



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact +**

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	\$13,000,000	\$52,000,000	\$0	\$0	\$0
Operating Costs					
External Revenues	(\$13,000,000)	(\$52,000,000)			
Program Income(County)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)
In-Kind Match(County)					
<b>NET FISCAL IMPACT</b>	\$0	\$0	\$0	\$0	\$0
#ADDITIONAL FTE					
<b>POSITIONS (CUMULATIVE)</b>					

Is Item Included in Current Budget?                      Yes                      No X  
 Does this item include the use of federal funds?      Yes                      No X

**Budget Account No:**  
 Fund 1523                      Dept 760                      Unit 5113

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
 No fiscal impact as PBC the grant will fully fund the project costs. PBC is serving as the sponsor (Grantee) and will administrate the Grant based on the documentation provided by the Third-Party-Engineer. PBC staff time is eligible for reimbursement by the grant.

**C. Departmental Fiscal Review:**

**III. REVIEW COMMENTS:**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

AR Dull 7/7/23  
 M6717 OFMB CA 10/18/23

[Signature] 7/7/23  
 Contract Dev. & Control  
 Fed 7/7/23

**B. Legal Sufficiency**

[Signature] 7/7/23  
 For M. Jones  
 Assistant County Attorney

**C. Other Department Review**

\_\_\_\_\_  
 Department Director

**(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)**

**Background and Justification Continued:** The Florida Legislature fully funded the design and construction of the C-51 Reservoir Phase II Cell 12 in Fiscal Year 2021-2022 and then fully funded the C-51 Reservoir Phase II Cell 13 by allocating \$65,000,000 in Fiscal Year 2023 and \$70,000,000 in Fiscal Year 2024. This grant is only for the \$65,000,000 currently available to FDEP.

The cells will be constructed through a sole source contract with the Palm Beach Aggregate's Design and Build Team as a Sub-Grant to PBC's Grant. The Design and Build Team has considerable experience with construction of reservoirs in general and specifically at this location as they constructed the C-51 Reservoir Phase 1.

This grant agreement and sub-recipient agreement provide accommodations to minimize the impact to PBC staff time and cash flow. PBC and the Sub-Recipient will select an independent Third-Party-Engineer to provide the appropriate level of construction management and QA/QC. The Sub-Recipient will fully fund the Third-Party-Engineer. FDEP will provide upfront funding of \$19,500,000 to meet all expected payments while PBC waits for reimbursement. The contract limits each month's payment to a maximum of 10% of the total funding and the Sub-Grant agreement limits payments to the contractor to the available FDEP funds. The inflow and outflow structure and conveyance required to connect to the L-8 Canal will be funded by other appropriations.

Once cells of the C-51 Reservoir Phase II are fully connected to the L-8 Canal the reservoir will be capable of receiving and storing regional water and discharging that water at times when it will reduce harmful discharges to the Lake Worth Lagoon, provide water storage to support restoration of the Northwest Fork of the Loxahatchee River and other restoration efforts, combat salt water intrusion by canal recharge, increase water supply resiliency, expand operational flexibility in conjunction with C-51 Reservoir Phase 1, SFWMD L-8 Flow Equalization Basin, SFWMD Stormwater Treatment Areas (STA-1) and other water resource benefits ("Environmental Benefits"). The completed project will be able to provide the County water supply by canal recharge and Lake Worth Lagoon Estuary benefits. Benefits to the Northwest Fork Loxahatchee River (NWFLR) are currently limited by the conveyance capacity through the City of West Palm Beach's Grassy Waters Preserve.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **C-51 Reservoir Phase II Cell 13 Project** Agreement Number: **OWP05**

2. Parties **State of Florida Department of Environmental Protection,  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Palm Beach County BOCC** Entity Type: **Local Government**

Grantee Address: **301 N. Olive Ave.  
West Palm Beach, FL 33401** FEID: **59-6000786** (Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Expiration: **12/31/2026**

4. Project Number: **OWP05** Project Location(s): **Palm Beach County**  
(If different from Agreement Number)

**Project Description:** The PROJECT will be located immediately north of Phase I (see Figure 1), and with an open connection to Phase II Cell 13. Phase II Cell 13 will be connected through improved existing levee, canals and culverts to two new culverts through the L-8 Canal Levee which will provide a controlled connection to the L-8 Canal. The PROJECT will include such items as levees, slurry wall, cell construction, roller compacted concrete on the inside and cap of the levees with grass on the outside, drains and geotextile fabric. At the completion of construction, the PROJECT will be conveyed to a Florida not-for-profit corporation similar to the ownership structure of Phase I. The levee design will be similar to the design used for the C-51 Reservoir Phase I. Grantee intends to request that the SPWMD accept all of the project responsibilities to integrate the Phase II capacity into the regional system to better achieve the benefits described in the Project Background section.

