

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20051198**

**1. ACTION REQUESTED/PURPOSE:**

Execute DEP Agreement 05LE1 with the Florida Department of Environmental Protection (FDEP) for the Blind Pass Restoration project. The agreement stipulates cost sharing amounts for design and permitting tasks. FDEP will provide \$70,554 for tasks to date.

**2. WHAT ACTION ACCOMPLISHES:**

The agreement allows for reimbursement of design and permitting of the Blind Pass project. Board approval is required for this agreement.

**3. MANAGEMENT RECOMMENDATION:**

Management recommends approval.

<b>4. Departmental Category:</b> 08 - <u>C8C</u>		<b>5. Meeting Date:</b> <u>09-06-2005</u>
<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose:</b> (specify)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other	Agreement
		<b>8. Request Initiated:</b> Commissioner _____ Department <u>Public Works</u> Division <u>Natural Resources</u> By: <u>Roland Ottolini, Director</u>

**9. Background:** In 2003 Lee County, the City of Sanibel, and the Captiva Erosion Prevention District (CEPD) partnered in feasibility study examining restoration options for the Blind Pass Ecozone. The Ecozone encompasses Blind Pass, Roosevelt Channel, Dinkins Bayou, and Clam Bayou on Sanibel and Captiva Islands. The study recommended 2 components to restoring the ecozone.

The first component is dredging Blind Pass and Wulfert Channel to improve tidal flushing and water condition in the ecozone. The second component is to install a connection to Clam Bayou from Dinkins Bayou, under San-Cap Road. Lee County, CEPD and the City of Sanibel have executed an interlocal agreement to partner on the work. The City of Sanibel is responsible for constructing the connection under San-Cap road, while Lee County and CEPD are responsible for the pass opening.

As part of the restoration, beach compatible material will be removed from the pass and placed on the adjacent shoreline of Captiva and Sanibel Islands. In accordance with Section 161.091 – 161.161 Florida Statutes, Agreement 05LE1 allows the Department of Environmental Protection, Bureau of Beaches and Coastal Systems to reimburse the County 31.05% of the eligible cost associated with the sand placement.

By interlocal agreement, CEPD and Lee County are each providing 50% of the remaining costs. Design and permitting encumbrances to date total \$427,264.

Funds are available in 20309130100, 20309130101, and 22309130100

Attachments: DEP Project Agreement 05LE1 (3 Originals)

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	AMgr.	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*  
8-23-05  
9-40 am  
COUNTY ADMIN FORWARDED TO: *[Signature]*  
8/25/05  
3:24 pm

RECEIVED BY CO. ATTY.  
CO. ATTY.  
FORWARDED TO: *[Signature]*  
8-25-05

**FORWARD WITH AGREEMENT AND BLUE SHEET**

ALL INFORMATION IS REQUIRED - DO NOT LEAVE ANY BLANKS - USE N/A WHEN NOT APPLICABLE

**GRANT AT A GLANCE**

GRANT AWARD INFORMATION

- 1. County Grant ID (project #): 223091
- 2. Title of Grant: BLIND PASS ECOZONE RESTORATION PROJECT
- 3. Amount of Award: \$70,554
- 4. Amount of Match Required: \$156,673
- 5. Type of Match: CEPD and Lee County are each Providing 50% of remaining Costs  
(cash, in-kind etc)

**6. SOURCE OF GRANT FUNDS & CATALOG NUMBER:**

FEDERAL <input type="checkbox"/> CFDA #	STATE <input type="checkbox"/> CSFA #
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7. Agency Contract Number: 05LE1

8. Contract Period:	Begin Date: <u>upon ex</u>	End Date:
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9. Name of Subrecipient(s) n/a

10. Business Unit(s): 22309130100

11. Scope of Grant: (describe project). dredging of Blind Pass and Wulfert Channel and connection of Clam Bayou from Dinkins Bayou under San-Cap Road

12. Has this Grant been Funded Before?  YES  NO If YES When?

13. Is Grant Funding Anticipated in Subsequent Years?  YES  NO

14. If Grant Funding Ends Will This Program Be Continued at County Expense?  YES  NO  
If YES What is the Lee County Budget Impact:

1st Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
4 <sup>th</sup> Year	5 <sup>th</sup> Year	

Check Box if Additional Information on Program and Budget Impact is provided in *Comment Section* on page 2

**ADMINISTERING DEPARTMENT INFORMATION**

- 1. Department: Natural Resources
- 2. Contacts:

Program Mgr. Robert Neal	Phone #: 479-8566
Fiscal Mgr. Elin Clemons	Phone #:

**GRANTOR AGENCY INFORMATION**

(The agency you signed this agreement with)

- 1. Grantor Agency: Florida Department of Enviromental Protection
- 2. Program Title/Division: Bureau of Beaches and Coastal Systems
- 3. Agency Contact: Dena VanLandingham
- 4. Phone Number: 850 487-1262 ext 118
- 5. Mailing Address: 3900 Commonwealth Blvd MS 300  
Tallahassee, FL 32399-3000

**SOURCE OF FUNDS**

- 1. Original Funding  
Source: Florida Dept of Enviromental Protection  
(name of agency where funding originated from)
- 2. Pass Through Agency: N/A  
(middleman if any? Example: federal \$\$ from US DOT given to STATE of FL DOT --- then from STATE DOT to Lec County DOT --- STATE of FL DOT is the pass-through agency).
- 3. Additional Information for Other Agencies Involved:  
\_\_\_\_\_  
\_\_\_\_\_
- 3a. Is the County a Grantee  
or Subrecipient in #3 above: Grantee

**REPORTING REQUIREMENTS**

- 1. Does this grant require a separate subfund? YES  NO

(Example: you need to return interest earnings)

Please Explain:

- 2. Is funding received in advance? YES  NO
- (If YES, please indicate conditions for returning residual proceeds, or interest and the address to return it to, if different from the Grantor Agency Information)

**COMMENTS--INSTRUCTIONS:**

DEP AGREEMENT No: 05LE1  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF BEACHES AND COASTAL SYSTEMS  
BEACH EROSION CONTROL PROGRAM  
STATE OF FLORIDA  
GRANT AGREEMENT FOR  
BLIND PASS ECOZONE RESTORATION PROJECT

THIS AGREEMENT is entered into between the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "DEPARTMENT") whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 and the LEE COUNTY, whose address is 1500 Monroe Street, Ft. Myers, Florida 33902, a local government, (hereinafter referred to as the "LOCAL SPONSOR") for the project described herein.

WHEREAS, the DEPARTMENT, pursuant to Section 161.091 - Section 161.161, Florida Statutes, which provides for financial assistance to eligible governmental entities for beach erosion control activities under the Florida Beach Erosion Control Program; and,

WHEREAS, the LOCAL SPONSOR has the capabilities of performing the task associated with, and has demonstrated a financial commitment to, the beach erosion control project as described herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, the DEPARTMENT and the LOCAL SPONSOR do hereby agree as follows:

1. The DEPARTMENT does hereby retain the LOCAL SPONSOR to implement the beach erosion control project known as the BLIND PASS ECOZONE RESTORATION PROJECT, (hereafter referred to as the PROJECT), as defined in Attachment A (Project Work Plan), attached hereto and incorporated herein by reference, and the LOCAL SPONSOR does hereby agree to perform such services as are necessary to implement the PROJECT in accordance with the terms and conditions set forth in this Agreement, and all attachments and exhibits named herein which are attached hereto and incorporated by reference. For purposes of this Agreement, the terms "Contract" and "Agreement" are used interchangeably, and also the terms "Grantee", "Recipient" and "Local Sponsor" are used interchangeably.
2. This Agreement shall begin on the last date executed and end on October 1, 2006. Pursuant to Section 161.101 (18), Florida Statutes, work conducted on this PROJECT by the LOCAL SPONSOR or its subcontractor beginning on or after January 21, 2005, shall be eligible for cost sharing by the DEPARTMENT.
3. The LOCAL SPONSOR shall perform the services in a proper and satisfactory manner as determined by the DEPARTMENT. Any and all equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the LOCAL SPONSOR.
4. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature and subject to the release of funds appropriated to the DEPARTMENT.

