

## Jayne Roberts

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**From:** William Clague  
**Sent:** Tuesday, October 03, 2017 4:03 PM  
**To:** Charlie Hunsicker  
**Cc:** Mitchell Palmer; Alex Nicodemi; Linda Klasing; Juliet Shepard  
**Subject:** FDEP Agreement 11ME1; Amendment #5; RLS-2017-0483  
**Attachments:** Agr No. 11ME1 - Amd No. 5 CAO Comments dtd 10.03.17.pdf

Charlie:

Pursuant to the above Request for Legal Services you have asked this office to review the above Amendment #5 to an existing agreement with the Florida Department of Environmental Protection (FDEP) for grant-funded beach improvements. I provide the following advice in response:

1. Attached is a mark-up of the Amendment reflecting my comments. The Amendment replaces and supplements provisions of the original agreement to incorporate revised standard FDEP provisions. The unaffected provisions follow the form reviewed by this office under a prior RLS. Therefore, my comments are fairly limited, and are intended for clarity and consistency with the County's practices.
2. The Amendment incorporates an extensive set of standard insurance requirements. By copy of this response to the County's Risk Manager, Linda Klasing, I ask that she review them and let me know if she has any additional recommended changes.

Subject to the inclusion of my suggested changes, I have no objection from a legal standpoint to the Amendment being scheduled for consideration by the Board. I express no opinion as to the business judgment of entering into the Amendment.

This concludes my response to the RLS. Please let me know if you have any questions or concerns.

Bill Clague  
Assistant County Attorney  
Manatee County, Florida  
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[william.clague@mymanatee.org](mailto:william.clague@mymanatee.org)

AGREEMENT No. 11ME1  
AMENDMENT No. 5

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER RESTORATION ASSISTANCE  
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM  
STATE OF FLORIDA  
GRANT AGREEMENT FOR  
ANNA MARIA ISLAND BEACH NOURISHMENT PROJECT

or "Grantee"

THIS AGREEMENT, entered into on 17th day of January, 2012, amended on the 2nd day of October, 2013, amended on the 2nd day of October, 2014, amended on the 8th of May 2015, and amended on 23rd day of May, 2016, the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department/DEP"), whose address is 3900 Commonwealth Boulevard, MS 3601, Tallahassee, Florida 32399, and MANATEE COUNTY a local government (hereinafter referred to as the "Local Sponsor"), whose address is 5502 33<sup>rd</sup> Avenue Drive West, Bradenton, Florida 34209, is hereby amended.

WHEREAS, the 2017 Legislature has provided FY 2016-2017 funds for construction; and,

WHEREAS, the Local Sponsor has requested to revise deliverables in the Grant Work Plan and the Department has agreed. Accordingly, the Grant Work Plan is revised as set forth in Attachment A-1.

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

NOW, THEREFORE, in consideration of the mutual benefits to be derived hereunder, the Department and the Local Sponsor do hereby agree as follows:

- Paragraph 5 sentence two is hereby deleted in its entirety and replaced with the following:

Therefore, the Department's financial obligation shall not exceed the sum of \$6,739,956.00 for this PROJECT or up to 50 percent of the non-federal Project cost, if applicable, for the specific eligible Project items listed, whichever is less.

- Paragraph 24 is hereby deleted in its entirety and replaced with the following:

1. Public Records

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

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

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

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

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

Telephone: (850) 245-2118  
 Email: [public.services@dep.state.fl.us](mailto:public.services@dep.state.fl.us)  
 Mailing Address: Department of Environmental Protection  
 ATTN: Office of Ombudsman and Public Services  
 Public Records Request  
 3900 Commonwealth Boulevard, MS 49  
 Tallahassee, Florida 32399

- Paragraph 31 is hereby deleted in its entirety.
- Paragraph 32 is hereby deleted in its entirety and replaced with the following:

**Insurance.**

- a. Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:
  - i. Commercial General Liability Insurance.  
 The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement.

Risk Management to Review + Comment

The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.

ii. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Agreement.

iii. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$300,000	Automobile Liability Combined Single Limit for Company- Owned Vehicles, if applicable
\$300,000	Hired and Non-owned Automobile Liability Coverage

iv. Other Insurance.

Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/lscntac.htm>) or to the parties' insurance carrier.