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$ 65,000,000.00	<input checked="" type="checkbox"/> State <input type="checkbox"/> Federal	<b>FY2022-23 GAA 1648A</b>	\$ <b>65,000,000.00</b>
	<input type="checkbox"/> State <input type="checkbox"/> Federal		\$
	<input type="checkbox"/> Grantee Match		\$
<b>Total Amount of Funding + Grantee Match, if any:</b>			<b>\$ 65,000,000.00</b>

6. Department's Grant Manager Name: **Carson Norris** or successor  
Address: **3900 Commonwealth Blvd., MS 24  
Tallahassee, FL 32399**  
Phone: **850-245-3150**  
Email: **Carson.Norris@FloridaDEP.gov**

Grantee's Grant Manager Name: **Paul F. Linton** or successor  
Address: **2300 North Jog Rd.  
4th Floor, ERM, Room 4W-14  
West Palm Beach, FL 33411**  
Phone: **O: 561-355-4600 M: 561-718-2830**  
Email: **PLinton@pbcgov.org**

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Grant Work Plan
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Special Audit Requirements
<input type="checkbox"/> Attachment 6: Program-Specific Requirements
<input type="checkbox"/> Attachment 7: Grant Award Terms (Federal) *Copy available at <a href="https://facts.fldfs.com">https://facts.fldfs.com</a> , in accordance with §215.985, F.S.
<input type="checkbox"/> Attachment 8: Federal Regulations and Terms (Federal)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Progress Report Form
<input type="checkbox"/> Exhibit B: Property Reporting Form
<input checked="" type="checkbox"/> Exhibit C: Payment Request Summary Form
<input type="checkbox"/> Exhibit D: Quality Assurance Requirements
<input checked="" type="checkbox"/> Exhibit E: Advance Payment Terms and Interest Earned Memo
<input checked="" type="checkbox"/> Exhibit F: Common Carrier or Contracted Carrier Attestation Form PUR1808
<input checked="" type="checkbox"/> Additional Exhibits (if necessary): <b>G: Schedule of Values for Payment Milestones</b>

DEP Agreement No. **OWP05**

Rev. 10/25/22

8.	The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331 (a) (1):	
Federal Award Identification Number(s) (FAIN):		
Federal Award Date to Department:		
Total Federal Funds Obligated by this Agreement:		
Federal Awarding Agency:		
Award R&D?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A	

**IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.**

**Palm Beach County BOCC**

**GRANTEE**

By \_\_\_\_\_ Date Signed \_\_\_\_\_  
*(Authorized Signature)*

Print Name and Title of Person Signing

**State of Florida Department of Environmental Protection**

**DEPARTMENT**

By \_\_\_\_\_ Date Signed \_\_\_\_\_  
 Secretary or Designee

Print Name and Title of Person Signing

Additional signatures attached on separate page.

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STANDARD TERMS AND CONDITIONS  
APPLICABLE TO GRANT AGREEMENTS

ATTACHMENT 1

**1. Entire Agreement.**

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

**2. Grant Administration.**

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
- i. Standard Grant Agreement
  - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
  - iii. Attachment 1, Standard Terms and Conditions
  - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
- (1) an increase or decrease in the Agreement funding amount;
  - (2) a change in Grantee's match requirements;
  - (3) a change in the expiration date of the Agreement; and/or
  - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
- A change order to this Agreement may be used when:
- (1) task timelines within the current authorized Agreement period change;
  - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
  - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
  - (4) fund transfers between budget categories for the purposes of meeting match requirements.
- This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

**3. Agreement Duration.**

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

#### **4. Deliverables.**

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

#### **5. Performance Measures.**

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

#### **6. Acceptance of Deliverables.**

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

#### **7. Financial Consequences for Nonperformance.**

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
  - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
  - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, 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 Department or steps taken by Grantee shall preclude 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 Department as requested by Department's Grant Manager.

- iii. 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 Department may result in termination of the Agreement.

**8. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. 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, which can be accessed at the following web address:  
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: [www.myfloridacfo.com/Division/AA/Vendors/default.htm](http://www.myfloridacfo.com/Division/AA/Vendors/default.htm).
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

**9. Documentation Required for Cost Reimbursement Grant Agreements and Match.**

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.

- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
  - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to 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 (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by 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 Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
  - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting

Attachment 1

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acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

**10. Status Reports.**

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

**11. Retainage.**

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

**12. Insurance.**

- a. 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.
- b. 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.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide 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 Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify 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) days after the cancellation of coverage.
- e. Insurance Trust. 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.

**13. Termination.**

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other

obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

#### **14. Notice of Default.**

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

#### **15. Events of Default.**

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
  - i. Entry of an order for relief under Title 11 of the United States Code;
  - ii. The making by Grantee of a general assignment for the benefit of creditors;
  - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
  - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

**16. Suspension of Work.**

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

**17. Force Majeure.**

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of 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 Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify 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 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 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 Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from 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 Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by 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 Agreement in whole or in part.

**18. Indemnification.**

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
  - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
  - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: 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, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or

otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

**19. 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.

**20. Remedies.**

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

**21. Waiver.**

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.**

a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:

- i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
- iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

**23. Compliance with Federal, State and Local Laws.**

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, 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.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

**24. Scrutinized Companies.**

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

**25. Lobbying and Integrity.**

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

**26. Record Keeping.**

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

**27. Audits.**

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
  - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;

- ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
  - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.330 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, 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>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. **No Commingling of Funds.** 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, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
- i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by 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 Department by Grantee to the date repayment is made by Grantee to Department.
  - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
  - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

**28. Conflict of Interest.**

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.

**29. Independent Contractor.**

The Grantee is an independent contractor and is not an employee or agent of Department.

**30. Subcontracting.**

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. 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.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

**31. Guarantee of Parent Company.**

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

**32. Survival.**

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

**33. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

**34. Severability.**

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

**35. Grantee's Employees, Subcontractors and Agents.**

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

**36. Assignment.**

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

**37. Compensation Report.**

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

**38. Execution in Counterparts and Authority to Sign.**

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Special Terms and Conditions  
AGREEMENT NO. OWP05**

**ATTACHMENT 2**

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

**1. Scope of Work.**

The Project funded under this Agreement is Phase II Cell 13 of the C-51 Reservoir Project. The Project is defined in more detail in Attachment 3, Grant Work Plan.

