that it was not in substantial compliance with the requirements of Section 120.569(2)(c), F.S., and Rule 28-106.201(2), F.A.C.; and

WHEREAS, on December 2, 2013, Dunn-Rankin filed a timely Third Amended Petition concerning the District’s issuance of the Permit; and

WHEREAS, on December 6, 2013, the District referred the matter to the Division of Administrative Hearings (“DOAH”) to conduct a formal hearing in this matter, which was assigned Case No. 13-4728; and

WHEREAS, on December 19, 2013, the District and the City filed a Joint Motion to Dismiss the Third Amended Petition, which motion was granted by the Administrative Law Judge (“ALJ”) on December 30, 2013, but which allowed Dunn-Rankin leave to file an amended petition; and

WHEREAS, on January 17, 2014, Dunn-Rankin filed a timely Fourth Amended Petition concerning the issuance of the Permit; and

WHEREAS, on January 30, 2014, the Parties voluntarily held a settlement meeting and now wish to resolve their dispute.

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby made a part of this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. The Parties hereby incorporate the “Whereas” clauses recited above into this Agreement.

2. Within five (5) days of approval of this Agreement by all Parties, the Parties agree to file a Joint Motion for Relinquishment of Jurisdiction in DOAH Case No. 13-4728, requesting that the ALJ remand this matter to the District so that the Parties may conduct further proceedings associated with this matter which are necessary to effectuate the terms and conditions of this Agreement.

3. Within five (5) days after this matter is remanded to the District, the District agrees to enter an order placing this matter in abeyance so that the City may pursue an amendment to the Application.

4. Within thirty (30) days after this matter is remanded to the District, the City agrees to amend Application ID No. 681134 requesting, at a minimum, the following changes to the permitted design of the Project:

- a. The City will modify the open swale concept for the portion of the Project north of Ocala Street to an underground exfiltration trench as shown on Exhibit "A" attached hereto.
- b. The City intends to construct the open swale proposed for the portion of the Project south of Ocala Street to the minimum dimensions possible, given the objectives and permit requirements for the Project. The City agrees, however, that the open swale will not exceed 2.5 feet in depth nor 35 feet in width at any point.

5. The City shall obtain an ERP incorporating the modifications described in Paragraph 4 as expeditiously as possible, but in no case later than 180 days after this Agreement is approved by the City. The District agrees to work with the City as expeditiously as possible in furtherance of this requirement.

6. Dunn-Rankin agrees not to oppose the City's ERP for the Project, including any authorizations or conditions, provided it is modified as described in Paragraph 4.

7. Within five (5) days of the District's issuance of an ERP incorporating the modifications described in Paragraph 4 to the City, Dunn-Rankin agrees to submit to the District a notice of voluntary dismissal with prejudice, withdrawing his request for formal administrative hearing concerning the Permit and thereby closing this matter.

8. The Parties acknowledge that the City has obtained funding for the Project from the District and from the Florida Department of Environmental Protection ("FDEP"). In the event that the City loses such funding as a result of any requirement of this Settlement Agreement, this Agreement shall be null, void, and of no legal effect.

9. The Parties acknowledge that this Settlement Agreement is contingent upon the City obtaining a modification to its Coastal Construction Control Line ("CCCL") Permit from FDEP. In the event that the City is unable to obtain a modification to its CCCL Permit from FDEP prior to the District's issuance of an ERP incorporating the modifications described in Paragraph 4 of this Agreement, this Agreement shall be null, void, and of no legal effect.

10. This Agreement shall be effective on the date the last party has executed it. This Agreement is subject to review and approval by the District's Governing Board and the City's Council. In the event that either the District's Governing Board or the City's Council shall not approve this Agreement, it shall be null, void, and of no legal effect. After this Agreement has been executed by Dunn-Rankin, Dunn-Rankin may not withdraw approval or terminate this Agreement under any circumstances unless either the District's Governing Board or the City's Council fails to approve this Agreement.

11. In the event that this Agreement terminates by operation of Paragraphs 8, 9, or 10, the City agrees to withdraw its request to modify the Application and the District agrees to refer this matter back to DOAH to conduct proceedings in accordance with the issues raised by Dunn-Rankin's Fourth Amended Petition.

12. The City or Dunn-Rankin may apply in writing to the District for an extension of the time limits contained in this Agreement no later than five (5) days prior to the expiration of such time limit. The District may grant an extension of time in writing for good cause shown.

13. Each party shall bear its own costs and attorney's fees related to this matter.

14. This Agreement may be enforced by the Parties in any manner authorized by law and does not preclude any party from seeking judicial or administrative remedies for violation of the terms or conditions of this Agreement.

15. Entry of this Agreement shall not relieve the City of the duty to comply with all applicable federal, state and local laws, regulations and ordinances.

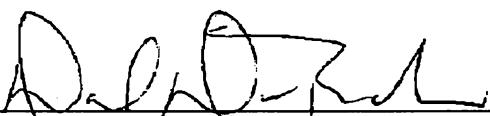
16. This Agreement, upon execution, constitutes the entire agreement of the Parties. The Parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed orally or by any means other than written amendments referencing this Agreement and signed by all Parties.

17. This Agreement may be executed in separate counterparts, which shall not affect its validity.

IN WITNESS WHEREOF, the District has caused this Agreement to be executed on the day and year written below in its name by its Governing Board; Dunn-Rankin has caused this Agreement to be executed on the day and year written below in his name; and the City has caused this Agreement to be executed on the day and year written below in its name by its Council.

DAVID DUNN-RANKIN

Date: 3/31/2014


By: David Dunn-Rankin


Witness

Eline Borges Vieira
Witness – Printed Name

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By: _____
Robert Beltran, P.E.
Executive Director

Witness

Witness – Printed Name

Approved as to Legal Form and Content

Office of General Counsel

Approved by the Governing Board of the Southwest Florida Water Management
District this _____ day of _____, 2014.

By: _____
Carlos Beruff, Chair

Attest: _____
Randall S. Maggard, Secretary

Filed this _____ day of _____, 2014.

(Seal)

Deputy Agency Clerk

Approved by the City Council of the City of Venice this _____ day of _____, 2014.

CITY OF VENICE, FLORIDA

ATTEST:

City Clerk

By: _____
Mayor

Approved as to Legal Form and Content

City Attorney

Copies furnished to:

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EXHIBIT A

MODIFICATION TO VENICE OUTFALLS 1 & 2

