

Meeting Date
November 3, 2015



AGENDA	
Section	CONSENT
Item No.	II, A, 1.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Florida Department of Environmental Protection (FDEP) Grant Agreement No. G0430 for Floating Vegetative Islands for Ten (10) Stormwater Ponds (Countywide) Fiscal Impact: Grant Revenue of \$398,015; Local Stormwater Match of \$188,939
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board of County Commissioners: (1) Authorize the Chairman to execute Contract G0430, between Brevard County (Grantee) and FDEP (Grantor) for wet detention pond upgrade cost-share funding; (2) Approve legal venue as Leon County; (3) Authorize the County Manager, or designee, to execute future contract amendments subject to the approval of the County Attorney's Office and Risk Management; and (3) Approve associated budget change requests.

Summary Explanation & Background:

Attached is the proposed grant agreement with FDEP for the Countywide Floating Vegetative Islands Upgrade for Wet Detention Pond Project. Locations of ponds are provided in Attachment A. This stormwater project is designed to improve the Indian River Lagoon water quality by reducing pollutant loadings to our waterways. This will also assist in the County's effort to meet the Federal and State Total Maximum Daily Load reduction mandates for the Indian River Lagoon.

Brevard County will enhance the pollutant removal effectiveness of ten (10) existing wet detention ponds by adding Floating Vegetative Islands (FVI). FVIs are managed aquatic plant systems that provide additional biological uptake through the root systems submerged in the stormwater pond. Nutrients removed from the water are stored in the plant mass and routinely harvested, preventing resuspension of nutrients when plants die. FVIs offer considerably more pollutant removal effectiveness than littoral zones where the normal water surface drops below the vegetation during dry season. In addition, cattails will not grow on FVIs, reducing maintenance challenges found in littoral zones.

There are 28.14 acres of surface water in ten ponds selected for this project. Per the manufacturer's recommendations, 5% of each pond's water surface areas, 61,288 square feet total, will be planted with FVIs to achieve a 20% removal efficiency above and beyond treatment obtained by the pond alone. FVIs will be planted with several plant species recommended by the manufacturer and secured in deep water areas until harvesting time, when the mats will be pulled to shore and replanted.

Fiscal Impact: FY 15-16: \$398,015 Grant Revenue; **D-1:** \$168,360; **D-2:** \$247,848; **D-3:** \$11,542; **D-4:** \$64,000
Contact: Terry Williamson (X52715) or Virginia Barker (X52435), Natural Resources Management Department

Clerk to the Board instruction: Total of three signed original contracts needed – one for the Clerk to the Board and two for FDEP.

Exhibits Attached: **ATTACHMENT A** - Project Location Map
ATTACHMENT B - Contract Approval Sheets
ATTACHMENT C - Draft Contract G0430

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director/Extension
Stockton Whitten		Virginia Barker/X52435



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

November 4, 2015

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Interim Director Attn: Terry Williamson

RE: Item II.A.1., Grant Agreement No. G0430 with Florida Department of Environmental Protection (FDEP) for Floating Vegetative Islands for Ten Stormwater Ponds

The Board of County Commissioners, in regular session on November 3, 2015, authorized the Chairman to execute Grant Agreement No. G0430 with FDEP for wet detention pond upgrade cost-share funding; approved the legal venue as Leon County; authorized the County Manager, of his designee, to execute any future contract amendments, subject to the approval of County Attorney and Risk Management; and approved the associated budget change requests. Enclosed are three executed Grant Agreements for your action.

Upon execution by the FDEP, please provide this office with a fully-executed copy of the Grant Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/ds

Encls. (3)

cc: Contracts Administration
Finance
Budget

DEP AGREEMENT NO. G0430

STATE OF FLORIDA
GRANT AGREEMENT
PURSUANT TO
ENVIRONMENTAL PROTECTION AGENCY GRANT AWARD(S)

THIS AGREEMENT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (hereinafter referred to as the "Department") and the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, whose address is 2725 Judge Fran Jamieson Way, Suite A219, Viera, Florida 32940 (hereinafter referred to as "Grantee"), a local government, to provide financial assistance for the Countywide Floating Vegetative Islands Upgrades for Wet Detention Ponds. Collectively, the Department and the Grantee shall be referred to as "Parties" or individually as a "Party".