**2. Duration.**

- a. Reimbursement Period. The reimbursement period for this Agreement begins on January 1, 2022 and ends at the expiration of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

**3. Payment Provisions.**

- a. Compensation. This is a combination fixed fee/cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur monthly.
- c. Advance Pay. Advance Pay is authorized under this Agreement.

**4. Cost Eligible for Reimbursement or Matching Requirements.**

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. Fringe Benefits, N/A.
<input type="checkbox"/>	<input type="checkbox"/>	b. Indirect Costs, N/A.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Contractual (Subcontractors)
<input type="checkbox"/>	<input type="checkbox"/>	Travel, in accordance with Section 112, F.S.
<input type="checkbox"/>	<input type="checkbox"/>	Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Rental/Lease of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous/Other Expenses
<input type="checkbox"/>	<input type="checkbox"/>	Land Acquisition

**5. Equipment Purchase.**

No Equipment purchases shall be funded under this Agreement.

**6. Land Acquisition.**

There will be no Land Acquisitions funded under this Agreement.

**7. Match Requirements**

There is no match required on the part of the Grantee under this Agreement.

**8. Insurance Requirements**

**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:

a. **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. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. **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, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. **Workers' Compensation and Employer's Liability Coverage.**

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage 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 Grant.

d. **Other Insurance.** None.

**9. Quality Assurance Requirements.**

There are no special Quality Assurance requirements under this Agreement.

**10. Retainage.**

No retainage is required under this Agreement.

**11. Subcontracting.**

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

**12. State-owned Land.**

The work will not be performed on State-owned land.

**13. Office of Policy and Budget Reporting.**

There are no special Office of Policy and Budget reporting requirements for this Agreement.

**14. Common Carrier.**

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution] If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The

Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808

**15. Additional Terms.**

None.

*Any terms added here must be approved by the Office of General Counsel.*

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
GRANT WORK PLAN  
DEP AGREEMENT NO. OWP05**

**ATTACHMENT 3**

**PROJECT TITLE:** C-51 Reservoir Phase II Cell 13 Project

**PROJECT AUTHORITY:** Pursuant to Section 373.4598(9), Florida Statutes, a regionally significant alternative water supply project.

**PROJECT LOCATION:** The project is located north of State Road 80 (Southern Boulevard) in Section 18, Township 43 South, Range 40 East (Latitude: 26° 44' 07" and Longitude: -80° 23' 08"), in Palm Beach County. See Figure 1 for a C-51 Reservoir Location Map.

**PROJECT BACKGROUND:** The C-51 Reservoir is capable of receiving and storing water from areas under the jurisdiction of the South Florida Water Management District ("SFWMD") in the Southeastern region of Florida ("Region"), and discharging that water back to the Region to reduce harmful discharges to the Lake Worth Lagoon, provide water storage to support restoration of the Northwest Fork of the Loxahatchee River and other restoration efforts, combat salt water intrusion, increase water supply resiliency, expand operational flexibility in conjunction with C-51 Reservoir Phase 1, SFWMD L-8 Flow Equalization Basin and SFWMD L-8 Canal, Stormwater Treatment Areas and other water resource benefits, to be constructed in multiple phases. Phase 1 of the C-51 Reservoir consisting of a reservoir with 14,000 acre-feet of water storage capacity and appurtenant facilities and works ("Phase 1") is currently under construction for public water supply purposes as a completely separate project. The project will consist of an anticipated additional 8,800 acre-feet of water storage capacity and appurtenant facilities and works.

**PROJECT DESCRIPTION:** The project will be located immediately north of Phase 1 (see Figure 1) and will have an open connection to Phase II Cell 12. Phase II Cell 13 will be connected through improved existing farm canals and culverts to two new culverts through the L-8 Canal Levee which will provide a controlled connection to the L-8 Canal. The two new culverts are currently under construction and are expected to be completed during 2023 ("S0932 - North Conveyance Improvements"). The project will include such items as levees, slurry wall, cell excavation, roller compacted concrete on the inside and top of the levees with grass on the outside, drains and geotextile fabric. At completion of construction, the project will be conveyed to a Florida not-for-profit corporation like the ownership structure of Phase 1. The levee design will be based on and like the design used for the C-51 Reservoir Phase I.

The GRANTEE will request that SFWMD accept ownership or control of the project from the Florida not-for-profit corporation, to be operated by SFWMD for the benefit of the regional system in conjunction with Phase II Cell 12 and the project Infrastructure, specifically to provide the benefits described in the Project Background section with defined and measurable environmental benefits.

The GRANTEE will, based on information gathered, reviewed, and analyzed by a third-party Engineer approved by GRANTEE but paid from grant funds by sub-contractor administrate the Grant. The third-party Engineer responsibilities will include reviewing construction plans, specifications, draw requests and work completed, and provide input and oversight to ensure the proper construction and documentation of the project. The GRANTEE will hold monthly meetings with the sub-contractor and contractor to be kept informed throughout the final design process, permitting and during construction. The oversight will include consideration for integration with Phase II Cell 12 and any future Phase II cells, additional

conveyance, control and/or pump station infrastructure as may be required or beneficial. It is anticipated that SFWMD will review, comment, and ultimately approve the construction plans and specifications through its internal process, which shall be a responsibility of the sub-contractor.

### **Task 1: Final Design, Permitting and Construction**

**Task Description:** The GRANTEE will execute an agreement with the sub-contractor regarding the project in accordance with state law, which has been pre-approved by the Department.

