

**AMENDMENT NO. 2
TO AGREEMENT NO. S0840
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
LEE COUNTY BOARD OF COUNTY COMMISSIONERS**

This Amendment to Agreement No. S0840, as previously amended, (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and the LEE COUNTY BOARD OF COUNTY COMMISSIONERS. (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for Lee County Yellow Fever Creek/Gator Slough Transfer Facility Project, effective December 10, 2015; and,

WHEREAS, the Grantee has requested extension of the Agreement because more time is needed to complete the construction task; and,

WHEREAS, certain provisions of the Agreement need revision and several provisions need to be added to the Agreement.

NOW THEREFORE, the parties agree as follows:

1. The Agreement is effective until March 31, 2022. The reimbursement period for this Agreement begins on July 1, 2015 and ends at the expiration of the Agreement. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.
2. Section 17. of the Agreement is hereby deleted in its entirety and replaced with the following:

CONTACTS:

The Department’s Grant Manager (which may also be referred to as the Department’s Project Manager) for this Agreement is identified below:

Zachary Easton, or Successor	
Florida Department of Environmental Protection	
Division of Water Restoration Assistance	
3900 Commonwealth Blvd., MS# 240	
Tallahassee, Florida 32399	
Telephone No.:	(850) 245-2949
E-mail Address:	Zachary.easton@dep.state.fl.us

The Grantee’s Grant Manager at the time of execution for this Agreement is identified below:

David Warthen, or Successor	
Lee County Board of County Commissioners	
Natural Resources; Project Manager	
1500 Monroe Street	
Fort Myers, Florida 33901	
Telephone No.:	(239) 533-8829
E-mail Address:	dwarthen@leegov.com

If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and

maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.

3. Section 29. is hereby deleted and replaced with RESERVED.

4. Section 30. of the Agreement is deleted and replaced as follows:

SCRUTINIZED COMPANIES:

A. Grantee certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee or its subcontractors are found to have submitted a false certification; or if the Grantee, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

B. If this Agreement is for more than one million dollars, the Grantee certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

C. The Grantee agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

D. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

5. Section 31. is added to the Agreement as follows:

REFUND OF PAYMENTS TO THE DEPARTMENT

Any balance of unobligated funds that have been advanced or paid must be refunded to the Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to the Department.

6. **Attachment F, Public Records Requirements**, as attached to this Amendment, is hereby incorporated into the Agreement.

7. **Attachment A-1, Revised Grant Work Plan**, is hereby deleted in its entirety and replaced with **Attachment A-2, Revised Grant Work Plan**, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to **Attachment A-1** shall hereinafter refer to **Attachment A-2, Revised Grant Work Plan**.

8. **Attachment B-1, Payment Request Summary Form**, is hereby deleted in its entirety and replaced with **Attachment B-2, Payment Request Summary Form**, attached hereto and made a part of the Agreement. All references in the Agreement to **Attachment B-1**, shall hereinafter refer to **Attachment B-2, Payment Request Summary Form**.

9. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties have caused this amendment to Agreement No. S0840 to be duly executed, the day and year last written below.

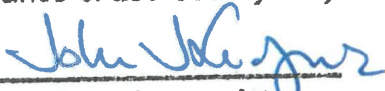
LEE COUNTY BOARD OF
COUNTY COMMISSIONERS

By: 
Chairman

BRIAN HAMMAN
Print Name of Authorized Person

Date: 8/19/19

Approved as to Form for the
Reliance of Lee County Only

By: 
Office of the County Attorney

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
Secretary or Designee

Trina Vielhauer, Director of DWRA
Print Name and Title of Authorized Person

Date: 8/23/19


Zachary Easton, DEP Grant Manager


Sandra Waters, DEP QC Reviewer

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A-2	Revised Grant Work Plan (2 Pages)
Attachment	B-2	Revised Payment Request Summary Form (1 Page)
Attachment	F	Public Records Requirements (1 Page)

**ATTACHMENT A-2
REVISED GRANT WORK PLAN**

PROJECT TITLE: Lee County Yellow Fever Creek/Gator Slough Transfer Facility Project

PROJECT LOCATION: The Project will be located at the jurisdictional line of North Fort Myers and the City of Cape Coral, and is adjacent to the Yellow Fever Creek Preserve in Lee County; Lat/Long (26.7155, -81.9248).

PROJECT BACKGROUND: Historically, Gator Slough Canal fed into Yellow Fever Creek, but the two (2) water bodies have been disconnected due to urban development. During the Northwest Spreader Ecosystem Management Agreement process, the stakeholder group identified excess discharges from the Gator Slough Canal system as one of the factors impacting scouring, mangrove fringe degradation, and salinity occurring during high-flow events downstream within Matlacha Pass. Lee County (Grantee) has prioritized the construction of a water transfer facility to restore the interconnection between Gator Slough Canal and Yellow Fever Creek. The Project will reduce freshwater discharges into Matlacha Pass, restore historic base flows to the Yellow Creek watershed, and will enhance the rehydration of wetlands south of Del Prado Boulevard.

PROJECT DESCRIPTION: The Grantee will construct a water transfer facility and downstream improvements to transfer excess water flows from the Gator Slough Canal to the Yellow Fever Creek.

The Grantee does not anticipate that the funding under this Agreement will result in a fully completed project, so this Agreement will cover a portion of the work.

TASKS:

All documentation should be submitted electronically unless otherwise indicated.

Task 1: Design and Permitting

Deliverables: The Grantee will complete the design of a water transfer facility and downstream improvements, and obtain all necessary permits for construction of the project.

Documentation: The Grantee will submit a signed acceptance of the completed work by the Grantee and a summary of design activities to date, indicating the percentage of design completion of the time period covered in the payment request. For the final documentation, Grantee will also submit a copy of the final design and a list of all required permits identifying issue dates and issuing authorities.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 2: Construction

Deliverables: The Grantee will construct a water transfer facility and downstream improvements in accordance with the construction contract documents.

Documentation: The Grantee will submit a signed acceptance of the completed work to date by the Grantee and the Engineer's Certification of Payment Request.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by, and all documentation received by, the corresponding task end date.

Task No.	Task Title	Budget Category	Budget Amount	Task Start Date	Task End Date
1	Design and Permitting	Contractual Services	\$50,000	07/01/2015	09/30/2021
2	Construction	Contractual Services	\$125,000	07/01/2015	09/30/2021
Total:			\$175,000		

Note that, per paragraph 4 of the agreement, authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations. Extending the contract end date carries the risk that funds for this project may become unavailable in the future. This should be a consideration for the Grantee with this and future requests for extension.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Payment Request Summary Form

Attachment B-2

The **Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.

ATTACHMENT F, PUBLIC RECORDS REQUIREMENTS

1. Public Records

- a. If the Agreement exceeds \$35,000.00, and if the Grantee is acting on behalf of the Department in its performance of services under the Agreement, the Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If the Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.
- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing address: Department of Environmental Protection

ATTN: Office of Ombudsman and Public Services

Public Records Request

3900 Commonwealth Boulevard, MS 49

Tallahassee, Florida 32399