

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20030671-UTL

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize the Chairman, on behalf of the BOCC, to approve Florida Department of Environmental Protection's (FDEP) Amendment No. 1 to State Revolving Fund (SRF) Loan Agreement No. CS12039232P for Lee County Wastewater Management Countywide Planning.

WHY ACTION IS NECESSARY:

Board approval is required.

WHAT ACTION ACCOMPLISHES:

Reschedules the loan payment activities to provide Lee County additional time to complete preconstruction activities. Also, the amendment terminates the FDEP's commitment to provide additional financing at a combined rate of interest and Grant Allocation Assessment of 3.08 percent per annum.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES
COMMISSION DISTRICT #: 5

C10B

3. MEETING DATE:

06-17-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE _____
- ORDINANCE _____
- ADMIN. CODE _____
- OTHER Agmt. Amendment

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, P.E., Utilities Director

DATE:

6/3/3

7. BACKGROUND:

The schedule specified in Article X, Paragraph 10.07 of the State Revolving Fund Loan Agreement calls for the design of all project facilities and site certifications to be completed by June 15, 2003, on the following projects:

- 1) Gateway WWTP Expansion and Deep Injection Well at Airport Sewer District
- 2) Pine Island Deep Injection Well and Transmission Line
- 3) Fiesta Village WWTP Expansion
- 4) Airport to Gateway Sewer Transmission Line
- 5) Waterway Estates WWTP Decommission and Transmission Line to City of Cape Coral WTP
- 6) Gateway WWTP Expansion

Due to the negotiations underway for the Gateway WWTP acquisition, Lee County will not be able to comply with the provisions of Paragraph 10.7-(2) and (3) as it relates to projects number 1, 4 and 6. In response to LCU's request, the FDEP has granted Lee County a one-year extension to complete preconstruction activities. Therefore, the attached Amendment No. 1 is required and is being submitted for approval.

Attachments: 3 Originals, Copy of 5-22-03 Letter Requesting Extension (Must be returned to FDEP on 6-20-03)

MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
J. Lavender Date: 6.3.03	<i>[Signature]</i> Date: 6/3/03	N/A	<i>[Signature]</i> J. Laracuente, P.E. Date: 6-3-03	<i>[Signature]</i> D. Owen Date: 6/3/03	P.M 6/4/03	45 6/4/03	28 6/4/03	24 6/4/03	<i>[Signature]</i> J. Lavender Date: 6.3.03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: 6/3/03
Time: 3:00 PM
Forwarded To: Budget
6/3/03 4:30 PM

RECEIVED BY
COUNTY ADMIN. *[Signature]*
COUNTY ADMIN.
FORWARDED TO:
6/5 9:00

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 479-8178

(239) 707-0733

Bob Janes
District One May 22, 2003

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

Don Berryhill, P.E., Chief
Bureau of Water Facilities Funding
FL DEPARTMENT OF ENVIRONMENTAL PROTECTION
2600 Blair Stone Road-MS 3505
Tallahassee, FL 32399-2400

**SUBJECT: CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT
CS12039232P FOR PROJECT # WWG12039232L – SCHEDULE DATES**

Dear Mr. Berryhill:

The schedule specified in article X, paragraph 10.07 of subject loan agreement calls for the design of all project facilities and site certifications to be completed by June 15, 2003. The current status of compliance with 10.07 of the 6 projects included in WWG12039232L is as follows:

#	Project	DEP Status	LCU** Project Status
1	Gateway WWTP expansion and deep injection well at Airport Sewer District	PP of PL*	The acquisition of the Gateway WWTP has been held up by protracted negotiations. Acquisition closing should occur before June 30, 2003. LCU** expects to proceed with the plant expansion (phase I) and DIW project in 2004. The design and site certification will be submitted a soon as feasible.
2	Pine Island deep injection well & transmission line.	PP of PL*	Project design is complete and Lee County will submit the design documents and the other documents to DEP in early June.
3	Fiesta Village WWTP expansion	Pending close out	Design was approved by DEP on November 5, 2002. The project has been completed and Lee county will not pursue any further funding for this project.
4	Airport to Gateway sewer transmission line	PP of PL*	The acquisition of the Gateway WWTP has been held up by protracted negotiations. Acquisition closing should occur before June 30, 2003. LCU expects to proceed with the transmission line project in 2004. The design and site certification will be submitted a soon as feasible.
5	Waterway Estates WWTP decommission and transmission line to C of CC WTP	PP of PL*	This project has been put on hold pending further analysis.
6	Gateway WWTP expansion	PP of PL*	The acquisition of the Gateway WWTP has been held up by protracted negotiations. Acquisition closing should occur before June 30, 2003. LCU** expects to proceed with the plant expansion (phase II) in 2005. The design and site certification will be submitted a soon as feasible.