The sub-contractor will identify a third-party Engineer for review and approval by the GRANTEE. The GRANTEE will review qualifications and experience of the identified third-party Engineer and their proposed staff, provide approval or requests for additional information or rejection in a timely manner. Once approved, the sub-contractor will contract with the third-party Engineer for services on behalf of the GRANTEE. The GRANTEE will, based on information gathered, reviewed, and analyzed by the third-party Engineer administrate the grant and provide construction input as needed, conduct site meetings with the sub-contractor and construction contractor, and oversee overall project coordination and supervision. The GRANTEE oversight will rely on the observation, tests, and work products of the sub-contractor's engineering and QA/QC of the construction firm hired by and paid solely by the sub-contractor. The sub-contractor shall develop the scope for the construction QA/QC with input from and approval by the GRANTEE. The scope for the third-party Engineer shall include the required quarterly progress reports, documentation of meetings (e.g. meeting notes), electronic mail, payment requests, documentation of payment, and progress reports from the sub-contractor meeting all of the reporting and documentation requirements of this grant agreement.

The GRANTEE's sub-contractor will obtain all necessary permits for construction of the project. The GRANTEE will request that the SFWMD review and approve the completed designs of the project which shall meet all of the SFWMD standards after review of the construction plans and specifications by the SFWMD and resolution of comments provided by the SFWMD in their "doc-check" program. Once approved by the SFWMD, GRANTEE will submit final design documents to the Department's Grant Manager.

**Deliverable 1.1:** A) An electronic copy of the final design, comments and resolutions of SFWMD's "doc-check" design review, and all professional certification; B) a list of all required permits identifying application and/or issue dates and issuing authorities; and C) electronic copies of executed subcontracts, including the scope of work for tasks described above.

**Deliverable 1.2:** The Grantee will submit A) a written description of completed construction tasks; B) date-stamped color photographs of the construction site prior to, during, and immediately following completion of the construction tasks as listed in the narrative description provided; C) any construction inspection reports (if applicable in current reporting period). Deliverables cannot be submitted more frequently than monthly.

**Deliverable 1.3:** The Grantee will submit A) a copy of record drawings and any required final inspection reports for the project; B) signed acceptance of the completed work by the grantee ; C) a signed statement from Florida Licensed Professional Engineer indicating that construction was completed in accordance with the design; and D) the as-built documents of the final plans and specifications as constructed. Upon request, the GRANTEE will provide paper copies of the final design.

**Performance Standard:** The Department's Grant Manager will review each deliverable to verify that it meets the specifications in the Grant Work Plan and this task description, and that the work has been performed in accordance with the terms of this agreement. Upon review and written acceptance by the Department's Grant Manager of each deliverable under this task, the GRANTEE may proceed with their payment request submittal.

**Payment Request Schedule:** The GRANTEE will submit invoices no more frequently than monthly and must include the Department's written approval of the submitted deliverable. Each monthly payment request will be based on the Schedule of Values for Payment Milestones found on Exhibit G, not to exceed the initial three month advanced value of the total project grant amount. All payment requests must include written approval of the GRANTEE's third-party Engineer.

**PROJECT TIMELINE:** The tasks must be completed by the corresponding task end date and all deliverables must be received by the designated due date.

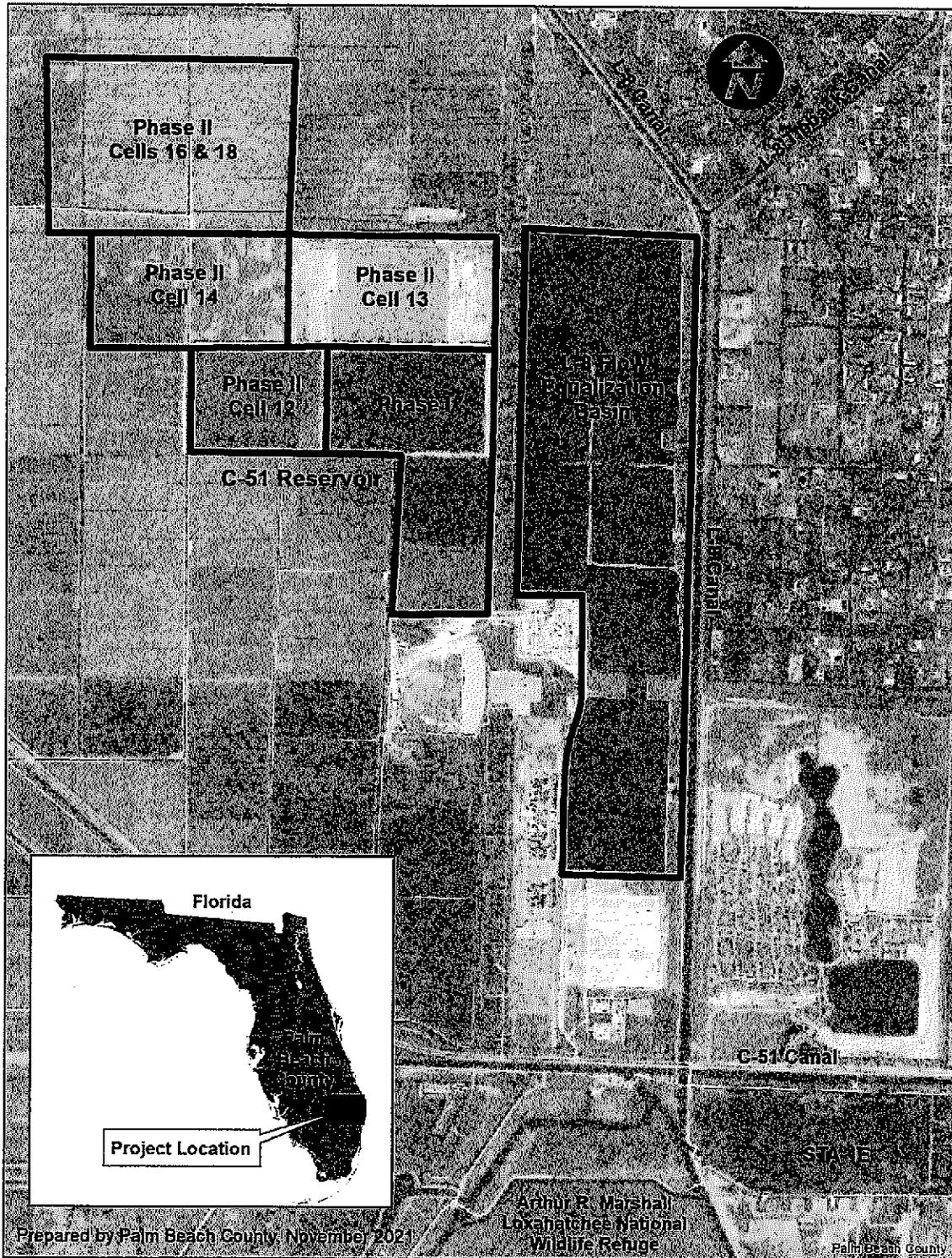
Task/ Deliverable No.	Task or Deliverable Title	Task Start Date	Task End Date	Deliverable Due Date/ Frequency
Task 1	<b>Design, Permitting, and Construction of Phase II, Cell 12 of the C-51 Reservoir Project</b>	1/1/2022	3/31/2026	n/a
<i>Deliverable 1.1</i>	<i>Final Design Documents / Permits / Executed Subcontract</i>	7/1/2022	9/30/2023	9/30/2023
<i>Deliverable 1.2</i>	<i>Construction Status Report #1 with Photographic Evidence of Construction</i>	n/a	n/a	Monthly by the 15 <sup>th</sup> of each preceding month
<i>Deliverable 1.3</i>	<i>Final As-Built Drawings with Certification</i>	n/a	n/a	3/31/2026