WHEREAS, the Department is the recipient of federal financial assistance from the U.S. Environmental Protection Agency (EPA); and,

WHEREAS, the Department was awarded funding by the EPA pursuant to Grant Agreement No. C9-99451512-0; and,

WHEREAS, the Grantee has been determined to be a subrecipient of federal financial assistance from the EPA; and,

WHEREAS, the Grantee is responsible for complying with the appropriate federal guidelines in performance of its activities pursuant to this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual benefits to be derived herefrom, the Department and the Grantee do hereby agree as follows:

1. The Grantee does hereby agree to perform in accordance with the terms and conditions set forth in this Agreement, **Attachment A, Grant Work Plan**, and all attachments and exhibits named herein which are attached hereto and incorporated by reference.
2. This Agreement shall begin upon execution by both parties and shall remain in effect until September 30, 2016, inclusive. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
3.
 - A. As consideration for the satisfactory completion of services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis up to a maximum of \$398,015 towards the total estimated project cost of \$586,954. The parties hereto understand and agree that this Agreement requires at least a 32.2% match on the part of the Grantee. Therefore, the Grantee is responsible for providing \$188,939 through cash or third party in-kind towards the work funded under this Agreement. It is understood that any additional funds necessary for the completion of this project are the responsibility of the Grantee. The Grantee will report those expenditures to the Department in the Final Report as required under Task 4 in Attachment A.
 - B. Prior written approval from the Department's Grant Manager shall be required for changes within approved deliverable budget categories of up to 10% of the total deliverable budget amount. Changes less than 10% of the total approved deliverable budget will require a formal change order to the Agreement. Changes greater than 10% of the total approved deliverable budget and/or

changes that transfer funds from one deliverable to another or that increase or decrease the total funding amount will require a formal amendment to the Agreement.

- C. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs, upon the completion, submittal and approval of the deliverables identified in **Attachment A**. Reimbursement shall be requested, utilizing **Attachment B, Payment Request Summary Form**, in accordance with the schedule in Attachment A. Each payment request must be accompanied by **Attachment C, MBE/WBE Procurement Reporting Form**. Failure to provide Attachment C shall result in a delay in processing the payment until such time as the appropriate information is provided to the Department. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. A final payment request should be submitted to the Department no later than sixty (60) days following the completion date of the Agreement, to assure the availability of funds for payment. Each payment request submitted shall document all matching funds and/or match efforts (i.e. in-kind services) provided during the period covered by each request. The final payment request shall not be processed until the match requirement has been met.
- D. The State Chief Financial Officer requires detailed supporting documentation of all costs under a cost reimbursement agreement. In accordance with the **Attachment D, Contract Payment Requirements**, the Grantee shall comply with the minimum requirements set forth therein. The Payment Request Summary Form shall be accompanied by supporting documentation and other requirements as follows:
- i. **Contractual** (Subcontractors) - Reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours/time spent on the project. All multipliers used (i.e. fringe benefits, overhead, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) days of written notification. Interest on the excessive charges shall be calculated based on the prevailing rate used by the State Board of Administration. For fixed price (vendor) subcontracts, the following provisions shall apply:
 - a. The Grantee may award, on a competitive basis, fixed price subcontracts to consultants/contractors in performing the work described in Attachment A. Invoices submitted to the Department for fixed price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (Invitation to Bid or Request for Proposals) resulting in the fixed price subcontract.
 - b. The Grantee may request approval from the Department to award a fixed price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed price amount, the Grantee may proceed in finalizing the fixed price subcontract.
 - c. All subcontracts are subject to the provisions of paragraph 13 and any other appropriate provisions of this Agreement which affect subcontracting activities.

- E. In addition to the invoicing requirements contained in paragraphs 3.B. and C. above, 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. 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). State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at <http://www.fldfs.com/aadir/reference%5Fguide>; allowable costs for Federal Programs can be found under 48 CFR Part 31 and Appendix E of 45 CFR Part 74, at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html> and OMB Circulars A-87 (2 CFR 225), A-122 (2 CFR 230), A-21 (2 CFR 220); and administrative requirements can be found in OMB Circulars A-102 and A-110 (2 CFR 215) at <http://www.whitehouse.gov/omb/circulars/index.html#numerical>.
- F. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the work identified in Attachment A, Grant Work Plan.
- G. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. For purposes of this Agreement, the following cost principles are incorporated by reference.