- b. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- c. Exceptions to Additional Insured Requirements. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Grantee is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.
- d. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- e. Proof of Insurance. Upon execution of this Agreement, the Grantee shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from the Department, the Grantee shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- f. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Grantee shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

- Paragraph 42 is hereby deleted in its entirety and replaced with the following:

**Force Majeure.**

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Grantee. In case of any delay the Grantee believes is excusable, the Grantee shall notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if the Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date the Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Grantee shall perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to the Department, in which case the Department may (1) accept allocated performance or deliveries from the Grantee, provided that the Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by the Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate the Agreement in whole or in part.

- Paragraph 46 is hereby added to this Agreement:

**Limitation of Liability.**

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

- Paragraph 47 hereby added to this Agreement:

**Prohibited Governmental Actions for Public Works Projects.**

Pursuant to Section 255.0992, F.S., state and political subdivisions that contract for public works projects are prohibited from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers and prohibited from restricting qualified bidders from submitting bids.

- a. "Political subdivision" means separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair or improvement of public works.
- b. "Public works project" means an activity of which fifty percent (50%) or more of the cost will be paid from state- appropriated funds that were appropriated at the time of the competitive solicitation and which consists of construction, maintenance, repair, renovation, remodeling or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

- c. Except as required by federal or state law, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor or material supplier or carrier engaged in such project:
    - i. Pay employees a predetermined amount of wages or prescribe any wage rate;
    - ii. Provide employees a specified type, amount, or rate of employee benefits;
    - iii. Control, limit, or expand staffing; or
    - iv. Recruit, train, or hire employees from designated, restricted, or single source.
  - d. For any competitive solicitation that meets the criteria of this section, the state or political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project, except for those vendors listed under Section 287.133 and Section 287.134, F.S.
  - e. Contracts executed under Chapter 337, F.S. are exempt from these prohibitions.
- Paragraph 48 hereby added to this Agreement:

**Scrutinized Companies.**

Grantee certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Grantee agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement for cause if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

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**Erl Hunziker,  
County Administrator**

IN WITNESS WHEREOF, the undersigned have signed and executed this Agreement on the respective dates under their signatures:

MANATEE COUNTY

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Title: Commission Chair → **County Administrator**

By: \_\_\_\_\_  
Department of Environmental Protection Secretary or designee

Print Name and Title

Print Designee Name and Title

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

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

FEID No. 59-6000727

\_\_\_\_\_  
Dena VanLandingham  
Program Grant Administrator

\_\_\_\_\_  
Vincent George  
DEP Project Manager

\_\_\_\_\_  
Local Sponsor's Attorney (if necessary)  
\_\_\_\_\_  
Print Name and Title

\*If someone other than the County Administrator 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-1	Revised Grant Work Plan (6 pages)

## Jayne Roberts

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**From:** Linda Klasing  
**Sent:** Wednesday, December 06, 2017 3:36 PM  
**To:** Jayne Roberts; George, Vincent  
**Cc:** William Clague  
**Subject:** RE: 14ME1\_CO1-Anna Maria Island-Manatee County Shore Protection-revised1

I have reviewed the insurance and we can comply with the requirements. When the agreement is ready to be executed, let me know and I will provide a letter of self-insurance to you that will comply with their requirements.

Sincerely,

Linda R. Klasing, MBA, ACA, CWCL, CWC  
Risk Manager  
Risk Management Division  
County Attorney's Office  
Manatee County  
1112 Manatee Ave. West, Suite 969  
Bradenton, FL 34205  
(941) 745-3750  
[Linda.klasing@mymanatee.org](mailto:Linda.klasing@mymanatee.org)



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**From:** Jayne Roberts  
**Sent:** Wednesday, December 06, 2017 2:17 PM  
**To:** George, Vincent <Vincent.George@dep.state.fl.us>  
**Cc:** Linda Klasing <linda.klasing@mymanatee.org>  
**Subject:** RE: 14ME1\_CO1-Anna Maria Island-Manatee County Shore Protection-revised1

The amendment is pending review from the Risk Management for the insurance section. As soon as that is completed, I'll let you know. We would like that to also go to the Board on January 9.

Thanks

Jayne Roberts, Sr. Fiscal Analyst  
Manatee County Parks & Natural Resources Dept  
5502 33<sup>rd</sup> Ave Drive West  
Bradenton, FL 34209  
Phone: (941) 742-5923 X6028