**PROJECT BUDGET SUMMARY:** Grant funding must not exceed the category totals for the project as indicated below.

Category Totals	Grant Funding, Not to Exceed, \$
Contractual Services	\$65,000,000
<b>Total:</b>	<b>\$65,000,000</b>

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Figure 1. C-51 Reservoir Location Map



STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Public Records Requirements

Attachment 4

**1. Public Records.**

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, 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 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 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 Grantee is a "contractor" as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide 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 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 Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to 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 Department, upon request from Department's custodian of Public Records, in a format specified by Department as compatible with the information technology systems of 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@floridadep.gov](mailto:public.services@floridadep.gov)  
**Mailing Address:** Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Boulevard, MS 49  
Tallahassee, Florida 32399

**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Special Audit Requirements**  
**(State and Federal Financial Assistance)**

**Attachment 5**

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 agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the 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 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, 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 (CFO) 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 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment 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 in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, 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 federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

## PART II: STATE FUNDED

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the 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(3), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), 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 \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), 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 \$750,000 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 <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/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(3), 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 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
  - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

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

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. 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 one of the following addresses:

By Mail:

**Audit Director**  
Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

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

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. 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 one of the following addresses:

By Mail:

**Audit Director**  
Florida Department of Environmental Protection  
Office of Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

4. 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 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

**Attachment 5**

3 of 7

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

**PART V: RECORD RETENTION**

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (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 **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

**EXHIBIT – 1**

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

*Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded*

<b>Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:</b>					
<b>Federal Program A</b>	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
<b>Federal Program B</b>	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

*Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:*

<b>Federal Program A</b>	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
<b>Federal Program B</b>	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year <sup>1</sup>	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
OWP05	Florida Department of Environmental Protection	FY2022-23	37.091	C-51 Reservoir Implementation	65,000,000	141122
State Program B	State Awarding Agency	State Fiscal Year <sup>2</sup>	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
<b>Total Award</b>					<b>\$65,000,000</b>	

Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [[https://apps.fldfs.com/fsaa/state\\_project\\_compliance.aspx](https://apps.fldfs.com/fsaa/state_project_compliance.aspx)]). The

<sup>1</sup> Subject to change by Change Order.

<sup>2</sup> Subject to change by Change Order.

services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Progress Report Form**

**Exhibit A**

<b>DEP Agreement No.:</b>	<b>OWP05</b>		
<b>Grantee Name:</b>			
<b>Grantee Address:</b>			
<b>Grantee's Grant Manager:</b>		<b>Telephone No.:</b>	
<b>Reporting Period:</b>			
<b>Project Number and Title:</b>	<b>C-51 Reservoir Phase II Cell 13 Project</b>		
<p><b>Provide the following information for all tasks and deliverables identified in the Grant Work Plan: a summary of project accomplishments for the reporting period; a comparison of actual accomplishments to goals for the period; if goals were not met, provide reasons why; provide an update on the estimated time for completion of the task and an explanation for any anticipated delays and identify by task.</b></p> <p><b>NOTE: Use as many pages as necessary to cover all tasks in the Grant Work Plan.</b></p> <p><b><u>The following format should be followed:</u></b></p> <p><b>Task 1:</b></p> <p><b>Progress for this reporting period:</b></p> <p><b>Identify any delays or problems encountered:</b></p>			

This report is submitted in accordance with the reporting requirements of DEP Agreement No. APC01 and accurately reflects the activities associated with the project.