Organization Type	Applicable Cost Principles
State, local or Indian tribal government.	OMB Circular A-87 (2 CFR 225)
Private non-profit organization other than (1) an institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122 (2 CFR 230)
Education Institutions	OMB Circular A-21 (2 CFR 220)
For-profit organization other than a hospital and an organization named in OMB A-122 as not subject to that circular.	48 CFR Part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal agency.
Hospital	45 CFR Subtitle A - Appendix E to Part 74-Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals

- H. i. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.

- ii. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - iii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department by the Grantee.
- I. The federal funds awarded under this Agreement must comply with *The Federal Funding Accountability and Transparency Act (FFATA) of 2006*. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. Grant Recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010 are subject to the FFATA. The Grantee agrees to provide the information necessary, over the life of this Agreement, for the Department to comply with this requirement.
- J. The table below identifies the funding supporting this Agreement and EPA Grants providing the funds.

EPA Grant Number	CFDA	Program Title	Funding Amount
C9-99451512-0	66.460	Nonpoint Source Implementation Grants	\$276,497
State Funding Trust Fund and Line Item Number	CSFA	Program Title	Funding Amount
General Revenue Fund, Line Item 1641 FY14/15	37.039	Statewide Surface Water Restoration And Wastewater Projects	\$121,518
Total Funding:			\$398,015

4. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The parties hereto understand that this Agreement is not a commitment of future appropriations.
5. A. Progress Reports shall be submitted to the Department's Grant Manager no later than twenty (20) days following the completion of the quarterly reporting period. Each Progress Report shall be submitted on **Attachment E, Progress Report Form**, and shall describe the work performed during the reporting period, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. The Final Project Report shall be submitted no later than the completion date of the Agreement. The Department's Grant Manager shall have thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee. Final payment, up to ten (10) percent of the total Agreement amount identified in paragraph 3.A., may

be withheld until all work is completed, all deliverables have been submitted, match requirements have been met and the Final Project Report has been received and approved.

- B. A draft comprehensive final report (hard copy and electronic) must be submitted no later than sixty (60) days prior to the completion date of the Agreement. The Department will review the draft final report and provide comments for inclusion in the final report within thirty (30) days. One (1) hard copies, plus one electronic copy in Adobe.pdf format or Microsoft Word Format, of a comprehensive final report must be submitted no later than the completion date of the Agreement. The Grantee's final report shall include an accounting of all project expenses, a report of all matching funds contributed on behalf of the Grantee, and a statement acknowledging that the project has been supported by a grant from the U.S. Environmental Protection Agency. The following language shall be included on the cover page of the final project report:

"This project and the preparation of this report was funded in part by a Section 319 Nonpoint Source Management Program Implementation grant from the U.S. Environmental Protection Agency through an agreement/contract with the Nonpoint Source Management Section of the Florida Department of Environmental Protection. The total cost of the project was \$[show actual amount], of which \$[show actual amount] or [show actual percentage] percent was provided by the U.S. Environmental Protection Agency."

Additionally, all other final deliverables required by this Agreement (such as booklets, pamphlets, videos, scientific papers, etc.) which were funded in whole or in part by federal sources shall include the language below to acknowledge the federal government's participation in the project.

"This _____ (booklet, pamphlet, video, paper, etc. as appropriate) was funded in part by a Section 319 Nonpoint Source Management Program Implementation grant from the U.S. Environmental Protection Agency through an agreement/contract with the Nonpoint Source Management Section of the Florida Department of Environmental Protection."

