

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

Blue Sheet No. 20051392

1. ACTION REQUESTED/PURPOSE:

Approve Amendment No. 2 to DEP Agreement No. S0096, Ten Mile Canal Filter Marsh Project, providing for a new completion date of December 31, 2006. No additional funding is required.

2. WHAT ACTION ACCOMPLISHES:

Provides additional time to complete project monitoring.

3. MANAGEMENT RECOMMENDATION:

Staff recommends approval.

4. Departmental Category: 08 -

CBE

5. Meeting Date: 10-11-2005

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other Grant Agreement

8. Request Initiated:

Commissioner _____
 Department Public Works
 Division Natural Resources
 By: Roland E. Ottolini, P.E.

9. Background:

On April 1, 2003, the Board of County Commissioners approved DEP Agreement No. S0096, Ten Mile Canal Filter Marsh Project, between the Florida Department of Environmental Protection and Lee County. The grant provides \$507,000 of funding towards the project. The original agreement was effective through June 30, 2004. Due to complex land ownership issues and protracted permitting, the project was delayed and Amendment No. 1 was issued revising the completion date to December 31, 2005. Amendment No.1 was approved by the Board of County Commissioners on June 22, 2004. Construction will be completed prior to December 31, 2005. DEP and Lee County wish to complete the one-year monitoring phase and Amendment No. 2 will provide the required time extension.

Additionally, language has been included for minor modifications as follows:

- 1) Land acquisition is not authorized under this Agreement.
- 2) Attachment 1, Page 7 is revised to reflect new Project Milestones dates.
- 3) Attachment C-1, Revised Special Audit Requirements is included.

None of these modifications require revised actions on the part of Lee County. No additional funding is required.

Attachments: Two (2) original DEP Agreement No. S0096 Amendment No. 2

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>J. J. J. 9/27/05</i>		N/A	N/A	<i>[Signature] 9/27/05</i>	<i>[Signature] 9/29/05</i>	<i>[Signature] 9/29/05</i>	<i>[Signature] 9/29/05</i>	<i>[Signature] 9/29/05</i>	<i>[Signature] 9/27/05</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN:
 9-28-05
 9:40
 COUNTY ADMIN FORWARDED TO:
 9/29/05
 3714

REC'D: 10/27/05
 by CO. ATTY.
 3:45pm
 CO. ATTY.
 FORWARDED TO:
 9-28-05

DEP AGREEMENT NO. S0096
AMENDMENT NO. 2

THIS AGREEMENT as entered into on the 1st day of April, 2003, and amended on the 22nd day of June, 2004, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and the LEE COUNTY BOARD OF COUNTY COMMISSIONERS (hereinafter referred to as the "Grantee" or "Recipient") is hereby amended.

WHEREAS, construction on the project was delayed due to the discovery of unanticipated foreign material on site; and,

WHEREAS, the delay in construction means that the 1-year monitoring phase cannot be completed prior to the expiration date of the Agreement; and,

WHEREAS, the Department is desirous of seeing the monitoring phase completed; and

WHEREAS, the Grantee and the Department have decided that the Agreement should be revised to allow time for the project to be completed as planned; and

WHEREAS, other changes to the Agreement are needed.

NOW, THEREFORE, the parties hereto agree as follows:

-- The title of the Agreement is hereby modified to read as follows:

**STATE OF FLORIDA
GRANT ASSISTANCE
PURSUANT TO LINE ITEM 1637C OF THE 2003-2004 APPROPRIATIONS ACT
AND LINE ITEM 1718 OF THE 2005-2006 APPROPRIATIONS ACT**

-- Paragraph 2 is hereby revised to change the completion date of the Agreement from December 31, 2005 to December 31, 2006.