\_\_\_\_\_  
Signature of Grantee's Grant Manager

\_\_\_\_\_  
Date

**Exhibit A, DEP Agreement #:  
OWP05 1 of 1**

**Exhibit C  
PAYMENT REQUEST SUMMARY FORM**

DEP Agreement No.: OWP05 Agreement Effective Dates: \_\_\_\_\_

Grantee: \_\_\_\_\_ Grantee's Grant Manager: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Payment Request No. \_\_\_\_\_ Date of Payment Request: \_\_\_\_\_

Performance Period (Start date – End date): \_\_\_\_\_

Task/Deliverable No(s). \_\_\_\_\_ Task/Deliverable Amount Requested: \$ \_\_\_\_\_

GRANT EXPENDITURES SUMMARY SECTION

CATEGORY OF EXPENDITURE <i>(As authorized)</i>	AMOUNT OF THIS REQUEST	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Salaries/Wages	\$ N/A	\$	SN/A	SN/A
Fringe Benefits	\$ N/A	\$	SN/A	SN/A
Indirect Cost	\$ N/A	\$	SN/A	SN/A
Contractual (Subcontractors)	\$	\$	SN/A	SN/A
Travel	\$ N/A	\$	SN/A	SN/A
Equipment (Direct Purchases)	\$ N/A	\$	SN/A	SN/A
Rental/Lease of Equipment	\$ N/A	\$	SN/A	SN/A
Miscellaneous/Other Expenses	\$ N/A	\$	SN/A	SN/A
Land Acquisition	\$ N/A	\$	SN/A	SN/A
<b>TOTAL AMOUNT</b>	\$	\$	SN/A	SN/A
<b>TOTAL TASK/DELIVERABLE BUDGET AMOUNT</b>	\$		SN/A	
<b>Less Total Cumulative Payment Requests of:</b>	\$		SN/A	
<b>TOTAL REMAINING IN TASK</b>	\$		SN/A	

**GRANTEE CERTIFICATION**

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

**Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.**

**This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid**

- **waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.**

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States-this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

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**Exhibit C, DEP Agreement #:**  
OWP05 2 of 4

Rev. 11/14/2022

**Grantee's Certification of Payment Request**

I, \_\_\_\_\_, on behalf of

(Print name of Grantee's Grant Manager designated in the Agreement)

\_\_\_\_\_, do hereby certify for

(Print name of Grantee/Recipient)

DEP Agreement No. \_\_\_\_\_ and Payment Request No. \_\_\_\_\_ that:

- The disbursement amount requested is for allowable costs for the project as described in Attachment 3 of the Agreement.
- All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

*Check all that apply below:*

- All permits and approvals required for the construction, which is underway, have been obtained.
- Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- The Grantee's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)      Period of Service (mm/dd/yy – mm/dd/yy)


\_\_\_\_\_  
Grantee's Grant Manager Signature

\_\_\_\_\_  
Grantee's Fiscal Agent Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

**INSTRUCTIONS FOR COMPLETING  
PAYMENT REQUEST SUMMARY FORM**

**DEP AGREEMENT NO.:** This is the number on your grant agreement.

**AGREEMENT EFFECTIVE DATES:** Enter agreement execution date through end date.

**GRANTEE:** Enter the name of the grantee's agency.

**GRANTEE'S GRANT MANAGER:** This should be the person identified as grant manager in the grant Agreement.

**MAILING ADDRESS:** Enter the address that you want the state warrant sent.

**PAYMENT REQUEST NO.:** This is the number of your payment request, not the quarter number.

**DATE OF PAYMENT REQUEST:** This is the date you are submitting the request.

**PERFORMANCE PERIOD:** This is the beginning and ending date of the performance period for the task/deliverable that the request is for (this must be within the timeline shown for the task/deliverable in the Agreement).

**TASK/DELIVERABLE NO.:** This is the number of the task/deliverable that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan).

**TASK/DELIVERABLE AMOUNT REQUESTED:** This should match the amount on the "*TOTAL TASK/DELIVERABLE BUDGET AMOUNT*" line for the "*AMOUNT OF THIS REQUEST*" column.

**GRANT EXPENDITURES SUMMARY SECTION:**

**"AMOUNT OF THIS REQUEST" COLUMN:** Enter the amount that was expended for this task during the period for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of the task on the "*TOTAL TASK BUDGET AMOUNT*" line. Enter the total cumulative amount of this request and all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL TASK BUDGET AMOUNT*" for the amount to enter on the "*TOTAL REMAINING IN TASK*" line.

**"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN:** Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the task you are reporting on). Enter the column total on the "*TOTALS*" line. **Do not enter anything in the shaded areas.**

**"MATCHING FUNDS" COLUMN:** Enter the amount to be claimed as match for the performance period for the task you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL TASK BUDGET AMOUNT*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL TASK BUDGET AMOUNT*" for the amount to enter on the "*TOTAL REMAINING IN TASK*" line.