- C. The Grantee agrees to provide a copy of any draft report and/or final report to the Department before making, or allowing to be made, a press release, publication, or other public announcement of the project's outcome. This shall not be construed to be a limitation upon the operation and applicability of Chapter 119, Florida Statutes.
- D. The Grantee agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Agreement.
 - i. The Grantee accepts the Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) "Fair Share" goals and objectives negotiated with EPA as follows:

Florida Fair Share Goals	
Industry	Goal
Equipment	9% MBE and 3% WBE
Supplies	
Services	
Construction	

- ii. If the Grantee does not want to rely on the applicable State's MBE/WBE goals, the Grantee agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment. "Fair Share" objectives must be submitted to the EPA Grants Management Office, 61 Forsyth Street, Atlanta, GA 30303 within thirty (30) calendar days of award and approved by EPA no later than thirty (30) calendar days

thereafter. Copies of all correspondence with EPA shall also be forwarded to the Department's Grant Manager.

- iii. The Grantee agrees to ensure, to the fullest extent possible, that at least the applicable "Fair Share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and Historically Black Colleges and Universities.
- iv. The Grantee agrees to include in its bid documents the applicable "Fair Share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "Fair Share" percentages.
- v. The Grantee agrees to follow the six good faith efforts or positive efforts stated in 40 C.F.R. 33, as appropriate, and retain records documenting compliance.
- vi. The Grantee agrees to submit a report documenting MBE/WBE utilization under federal grants in conjunction with the required payment request form (see paragraph 3.C).
- vii. If race and/or gender neutral efforts prove inadequate to achieve a "Fair Share" objective, the Grantee agrees to notify the Department and EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "Fair Share" objective.
- viii. In accordance with Section 129 of Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988, the Grantee agrees to utilize and to encourage any prime contractors under this Agreement to utilize small businesses located in rural areas to the maximum extent possible. The Grantee agrees to follow the six affirmative steps stated in six good faith efforts stated in 40 C.F.R. 33, as appropriate, in the award of any contracts under this Agreement.

E. In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and/or 40 CFR 30.16, the Grantee agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this Agreement and delivered to the Department. This requirement does not apply to reports which are prepared on forms supplied by EPA. This requirement does not apply to invoices and their documentation, which are required to be single sided. This requirement applies even when the cost of recycled paper is higher than that of virgin paper.

F. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

6. 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.

7. A. The Department may terminate this Agreement at any time in the event of the failure of the Grantee to fulfill any of its obligations under this Agreement. Prior to termination, the Department

shall provide thirty (30) calendar days written notice of its intent to terminate and shall provide the Grantee an opportunity to consult with the Department regarding the reason(s) for termination.

- B. The Department may terminate this Agreement for convenience by providing the Grantee with thirty (30) calendar days written notice.
 - C. This Agreement may be unilaterally canceled by the Department for refusal by the Grantee to allow public access to all documents, papers, letters, or other material made or received by the Grantee 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)(a), Florida Statutes.
8. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Grantee shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within ten (10) days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate this Agreement for failure to perform, or 2) the Department Grant Manager may, by letter specifying the failure of performance under this Agreement, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.
- A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - B. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.
 - C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement.

The remedies set forth above are not exclusive and the Department reserves the right to exercise other remedies in addition to or in lieu of those set forth above, as permitted by the Agreement.

9. If the Grantee materially fails to comply with the terms and conditions of this Agreement, including any Federal or State statutes, rules or regulations, applicable to this Agreement, the Department may take one or more of the following actions.
- A. Temporarily withhold cash payments pending correction of the deficiency by the Grantee.

- B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - C. Wholly or partly suspend or terminate this Agreement.
 - D. Withhold further awards for the project or program.
 - E. Take other remedies that may be legally available.
 - F. Costs of the Grantee resulting from obligations incurred by the Grantee during a suspension or after termination of the Agreement are not allowable unless the Department expressly authorizes them in the notice of suspension or termination. Other Grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the following apply.
 - i. The costs result from obligations which were properly incurred by the Grantee before the effective date of suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable.
 - ii. The cost would be allowable if the Agreement were not suspended or expired normally at the end of the funding period in which the termination takes place.
 - G. The remedies identified above, do not preclude the Grantee from being subject to debarment and suspension under Executive Orders 12549 and 12689.
10. The Department shall have the right to demand a refund, either in whole or part, of the funds provided to the Grantee for noncompliance with the terms of this Agreement.
11. A. The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The United States Environmental Protection Agency, the Comptroller General of the United States, the Department of Environmental Protection, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following Agreement completion. In the event any work is subgranted or subcontracted, the Grantee shall similarly require each subgrantee and subcontractor to maintain and allow access to such records for audit purposes.
- B. The Grantee agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
- C. Records for real property and equipment acquired with Federal funds shall be retained for five (5) years following final disposition.
12. A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in **Attachment F, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1 to Attachment F** summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of **Attachment F**. 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 F, Exhibit I** 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 DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

<https://apps.fldfs.com/fsaa>

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.