5. The LOCAL SPONSOR shall implement the PROJECT and complete said PROJECT upon the terms and conditions set forth in this Agreement and future requisite authorizations and environmental permits. The PROJECT consists of the reopening and bypassing of material from Blind Pass. It is a component of a larger, multi-jurisdictional project to reestablish the tidal connection between Clam and Dinkins Bayou and to improve water conditions and flushing to the Blind Pass/Dinkins Bayou/Pine Island Sound system. DEP shall cost share on eligible activities associated with the management of the adjacent beaches. Specific activities include removal of beach quality material from the Blind Pass entrance channel and floodshoal, with placement on the downdrift beaches or in a configuration to reestablish the ebb shoal. The life of the PROJECT is defined as ten (10) years commencing upon the completion date of the construction task under this PROJECT.

The LOCAL SPONSOR shall develop a detailed Scope of Work for each eligible PROJECT item, as specified in Table 1 below. It is understood and agreed that the detailed Scope of Work shall include a narrative description of each task, a corresponding detailed budget and a project schedule. Written authorization to initiate each eligible project item must be obtained from the DEPARTMENT prior to the initiation of said item.

6. The DEPARTMENT and the LOCAL SPONSOR agree that the estimated costs of the PROJECT are identified in Table 1 below:

Task #	Eligible PROJECT Items	Estimated Project Costs			
		Federal	State	Local	Total
1.0	Design and Permitting	\$0	\$70,554	\$156,673	\$227,227
	<b>TOTAL PROJECT COSTS</b>	<b>\$0</b>	<b>\$70,554</b>	<b>\$156,673</b>	<b>\$227,227</b>

7. The DEPARTMENT has determined that 62.1 percent of the PROJECT length is eligible for state cost sharing. Therefore, the DEPARTMENT's financial obligation shall not exceed the sum of \$70,554 for this PROJECT or up to 31.05 percent of the non-federal PROJECT cost, if applicable, for the specific eligible PROJECT items listed above, whichever is less. The DEPARTMENT and the LOCAL SPONSOR agree that any and all activities associated with the PROJECT that are not shown in Table 1 or Attachment A are the responsibility of the LOCAL SPONSOR and are not a part of this Agreement. The LOCAL SPONSOR agrees that any costs for the specific eligible PROJECT items which exceed the estimated PROJECT costs for that item shall be the responsibility of the LOCAL SPONSOR. Any modifications to the estimated TOTAL PROJECT COSTS shall be provided through formal amendment to this Agreement.

8. The LOCAL SPONSOR shall perform as an independent contractor and not as an agent, representative, or employee of the DEPARTMENT.

9. The LOCAL SPONSOR agrees to maintain the public beach access sites and public parking spaces, as identified in Attachment B (Funding Eligibility), attached hereto and incorporated herein by reference, for beach use throughout the life of the PROJECT as established under this Agreement. If at any time the LOCAL SPONSOR fails to maintain the subject beach access sites and public parking for use by the general public on an equal basis, the LOCAL SPONSOR agrees to reimburse the DEPARTMENT all funds provided by the DEPARTMENT associated with any beach access site where maintenance is discontinued. Additionally, the LOCAL SPONSOR agrees to maintain public beach access signs that are clearly visible from the highway for the life of the PROJECT. The parties expressly agree that the provisions of this paragraph shall survive and be enforceable beyond the expiration date of this Agreement.