-- Paragraph 10. is hereby deleted in its entirety and replaced with the following:

10. A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in Attachment C-1, Revised Special Audit Requirements, attached hereto and incorporated herein by reference. Exhibit 1 to Attachment C-1 summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of Attachment C-1. A revised copy of Exhibit 1 must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of Exhibit 1, the Grantee shall notify the Department's Grants Development and Review Manager at 850/245-2361 to request a copy of the updated information.

B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment C-1, Exhibit 1 when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section __.210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number FSAA_CL2) that can be found under the "Links/Forms" section appearing at the following website:

<http://www.fsaa.state.fl.us/>

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

- The following language is added to the Agreement as Paragraph 23.:
23. Land acquisition is not authorized under this Agreement.
- Paragraph 23. is renumbered as Paragraph 24.
- Attachment A, Page 7 (Revised) of 11, is hereby deleted in its entirety and replaced with Attachment A, Page 7 (Second Revision) of 11, attached hereto and made a part of the Agreement.
- Attachment C, Special Audit Requirements, is hereby deleted in its entirety and replaced with **Attachment C-1, Revised Special Audit Requirements**, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment C shall hereinafter refer to Attachment C-1.

In all other respects, the Agreement of which this is an Amendment, and attachments relative thereto shall remain in full force and effect.

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

LEE COUNTY BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Title: Chairman*

Jimmy Brooks
Secretary or designee

Date: _____

Date: 9/12/05

APPROVED AS TO FORM:

David Worley
David Worley, DEP Grant Manager

County Attorney's Office

S. Hebbie Skelton
DEP Contracts Administrator

Approved as to form and legality:

Marian B. O.
DEP Attorney

*For Amendments with governmental boards/commissions: If someone other than the Chairman signs this Amendment, a resolution, statement or other document authorizing that person to sign the Amendment on behalf of the Grantee must accompany the Amendment.

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

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	A	Page 7 (Second Revision) of 11 (1 Page)
Attachment	C-1	Revised Special Audit Requirements (5 Pages)

County Smart Growth Task Force. These meetings are designed to keep key decision makers informed of the progress of the project.

Media Relations: Press releases will be drafted and distributed at various intervals throughout the project, including, but not limited to: announcement of the project, noted milestones and regular progress reports. Consumer and industry publications throughout Southwest Florida will be targeted for receipt of these press releases.

Collaterals and Reports:

- Public information brochure
- Boundary and Topographic survey information, geotechnical information, environmental audit, and land ownership (title) information
- Water quality monitoring progress reports
- Hydraulic and hydrologic model analyses
- Project reports on a quarterly basis
- Final construction plans
- Operation and maintenance plan
- Construction permits
- Construction documents for bidding the project
- Construction completion report.
- Take slides/photos of entire project
- Post construction water quality monitoring evaluation report and phase II recommendation
- Draft final project report
- Comprehensive final project report (with five copies)
- Slides taken throughout the duration of the project to document progress

PROJECT MILESTONES:

<u>Task/Activity</u>	<u>Start</u>	<u>Complete</u>
0.0 Kick-Off Meeting and Periodic Status Meetings	11/01	12/05
1.0 Treatment System Design and Permitting	07/02	06/04
2.0 Contract Documents	05/04	07/04
3.0 Construction Management	10/04	12/05
4.0 Water Quality Treatment System Effectiveness Monitoring	11/01	12/06
5.0 Public Education and Reporting Community Outreach Media Relations Draft final report Final report	02/04	11/06 12/06

ATTACHMENT C-1

REVISED 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 \$500,000 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 \$500,000 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 recipient expends less than \$500,000 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 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 \$500,000 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 \$500,000 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 \$500,000 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 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

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

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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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EXHIBIT - 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources 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

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:

Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:

State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Water Quality Assurance Trust Fund—GAA Line Item 1637C	2003-2004	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$51,308.16	140076
Original Agreement	Water Quality Assurance Trust Fund—GAA Line Item 1718	2005-2006	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$455,691.84	140076

Total Award	\$507,000.00
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For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<http://state.fl.us/fsaa/catalog>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.