13. A. The Grantee may not subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. The Grantee shall submit a copy of the executed subcontract to the Department within ten (10) days after execution. Regardless of any subcontract, the Grantee is ultimately responsible for all work performed under this Agreement. The Grantee agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Grantee that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- B. The Grantee agrees to comply with the procurement requirements contained in 40 C.F.R. 31.36 for its selection of subcontractors.
- C. The Department of Environmental Protection 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. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
14. A. The Grantee certifies that no Federally-appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above, the Grantee shall submit **Attachment G, Standard Form-LLL, "Disclosure of Lobbying Activities"** and shall file quarterly updates of any material changes. The Grantee shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly. **[40 CFR 34]**
- B. In accordance with Section 216.347, Florida Statutes, the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
- C. Pursuant to the Lobbying Disclosure Act of 1995, any organization described in Section 501(c)4 of the Internal Revenue Code of 1986 shall not be eligible for subgrants under this Agreement, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subgrant. This restriction does not apply to loans made

pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.

D. The Grantee's Chief Executive Officer shall certify that no funds provided under this Agreement have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Grantee shall submit **Attachment H, "Lobbying and Litigation Certificate"** to the Department within ninety (90) days following the completion of the Agreement period.

15. The Grantee shall comply with all applicable federal, state and local rules and regulations in performing under this Agreement. The Grantee acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.

16. Any notices between the parties shall be considered delivered when posted by Certified Mail, return receipt requested, or overnight courier service, or delivered in person to the Grant Managers at the addresses below.

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

Amanda Peck	
Florida Department of Environmental Protection	
Nonpoint Source Management Section	
3900 Commonwealth Boulevard., MS#3570	
Tallahassee, Florida 32399-3000	
Telephone No.:	(850) 245-2948
E-mail Address:	Amanda.Peck@dep.state.fl.us

18. The Grantee's Grant Manager (which may also be referred to as the Grantee's Project Manager) for this Agreement is identified below.

Terry Williamson	
Brevard County	
2725 Judge Fran Jamieson Way, Suite A219	
Viera, Florida 32940	
Telephone No.:	(321) 633-2016 ext. 52715
E-mail Address:	Terry.williamson@brevardcounty.us

19. To the extent required by law, the Grantee will be self-insured against, or will secure and maintain during the life of this Agreement, Workers' 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 Workers' Compensation Insurance for all of its 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 Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Grantee shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of his employees not otherwise protected.

20. A. The Grantee shall secure and maintain Commercial General Liability insurance including bodily injury and property damage. The minimum limits of liability shall be \$100,000 each occurrence and \$300,000 aggregate. This insurance will provide coverage for claims that may arise from the

services and/or operations completed under this Agreement. Such insurance shall include the State of Florida as an Additional Insured for the entire length of the Agreement.

- B. The Grantee shall secure and maintain Commercial Automobile Liability insurance for claims which may arise from the services and/or operations under this Agreement. The minimum limits of liability shall be as follows:

\$300,000 Automobile Liability Combined Single Limit for Company Owned Vehicles, if applicable

\$300,000 Hired and Non-owned Liability Coverage

- C. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Grantee's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice (with the exception of non-payment of premium which requires a 10 day notice) to the Department's Procurement Administrator.

21. The Grantee 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.
22. Reimbursement for equipment purchases costing \$1,000 or more is not authorized under the terms and conditions of this Project Agreement.
23. The Department may at any time, by written order designated to be a change order, make any change in the Grant Manager information or task timelines within the current authorized Agreement period. All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change, which causes an increase or decrease in the Grantee's cost or time, shall require formal amendment to this Agreement.
24. The Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) establishes a number of fire safety standards which must be met for hotels and motels. The Grantee acknowledges that Federal funds may not be used to sponsor a conference, meeting, or training seminar held in a hotel or motel which does not meet the requirements of the Hotel and Motel Fire Safety Act of 1990.
25. If the Grantee's project involves environmentally-related measurements or data generation, including the development of models that may be used in regulatory decisions, the Grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. All sampling and analyses performed under this Agreement must conform with the requirements set forth in Chapter 62-160, Florida Administrative Code, and the Quality Assurance Requirements for Department Agreements, attached hereto and made part hereof as **Attachment I, Quality Assurance Requirements**.
26. 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 posts 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.