10. Paragraph intentionally left blank.

11. As consideration for the eligible work performed by the LOCAL SPONSOR under the terms of this Agreement, the DEPARTMENT shall pay the LOCAL SPONSOR as specified herein. For satisfactory performance, the DEPARTMENT agrees to compensate the LOCAL SPONSOR on a cost reimbursement basis for services rendered. All requests for reimbursement shall be made in accordance with Attachment C (Comptroller's Contract Payment Requirements), attached hereto and made a part hereof, and state guidelines for eligible costs found in the State Comptroller's Voucher Processing Handbook at (<http://www.dbf.state.fl.us/aadir/mainindex.html>). The LOCAL SPONSOR will submit a request for reimbursement of funds on the forms provided as Attachment D (Request For Payment, PARTS I - IV), attached hereto and made a part hereof, on a quarterly basis. The term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30, and December 31; the request shall be submitted no later than thirty (30) days following the completion date of the quarterly reporting period, of each year in which the project is underway. These forms shall be certified as accurate by the LOCAL SPONSOR'S Project Administrator and the LOCAL SPONSOR's Project Financial Officer and submitted to the DEPARTMENT as a payment request. All requests for the reimbursement of travel expenses shall be based on the travel limits established in Section 112.061, Florida Statutes. A final invoice shall be due no later than thirty (30) days following the completion date of this Agreement. The DEPARTMENT will not release funds for payment until such time as all requisite authorizations and environmental permits, including those required pursuant to Chapters 161, 253, 258 and 373, Florida Statutes, have been obtained.
12. The DEPARTMENT's Project Manager shall have thirty (30) days after receipt of each billing to determine that the work has been accomplished in accordance with the terms and conditions of this Agreement prior to approving the billing for payment. It is understood and agreed that any request for reimbursement that requires the DEPARTMENT to request additional information of the LOCAL SPONSOR shall stop time for the DEPARTMENT's review period and the clock will not resume until such information is received as requested by the DEPARTMENT. Upon approval of the payment request the DEPARTMENT shall disburse the funds due the LOCAL SPONSOR less ten (10) percent which shall be retained on account. The cumulative amount retained for each eligible PROJECT item shall be disbursed to the LOCAL SPONSOR after the DEPARTMENT has certified that the LOCAL SPONSOR has complied with all the terms and conditions of the Agreement and the applicable Scope of Work for said item. The Department will periodically request proof of a transaction (invoice, payroll register, etc.) to evaluate the appropriateness of costs to the agreement pursuant to State and Federal guidelines (including cost allocation guidelines), as appropriate. When requested, this information must be provided within thirty (30) calendar days of such request. If applicable, the Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). All bills for amounts due under this agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
13. For the duration of this Agreement, the LOCAL SPONSOR shall submit to the DEPARTMENT's Project Manager quarterly project progress reports as updates to a project schedule, no later than thirty (30) days following the completion date of the quarterly reporting period. Schedules shall be submitted electronically in an .MPP or tab delimited .TXT format. Information provided shall be the best available and shall represent the most accurate forecast of future events. Specific information to be included: tasks to be completed, start and finish dates, task duration, actual start and finish dates with actual task duration.
14. Upon completion of the PROJECT the LOCAL SPONSOR shall submit to the DEPARTMENT a certification of completion, attached hereto as Attachment E (Project Completion Certification).

The DEPARTMENT reserves the right to release retainage withheld, at the request of the LOCAL SPONSOR, or at the DEPARTMENT's convenience, for a completed eligible PROJECT item task during the term of this Agreement. A completed Project Completion Certification must accompany the payment request that identifies the eligible project items completed for which release of retained funds is requested by the LOCAL SPONSOR.

15. Pursuant to Chapter 161.101(17), Florida Statutes, the LOCAL SPONSOR shall, at a minimum, comply with monetary limits for competitive acquisition of both materials and services as required by Chapter 287, Florida Statutes, which is expressly made a part of this Agreement and is incorporated herein by reference as if fully set forth.
16. The applicable provisions of Chapter 161, Florida Statutes, entitled Beach and Shore Preservation, and any rules promulgated therefrom, are expressly made a part of this Agreement and are incorporated herein by reference as if fully set forth.
17. The LOCAL SPONSOR's Project Manager for all matters is Robert Neal, Phone: 239/479-8566. The DEPARTMENT's Project Manager for all technical matters is Becky Roland, Phone: 850/487-1262, ext. 170 and the DEPARTMENT's Grant Program Administrator for all administrative matters is Dena VanLandingham, Phone: 850/487-1262, extension 118, or their successor(s). All matters shall be directed to the appropriate persons for action or disposition.
18. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
19. The DEPARTMENT may terminate this Agreement at any time in the event of the failure of the LOCAL SPONSOR to fulfill any of its obligations under this Agreement. Prior to termination, the DEPARTMENT shall provide ten (10) calendar days written notice of its intent to terminate and shall provide the LOCAL SPONSOR an opportunity to consult with the DEPARTMENT regarding the reason(s) for termination. The DEPARTMENT may terminate this Agreement without cause and for its convenience by giving thirty (30) calendar days written notice to the LOCAL SPONSOR. Notice shall be sufficient if delivered personally or by certified mail to the address set forth in this Agreement.
20. Any and all notices shall be delivered to the parties at the following addresses:

LOCAL SPONSOR

Robert Neal  
 Lee County  
 1500 Monroe Street/ P.O. Box 398  
 Ft. Myers, FL 33902  
 (239) 479-8566

DEPARTMENT

Dena VanLandingham, Grants Program Administrator  
 Department of Environmental Protection  
 Bureau of Beaches and Coastal Systems  
 3900 Commonwealth Blvd., MS 300  
 Tallahassee, Florida 32399-3000  
 (850) 487-1262, extension 118

21. This Agreement may be unilaterally canceled by the DEPARTMENT for refusal by the LOCAL SPONSOR to allow public access to all documents, papers, letters, or other material made or received by the LOCAL SPONSOR in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes.
22. The LOCAL SPONSOR shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The DEPARTMENT, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for three years following Agreement completion. In the event any work is subcontracted, the LOCAL SPONSOR shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.

23. In addition to the requirements of the preceding paragraph, the LOCAL SPONSOR shall comply with the applicable provisions contained in Attachment F (Special Audit Requirements), attached hereto and incorporated herein by reference. Exhibit 1 summarizes the funding sources supporting the Agreement for purposes of assisting the LOCAL SPONSOR in complying with the requirements of Attachment F. A revised copy of Exhibit 1 must be provided to the LOCAL SPONSOR for each amendment which authorizes a funding increase or decrease. If the LOCAL SPONSOR fails to receive a revised copy of Exhibit 1, the LOCAL SPONSOR shall notify the DEPARTMENT's Grant Manager to request a copy of the updated information. The LOCAL SPONSOR is hereby noticed that the Florida Single Audit Act and Special Audit Requirements may further apply to subcontracts and lower tier transactions that may result pursuant to this Agreement. The LOCAL SPONSOR may confer with its chief financial officer, audit director or contact the state officials identified under Part II of Attachment F for assistance with questions pertaining to the applicability of these requirements.
24. In accordance with Section 216.347, Florida Statutes, the LOCAL SPONSOR is hereby prohibited from using funds provided by this Agreement for the purposes of lobbying the Legislature, the judicial branch or a state agency.
25. The LOCAL SPONSOR covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
26. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
27. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
28. To the extent required by law, the Grantee will be self-insured against, or will secure and maintain during the life of this Agreement, Worker's Compensation Insurance for all of its employees connected with the work of this project and, in case any work is subcontracted, the Grantee shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Grantee. Such self-insurance program or insurance coverage shall comply fully with the Florida Worker's Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Worker's Compensation statutes, the Grantee shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of its employees not otherwise protected.
29. The LOCAL SPONSOR recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement.
30. This Agreement is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
31. A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.



- B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at 850/487-0915.
- C. The DEPARTMENT supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. The Department will be glad to furnish a list of minority owned businesses for consideration in subcontracting opportunities.

- 32. The LOCAL SPONSOR shall not subcontract, assign, or transfer any work under this Agreement without the prior written consent of the DEPARTMENT's Project Manager. The LOCAL SPONSOR agrees to be responsible for the fulfillment of all work elements included in any subcontract consented to by the DEPARTMENT and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the LOCAL SPONSOR that the DEPARTMENT shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the LOCAL SPONSOR shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

When applicable, the LOCAL SPONSOR shall also notify the DEPARTMENT's Project Manager of the solicitation from which an intended subcontractor was selected. Upon the DEPARTMENT's request, the LOCAL SPONSOR shall furnish copies of the respective solicitation documents, including the solicitation and responses thereto, the bid tabulations and the resulting contract(s) including a detailed scope of work.