* - Planning Portion of DEP-SRF Priority List

** - Lee County Utilities

Don Berryhill, P.E., Chief, Bureau of Water Facilities Funding-FDEP
May 22, 2003
Page 2

Due to the drawn out negotiations for the Gateway WWTP acquisition, Lee County will not be able to comply with the provisions of paragraph 10.7 – (2) and (3) as it relates to projects number 1, 4 and 6. Specifically, we will not be able to complete the design and site certifications for these projects by June 15, 2003. We enclose herewith documentation showing the Lee County BOCC action taken on 5/20/2003 authorizing the purchase of the Gateway WWTP.

As we are unclear what effect this delay has on the loan agreement and how to proceed, we are hereby respectfully requesting your guidance. It would seem proper to request an extension of the deadlines specified in paragraph 10.07.

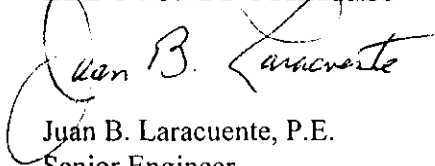
Lee County intends to re-submit a Request for Inclusion for projects number 1, 2, 4 and 6, those currently on the planning portion of the DEP-SRF priority list, in June.

If you feel a meeting would be best to further discuss these matters we are available at your convenience.

Thank you for your assistance.

Cordially,

LEE COUNTY UTILITIES



Juan B. Laracuate, P.E.
Senior Engineer

JBL:sdg

Enclosures

cc: Rick Diaz, P.E., LCU (WO/A)
Ivan Velez, P.E., LCU (WO/A)
Orlando Figueroa, LCU (WO/A)
Jim Lewin, Budget Services (WO/A)
File/Scan Copy



Department of Environmental Protection

Jeb Bush
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

May 28, 2003

Mr. Juan B. Laracuente, P.E., Senior Engineer
Lee County
Post Office Box 398
Fort Myers, Florida 33902-0398

Re: CS12039232P - Lee County
Wastewater Management
County-Wide Planning

Dear Mr. Laracuente:

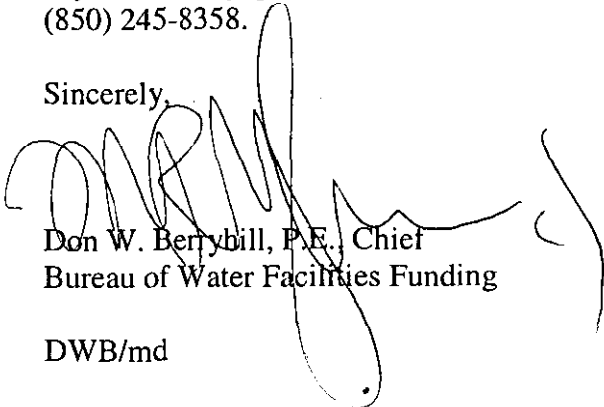
In response to your letter dated May 22, 2003, we are granting a one-year extension to Project CS12039232P. Enclosed are three original copies of proposed Amendment 1 to your State Revolving Fund loan agreement. The amendment terminates the Department's commitment to provide additional financing at a combined rate of interest and Grant Allocation Assessment of 3.08 percent per annum and reschedules the loan repayment activities to provide Lee County additional time to complete preconstruction activities.

COPY

Please sign and have the appropriate officials **sign and seal** the enclosed three copies and return them to us within three weeks at 2600 Blair Stone Road, Mail Station 3505, Tallahassee, Florida, 32399-2400. We will arrange for the Department Secretary to sign the document and mail a fully executed copy to you.

If you have any questions regarding this amendment, please call Melissa Dockstader at (850) 245-8358.

Sincerely,


Don W. Berrybill, P.E., Chief
Bureau of Water Facilities Funding

DWB/md

Enclosures

cc: Rick Diaz - Lee County
Donna Harn - Lee County

JUN 02 2003

"More Protection, Less Process"

Printed on recycled paper.

**STATE REVOLVING FUND
AMENDMENT 1 TO LOAN AGREEMENT CS12039232P
LEE COUNTY**

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and LEE COUNTY, FLORIDA, existing as a local government agency (Local Government) under the laws of the State of Florida.