27. In accordance with Executive Order 12549, Debarment and Suspension (**2 CFR 180 and 1532**), the Grantee agrees and certifies that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Grantee shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction, unless authorized in writing by EPA to the Department. The Grantee shall include the language of this section in all subcontracts or lower tier agreements executed to support the Grantee's work under this Agreement.
28. The Environmental Protection Agency and Department reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
 - A. The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant.
 - B. Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
29. The Grantee agrees to comply with, and include as appropriate in contracts and subgrants, the provisions contained in **Attachment J, Contract Provisions**, attached hereto and made a part hereof. In addition, the Grantee acknowledges that the applicable regulations listed in **Attachment K, Regulations**, attached hereto and made a part hereof, shall apply to this Agreement.
30. Land acquisition is not authorized under the terms of this Agreement.
31. 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.
32. 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 this Agreement to be duly executed, the day and year last written below.

BREVARD COUNTY

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: [Signature]
Robin Fisher, Chairman
Brevard County Commission

By: _____

As Approved by the Board on
November 3, 2015

Date: _____

Secretary or designee

Reviewed for legal form and
Content: [Signature]
Assistant County Attorney

Date: _____

Attest:
[Signature]
Scott Ellis, Clerk

Amanda Peck, DEP Grant Manager

DEP Contracts Administrator

Approved as to form and legality:

DEP Attorney

FEID No.: 59-6000523

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

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

Specify Type	Letter/ Number	Description (include number of pages)
<u>Attachment</u>	<u>A</u>	<u>Grant Work Plan (6 Pages)</u>
<u>Attachment</u>	<u>B</u>	<u>Payment Request Summary Form and Instructions (2 Pages)</u>
<u>Attachment</u>	<u>C</u>	<u>MBE/WBE Procurement Reporting Form and Instructions (3 Pages)</u>
<u>Attachment</u>	<u>D</u>	<u>Contract Payment Requirements (1 Page)</u>
<u>Attachment</u>	<u>E</u>	<u>Progress Report Form (1 Page)</u>
<u>Attachment</u>	<u>F</u>	<u>Special Audit Requirements (5 Pages)</u>
<u>Attachment</u>	<u>G</u>	<u>Disclosure of Lobbying Activities (2 Pages)</u>
<u>Attachment</u>	<u>H</u>	<u>Lobbying and Litigation Certificate (1 Page)</u>
<u>Attachment</u>	<u>I</u>	<u>Quality Assurance Requirements (14 Pages)</u>
<u>Attachment</u>	<u>J</u>	<u>Contract Provisions (3 Pages)</u>
<u>Attachment</u>	<u>K</u>	<u>Regulations (1 Page)</u>

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Brevard County Natural Resources Management Department	
2. Fund/Account #: G0430	3. Division Name: Watershed
4. Contract Description: Brevard County Countywide Floating Vegetative Islands Upgrades	
5. Contract Monitor: State of Florida Dept of Environmental Protection	6. Mail Stop #: 81
7. Dept./Office Director: Virginia Barker	8. Contract Type:
ACTION DATE: 30 days from entry	ACTION REQUIREMENT:

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	<u> </u>	<u> TWW </u>	<u> 15 Oct 15 </u>
Risk Management	<u> </u>	<u> </u>	<u> </u>	<u> </u>
County Attorney	<u> </u>	<u> </u>	<u> </u>	<u> </u>

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.*

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	X _____	_____	JLJ _____	10/14/2015
County Attorney	_____	_____	_____	_____

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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

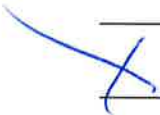

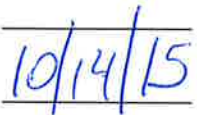
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	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	_____	_____	_____	_____
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