- 33. The LOCAL SPONSOR 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 LOCAL SPONSOR's officers, employees, servants and agents while acting within the scope of their employment with the LOCAL SPONSOR.
- 34. The purchase of non-expendable equipment costing \$1,000 or more is not authorized under the terms and conditions of this Agreement.
- 35. The DEPARTMENT may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Agreement (e.g., specifications, time, method or manner of performance, requirements, etc.). All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change order which causes an increase or decrease in the LOCAL SPONSOR's cost or time shall require an appropriate adjustment and modification (formal amendment) to this Agreement.
- 36. The LOCAL SPONSOR shall comply with all applicable federal, state and local rules and regulations in providing services to the DEPARTMENT under this Agreement. The LOCAL SPONSOR acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The LOCAL SPONSOR further agrees to include this provision in all subcontracts issued as a result of this Agreement.

37. If a force majeure occurs which causes delays or the reasonable likelihood of delay in the fulfillment of the requirements of this PROJECT Agreement, the LOCAL SPONSOR shall promptly notify the DEPARTMENT orally and shall, within seven (7) calendar days, notify the DEPARTMENT in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay, and the LOCAL SPONSOR's intended timetable for implementation of such measures. If the parties agree that the delay or anticipated delay was caused, or will be caused by a force majeure, time for performance under this PROJECT Agreement may be extended, at the discretion of the DEPARTMENT, for a period of time equal to the delay resulting from the force majeure. Such agreement shall be confirmed by letter from the DEPARTMENT accepting, or if necessary, modifying the extension. A force majeure shall be an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary governmental or third party approvals, governmental restraint, and any other cause, whether of the kind specifically enumerated herein or otherwise, which is not reasonably within the control of the LOCAL SPONSOR and/or the DEPARTMENT. The LOCAL SPONSOR is responsible for the performance of all services issued under this PROJECT Agreement. Failure to perform by the LOCAL SPONSOR's consultant(s) or subcontractor(s) shall not constitute a force majeure event.
38. This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement 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 Agreement, unless otherwise provided herein.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed, the day and year last written below.

LEE COUNTY

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Title: \*Commission Chair

By: W. L. D. B. [Signature]  
Secretary or designee

Date: \_\_\_\_\_

Date: 5/01/05

FEID No. \_\_\_\_\_

[Signature]  
DEP Grant Program Administrator

APPROVED as to form and legality:

[Signature]  
DEP Attorney

\*If someone other than the Commission Chair signs this Agreement, a resolution, statement or other documentation authorizing that person to sign the Agreement on behalf of the County/City must accompany the agreement.

List of Attachments/Exhibits included as part of this Agreement:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A	Project Work Plan (1 page)
Attachment	B	Funding Eligibility (1 page)
Attachment	C	Comptroller's Contract Payment Requirements (1 page)
Attachment	D	Request For Payment (4 pages)
Attachment	E	Project Completion Certification (1 page)
Attachment	F	Special Audit Requirements (5 pages)

## ATTACHMENT A

### PROJECT WORK PLAN

#### BLIND PASS ECOZONE RESTORATION PROJECT

The PROJECT consists of the reopening and bypassing of material from Blind Pass. It is a component of a larger, multi-jurisdictional project to reestablish the tidal connection between Clam and Dinkins Bayou and to improve water conditions and flushing to the Blind Pass/Dinkins Bayou/Pine Island Sound system. DEP shall cost share on eligible activities associated with the management of the adjacent beaches. Specific activities include removal of beach quality material from the Blind Pass entrance channel and floodshoal, with placement on the downdrift beaches or in a configuration to reestablish the ebb shoal. The PROJECT shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable DEP permits and the eligible project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standard technical specifications contained in the Department's Regional Data Collection and Processing Plan and Geographic Information System Plan, unless otherwise specified in the approved Scope of Work for an eligible PROJECT item. These plans may be found at <http://www.dep.state.fl.us/beaches/>. Three (3) originals on all written reports developed under this Agreement shall be forwarded to the Department, unless otherwise specified.

#### **Task No: Eligible Project Item:**

#### **1.0 Design and Permitting**

Professional services required for engineering and design, obtaining environmental permits and other authorizations and the preparation of plans and specifications. This item specifically excludes permit application fees or any other fees paid to the State of Florida.