**"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN:** Enter the cumulative amount you have claimed to date for match by budget category for the task. Put the total of all on the line titled "*TOTALS*." The final report should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

**GRANTEE'S CERTIFICATION:** Check all boxes that apply. Identify any licensed professional service providers that certified work or services completed during the period included in the request for payment. **Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.**

**NOTES:**

**If claiming reimbursement for travel, you must include copies of receipts and a copy of the travel reimbursement form approved by the Department of Financial Services, Chief Financial Officer.**

**Documentation for match claims must meet the same requirements as those expenditures for reimbursement.**

Exhibit C, DEP Agreement #:  
OWP05 4 of 4

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Advance Payment Terms

Exhibit E

1. Advance Payments.

- a. The Grantee shall submit a written request on letterhead to the Department explaining the need for the advance payment and why the advance payment is in the best interest of the State. If the advance payment requested is beyond the expected cash needs of the entity for the initial three months of the Agreement, the Grantee must also request a waiver of this requirement by submitting a written request with justification on letterhead to the Department. Advance payment is subject to written approval from the State's Chief Financial Officer (CFO) and the Department.
- b. The CFO may identify additional requirements that must be met in order for advance payment to be authorized. If additional requirements are imposed by the CFO, the Grantee shall be notified, in writing, by the Department's Grant Manager regarding the additional requirements. Prior to releasing any advanced funds, the Grantee shall be required to provide a written acknowledgement to the Department's Grant Manager of the Grantee's acceptance of the additional requirements imposed by the CFO for release of the funds.
- c. If advance payment is authorized, the Grantee shall report, on a quarterly basis in conjunction with the Progress Report as required under in this Agreement, the amount of funds expended during the reporting period, the Agreement expenditures to date, and interest earned during the quarter, and clearly indicate the method for repayment of the interest to the Department. Expenditures shall be documented in accordance with the requirements for reimbursement identified below. Interest earned and method of repayment shall be reported on the **Advance Payment – Interest Earned Memorandum, Exhibit E1** below.
- d. The Grantee must temporarily invest the advanced funds, and return any interest income to the Department, within thirty (30) days of each calendar quarter or apply said interest income against the Department's obligation to pay, if applicable, under this Agreement. Interest earned must be returned to the Department within the timeframe identified above or invoices must be received within the same timeframe that shows the offset of the interest earned.
- e. Unused funds, and interest accrued on any unused portion of advanced funds that has not been remitted to the Department, shall be returned to the Department within sixty (60) days of Agreement completion.
- f. If an advance payment is not approved by the CFO, the Grantee shall make its reimbursement requests in accordance with the reimbursement process described in Attachment 1, Standard Terms and Conditions.

EXHIBIT E

1 of 1

Memorandum

**EXHIBIT E1  
Advanced Funds Expended and Interest Earned Memo**

**WHEN REPORTING OR REMITTING, PLEASE RETURN A COPY OF THIS REQUEST**

TO: **Contract Manager Name**  
FROM: Lydia L. Griffin, Bureau Chief  
Bureau of Finance and Accounting  
DATE: **MM/DD/YYYY**  
SUBJECT: Advanced Funds for:  
**Agreement No. APC01**  
**Begin Date:**

In accordance with Section 216.181(14)(b), Florida Statutes, the Department requires that advanced funds be deposited into an interest-bearing account until all funds have been depleted. In order to update the status on the **unused portion of the advanced funds and/or interest due**, the following information is needed **no later than MM/DD/YYYY**.

Interest Due to DEP: Yes  No

(If No, Advanced Funds Recipient is required to report only the amount of Advanced Funds Expended or Returned to DEP.)

Project % of Completion as of MM/DD/YY: _____	Final Report: <input type="checkbox"/> Yes or <input type="checkbox"/> No
Project % of Completion as of MM/DD/YY: _____	Estimated Project Completion Date: _____
Initial advanced funds disbursed MM/DD/YY	Cumulative amount of advanced funds \$ _____
1 Advanced funds principal <i>expended</i> by contractor covering period of MM/DD/YY to MM/DD/YY	\$ _____
2 Advanced funds principal <i>returned</i> by contractor covering period of MM/DD/YY to MM/DD/YY	\$ _____
3 Advanced funds principal balance available on hand	\$ _____
4 Interest earned on advanced funds covering period of MM/DD/YY to MM/DD/YY	\$ _____
5 Amount of interest paid to DEP as of MM/DD/YY	\$ _____
6 Interest balance due to DEP as of MM/DD/YY	\$ _____

**Project Management Certification:**

By evidence of my signature below, the above information is true and correct. I have knowledge of the work performed and the advanced funds principal on hand is needed to complete the project(s) by the Estimated Project Completion Date.

\_\_\_\_\_  
Carson Norris

DEP Grant Manager Printed Name

\_\_\_\_\_  
Advanced Funds Recipient Printed Name

\_\_\_\_\_  
DEP Grant Manager Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Advanced Funds Recipient Signature

\_\_\_\_\_  
Date

**DEP USE ONLY**

Project Management Verification (please explain): \_\_\_\_\_

Thank you for your cooperation in providing the above information. If you have any questions, please contact the **Contract Disbursements Section at (850) 245-2465**, in the Bureau of Finance & Accounting.

**Memorandum**

**INSTRUCTIONS TO COMPLETE THE ADVANCED FUNDS EXPENDED & INTEREST EARNED MEMO:**

*This form should be completed by the Advanced Funds Recipient in its entirety, signed and dated by the appropriate personnel and submitted each reporting period. Please ensure each field on the form is completed according to the guidance provided.*

Percentage of Project Completion must be completed, indicating the percentage of progress for the current reporting period.

Estimated Project Completion Date must be completed, indicating the anticipated project completion date in the MM/DD/YYYY format.

The Final Report indicator (Yes or No) must be completed.

If the contract states that no interest is due, quarterly reporting of the expended advanced funds is still required. Lines 1, 2, and 3 must be completed.

In all cases the lines 1, 2, and 3 reported amounts are on a cash basis for the advanced funds principal. Do not include receivables, payables, or interest previously paid to DEP.

If the grant/contract requires quarterly accrued interest payments to DEP, the advanced funds recipient must complete lines 1 through 6 for each quarterly report. Payments of interest due to DEP shall be paid within the specifications of the grant/contract. Project Management Certification: This section is to be completed by the DEP Grant Manager and the Advanced Funds Recipient to certify that the information provided on this form is true and accurately reflects the status of the advanced funds received from the Department.