WITNESSETH:

WHEREAS, the Department and the Local Government entered into a State Revolving Fund Loan Agreement, Number CS12039232P; and

WHEREAS, termination of the Department's commitment to provide additional financing at a combined rate of interest and Grant Allocation Assessment of 3.08 percent per annum is necessary because the Local Government failed to comply with the Project schedule as required under Sections 4.06 and 10.07 of the Loan Agreement; and

WHEREAS, revised provisions for audit and monitoring are needed; and

WHEREAS, Loan repayment activities need rescheduling to give the Local Government additional time to complete preconstruction activities.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Department's commitment to provide additional financing for Construction Related Costs at a combined rate of interest and Grant Allocation Assessment of 3.08 percent per annum is hereby terminated.
2. Subsections 2.01(10) and 2.01(11) of the Agreement are deleted and replaced by Section 2.03 AUDIT AND MONITORING REQUIREMENTS.

The Local Government agrees to the following audit and monitoring requirements.

- (1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

Federal Resources, Including State Match, Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
CS120001-010	EPA	66.458	Capitalization Grants for State Revolving Funds	\$4,669,379	140131

- (2) Audits.

- (a) In the event that the Local Government expends \$300,000 or more in Federal awards in its fiscal year, the Local Government must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Subsection 2.03(1) of this Agreement indicates that Federal funds are awarded through the Department of Environmental

Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the Local Government shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Local Government conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.

(b) In connection with the audit requirements addressed in the preceding paragraph (a), the Local Government shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

(c) If the Local Government expends less than \$300,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Local Government expends less than \$300,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Local Government resources obtained from other than Federal entities).

(d) The Local Government may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://aspe.os.dhhs.gov/cfda>.

(3) Report Submission.

(a) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Subsection 2.03(2) of this Agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Local Government directly to each of the following:

(i) The Department of Environmental Protection at each of the following addresses:

Don W. Berryhill, P.E., Chief
Bureau of Water Facilities Funding
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 3505
Tallahassee, Florida 32399-2400

Joe Aita, Audit Director
Office of the Inspector General
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 40
Tallahassee, Florida 32399-2400

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

(iii) Other Federal agencies and pass-through entities in accordance with Sections .320(e) and (f), OMB Circular A-133, as revised.

(b) Pursuant to Section .320(f), OMB Circular A-133, as revised, the Local Government shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department of Environmental Protection at the two addresses listed under Subsection 2.03(3)(a) of this Agreement.

(c) Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(d) Local Governments, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Local Government in correspondence accompanying the reporting package.

(4) Project-Specific Audit.

Within 12 months after the amendment establishing final Project costs, the Local Government shall submit to the Department a Project-specific audit report for the Loan related revenues and expenditures. The audit shall address Loan disbursements received, Project expenditures, and compliance with Loan Agreement covenants. The Local Government shall cause the auditor to notify the Department immediately if anything comes to the auditor's attention during the examination of records that would constitute a default under the Loan Agreement. The audit findings shall set aside or question any costs that are unallowable under Chapter 62-503, Florida Administrative Code. A final determination of whether such costs are allowed shall be made by the Department.

(5) Record Retention.

The Local Government shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Comptroller, or Auditor General access to such records upon request. The Local Government shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Comptroller, or Auditor General upon request for a period of three years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

(6) Monitoring.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised (see audit requirements above), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Local Government agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the Local Government is appropriate, the Local Government agrees to comply with any additional instructions provided by the Department to the Local Government regarding such audit. The Local Government further agrees to comply and cooperate with any

inspections, reviews, investigations, or audits deemed necessary by the Comptroller or Auditor General.

3. Unless repayment is further deferred by amendment of the Agreement, Semiannual Loan Payments as set forth in Section 10.05 shall be received by the Department beginning on July 15, 2005, and semiannually thereafter on January 15 and July 15 of each year until all amounts due under the Agreement have been fully paid.
4. The items scheduled under Subsections 10.07 (2) through (7) of the Agreement are rescheduled as follows:
 - (2) Design of all Project facilities proposed for loan funding no later than June 15, 2004.
 - (3) Certification of availability of all sites for facilities proposed for loan funding no later than June 15, 2004.
 - (4) Authorization to incur Construction Related Cost for all Project facilities proposed for loan funding no later than July 15, 2004.
 - (5) Unless deferred by amendment, establish the Loan Repayment Reserve Account and deposit \$136,001 no later than January 15, 2005.
 - (6) Unless deferred by amendment, establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than January 15, 2005.
 - (7) Unless deferred by amendment, provide certifications under Subsection 2.01(12) beginning April 15, 2005, and thereafter no later than September 30 of each year until the final Semiannual Loan Repayment is made.

All other terms and provisions of the Loan Agreement shall remain in effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Amendment 1 to Loan Agreement CS12039232P shall be executed in three or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Secretary of the Department and the Local Government has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Secretary of the Department.

for
LEE COUNTY

Chairman, Board of County Commissioners

Attest

Approved as to Form and Legality

County Clerk

County Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary

Date