Coastal Engineering Consultants scope of work (SOW) for core boring submitted to the Bureau in February 2004 is 50 percent eligible. The total SOW costs equal \$49,865. Only \$24,932.5 is eligible for cost sharing at 62.10 percent.

The SOW submitted by Erickson Consulting Engineers on January 18, 2005 has varying eligibility by task. The following list indicates the percent of task deemed eligible for cost sharing at 62.10 percent.

Tasks 1, 2.2-2.5, 2.7, 2.8, 3.1-3.4, 3.6-3.9 and 4-6: 50 percent eligible

Tasks 2.6, 2.9, 3.5 and 8.1: 100 percent eligible

Tasks 7 and 8.2: 0 percent eligible

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**ATTACHMENT B**

**FUNDING ELIGIBILITY**

**BLIND PASS ECOZONE RESTORATION PROJECT**

**Blind Pass (Captiva/Sanibel Island)**

Project Boundary: 520' north of R85 to R118.  
Approximate Shoreline Length: 33,590 FEET

<u>Public Access</u>	<u>Parking Spaces</u>
Captiva Road	39
Andy Rosse Road	0
Turner Beach Park North	26
Turner Beach Park South	15
Turner Beach Park Addition	0
Bowmans Beach Park*	100+

Areas determined to be publicly accessible:

\*Primary beach access containing a minimum of 100 parking spaces and public restrooms.

Qualifying Hotels

South Seas Plantation Resort

Jensen's on the Gulf

'Tween Water Hotel

Blind Pass Cottages

Castaways Resort

Areas determined to be publicly accessible

	Total Length
370' north of R95 to 320' north of R95	50
20' north of R96 to 230' south of R96	250
100' north of R99 to 700' south of R99	800
620' north of R108 to 30' south of R109	1540
R110 to R118	8490
R84 to 310' south of R94	9729

Total eligible shoreline length: 20,859 FEET

Total project shoreline length: 33,590 FEET

**Percent eligible for State funding: 62.10 PERCENT**

## ATTACHMENT C

### **Comptroller Contract Payment Requirements** **Department of Banking and Finance, Bureau of Auditing Manual (10/07/97)** *Cost Reimbursement Contracts*

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.) Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of documentation representing the minimum requirements:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.  
  
Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Pursuant to 216.346, Florida Statutes, a contract between state agencies including any contract involving the State University system or the State Community College system, the agency receiving the contract or grant moneys shall charge no more than 5 percent of the total cost of the contract or grant for overhead or indirect cost or any other cost not required for the payment of direct costs.

ATTACHMENT D

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BEACH EROSION CONTROL PROGRAM

REQUEST FOR PAYMENT – PART I  
PAYMENT SUMMARY

Name of Project: BLIND PASS ECOZONE RESTORATION PROJECT

Grantee: LEE COUNTY

DEP Contract Number: 05LE1

Billing Number: \_\_\_\_\_

Billing Period: \_\_\_\_\_  
Billing Type:  Interim Billing  Final Billing

**Costs Incurred This Payment Request:**

Federal Share*	State Share	Local Share	Total
\$ _____ *if applicable	\$ _____	\$ _____	\$ _____

**Cost Summary:**

State Funds Obligated	\$ _____	Local Funds Obligated	\$ _____
Less Previous Payment	\$ _____	Less Previous Credits	\$ _____
Less Previous Retained	\$ _____		
Less This Payment	\$ _____	Less This Credit	\$ _____
Less This Retainage (10%)	\$ _____	Local Funds Remaining	\$ _____
State Funds Remaining	\$ _____		

Certification: I certify that this billing is correct and is based upon actual obligations of record by the grantee; that payment from the State Government has not been received; that the work and/or services are in accordance with the Department of Environmental Protection, Bureau of Beaches and Coastal Systems approved Project Agreement including any amendments thereto; and that progress of the work and/or services are satisfactory and are consistent with the amount billed.

\_\_\_\_\_  
Name of Project Administrator

\_\_\_\_\_  
Signature of Project Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Project Financial Officer

\_\_\_\_\_  
Signature of Project Financial Officer

\_\_\_\_\_  
Date





**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
FLORIDA BEACH EROSION CONTROL PROGRAM**

**REQUEST FOR PAYMENT - PART III  
PROJECT PROGRESS REPORT**

Name of Project: BLIND PASS ECOZONE RESTORATION PROJECT

Grantee: LEE COUNTY

DEP Agreement Number: 05LE1

Report Period: \_\_\_\_\_

Status of Eligible Project Items: (Describe progress accomplished during report period, including statement(s) regarding percent of task completed to date. Describe any implementation problems encountered, if applicable.)

Task    Eligible Project  
No:    Item:

1.0    DESIGN AND PERMITTING

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
FLORIDA BEACH EROSION CONTROL PROGRAM**

**REQUEST FOR PAYMENT - PART IV  
PROJECT FINANCIAL REPORT**

Name of Project: BLIND PASS ECOZONE RESTORATION PROJECT

Grantee: LEE COUNTY

DEP Contract Number: 05LE1

Report Period: \_\_\_\_\_

Project Expenditures

<u>Task No.</u>	<u>Eligible Project Items</u>	<u>Costs Incurred This Report Period</u>	<u>Costs Incurred to Date</u>	<u>Total Funds Obligated</u>
1.0	<u>Design and Permitting</u>	\$	\$	\$227,227
	TOTAL			\$227,227

ATTACHMENT E

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
FLORIDA BEACH EROSION CONTROL PROGRAM

PROJECT COMPLETION CERTIFICATION

Name of Project: BLIND PASS ECOZONE RESTORATION PROJECT

Grantee: LEE COUNTY DEP Agreement Number: 05LE1

\*I hereby certify that the above mentioned project has been completed in accordance with the Project Agreement, including any amendments thereto, between the Department of Environmental Protection and grantee, and all funds expended for the project were expended pursuant to the Project Agreement.

\_\_\_\_\_  
Name of Project Administrator                      Signature of Project Administrator                      Date

\*Requests for the Department's release of retained funds for which an *eligible project item* is completed *may be considered* in advance of overall Project Completion. If this Certification pertains only to the completion of specific eligible project item tasks, the LOCAL SPONSOR shall also provide the following information in addition to the required signature above:

Requested Amount of Release:                      \$ \_\_\_\_\_

Period of Services:                      \_\_\_\_\_

Completed Task Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT F

### FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FLORIDA BEACH EROSION CONTROL PROGRAM

#### SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

#### MONITORING

**In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), 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 recipient 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 recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.**

#### AUDITS

##### PART I: FEDERALLY FUNDED

**This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.**

1. In the event that the recipient expends \$300,000 (\$500,000 for fiscal years ending after 12/31/03) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT 1 to this Agreement indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient 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 recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$300,000 (\$500,000 for fiscal years ending after 12/31/03) 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 recipient expends less than \$300,000 (\$500,000 for fiscal years ending after 12/31/03) 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 recipient resources obtained from other than Federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://12.46.245.173/cfda/cfda.html>.

## **PART II: STATE FUNDED**

**This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(l), Florida Statutes.**

1. In the event that the recipient expends a total amount of State financial assistance equal to or in excess of \$300,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Chief Financial Officer; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Agreement indicates State financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the State financial assistance expended in its fiscal year, the recipient shall consider all sources of State financial assistance, including State financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$300,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$300,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-State entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <http://state.fl.us/fsaa/catalog> or the Governor's Office of Policy and Budget website located at <http://www.myflorida.com/myflorida/government/contacts/opbOffice.html> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website <http://www.leg.state.fl.us/>, Governor's Website <http://www.myflorida.com/>, Department of Financial Services' Website <http://www.dbf.state.fl.us/> and the Auditor General's Website <http://www.state.fl.us/audgen>.

## **PART III: OTHER AUDIT REQUIREMENTS**

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(7)(m), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

## **PART IV: REPORT SUBMISSION**

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at the following address:

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

- B. 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

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

2. Pursuant to Section .320(f), OMB Circular A-133, as revised, the recipient 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 the following address:

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

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at the following address:

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

- B. The Auditor General's Office at the following address:

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at the following address:

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

5. 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.

6. Recipients, 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 recipient in correspondence accompanying the reporting package.

#### **PART V: RECORD RETENTION**

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **5** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **3** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

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