Project Management Verification: This section is to be completed by the DEP Grant Manager in providing the method used to verify that the information received from the Advanced Funds Recipient is true and accurately reflects the status of the advanced funds received from the Department.

**COMMON CARRIER OR CONTRACTED CARRIER ATTESTATION  
FORM  
(PUR 1808)**

This form must be completed by a Common Carrier or contracted carrier and submitted to the Governmental Entity with which a Contract being is executed, amended, or renewed. Capitalized terms used herein have the definitions ascribed in section 908.111, F.S.

Name of Common Carrier or contracted carrier is not willfully providing and will not willfully provide any service during the Contract term in furtherance of transporting a person into this state knowing that the person is an Unauthorized Alien, except to facilitate the detention, removal, or departure of the person from this state or the United States.

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Printed Name:

Title:

Signature:

Date:

**Exhibit G**  
**Advanced Payment Schedule**  
**- Values for Payment**  
**Milestones**

Cell 13 \$65,000,000			
Month	Date	Monthly Avg Value	Advanced Payment Standard Terms
1	Aug-23	\$ 6,500,000.00	
2	Sep-23	\$ 6,500,000.00	
3	Oct-23	\$ 6,500,000.00	\$ 19,500,000.00
4	Nov-23	\$ 6,500,000.00	\$ 19,500,000.00
5	Dec-23	\$ 6,500,000.00	\$ 19,500,000.00
6	Jan-24	\$ 6,500,000.00	\$ 19,500,000.00
7	Feb-24	\$ 6,500,000.00	\$ 19,500,000.00
8	Mar-24	\$ 6,500,000.00	\$ 19,500,000.00
9	Apr-24	\$ 6,500,000.00	\$ 19,500,000.00
10	May-24	\$ 6,500,000.00	\$ 19,500,000.00

**Exhibit G**  
**C-51 Reservoir – Phase 2 Cell 13**  
**Project Completion Schedule**

<b>Description</b>	<b>Milestone Dates</b>
Commence Project	August 2023
Conveyor and Powerline Relocation	October 2023 – February 2024
Dewatering	December 2023 – June 2025
Foundation, Excavation, Embankment	December 2023 – January 2025
Interior Cell Excavation	April 2024 – January 2025
Soil Bentonite Wall	April 2024 – January 2025
Continuation of Construction with additional funding (all dates below with additional funding)	February 2025 – June 2025
Substantial Completion of Cell 13	June 2025
Final Inspections, Cleanup and Demobilization	July 2025
Closing and Turnover to Non-Profit	August 2025
Commence Operations with Cell 13 Pump Station	December 2025

Company shall use its best efforts to achieve the project milestones listed above within the time periods specified. If Company anticipates a delay in achieving any of the project milestones listed above, Company shall promptly notify County in writing of such anticipated delay and work with County to minimize the delay and develop an amended schedule.

**Exhibit G**  
**Project Schedule and Values**

<b>Description</b>	<b>Schedule of Values</b>
Mobilization	\$ 3,321,000
General Conditions	\$ 867,584
Environmental Controls/SWPPP	\$ 306,447
Dewatering	\$ 3,421,295
Maintenance Dewatering	\$ 2,799,241
Soil Bentonite Wall	\$ 11,944,718
Stormwater Pond	\$ -
Boat Ramp	\$ -
Engineering & Construction Mngmt	\$ 2,254,550
QA/QC Including Materials Testing	\$ 2,831,376
Relocation of Conveyor & Powerlines	\$ 6,272,489
Foundation Stripping	\$ 877,236
Key Trench Excavation	\$ -
Foundation Excavation to Embankment	\$ 5,318,528
Perimeter Ditch	\$ -
Toe Drain In Place	\$ -
Interior Cell Excavation	\$ 13,815,391
RCC Plating Complete	\$ -
Payment & Performance Bonding	\$ 457,451
Existing Storage Capacity /CIP	\$ 10,512,694
<b>Cell 13 Totals</b>	<b>\$ 65,000,000</b>

Table will be revised with quantities once the initial surveying is completed and the embankment design is finalized.

**C-51 RESERVOIR PHASE II CELL 13 PROJECT  
SUB-GRANT AGREEMENT FOR WATER STORAGE  
CAPACITY ALLOCATION**

THIS C-51 RESERVOIR PHASE II CELL 13 PROJECT SUB-GRANT AGREEMENT FOR STORAGE CAPACITY ALLOCATION ("Agreement") is made and entered into by and between C-51 Reservoir Cell 13, LLC, a Florida limited liability company ("Company"), with its principal offices at 20125 State Road 80, P.O. Box 700, Loxahatchee, Florida 33470, and Palm Beach County Florida, a political subdivision of the State of Florida ("County"), whose address is 300 S. Olive Ave, West Palm Beach, FL 33401. Company and County shall collectively herein be called the "Parties" and each be individually identified herein from time to time as a "Party."

**WITNESSETH:**

**WHEREAS**, Company is constructing a series of reservoir cells (collectively, the "C-51 Reservoir") capable of receiving and storing water from areas under the jurisdiction of the South Florida Water Management District ("SFWMD") in the Southeastern region of Florida ("Region"), and discharging that water back to the Region to reduce harmful discharges to the Lake Worth Lagoon, provide water storage to support restoration of the Northwest Fork of the Loxahatchee River and other restoration efforts, combat salt water intrusion, increase water supply, increase resiliency, expand operational flexibility in conjunction with the SFWMD L-8 Flow Equalization Basin, and provide other water resource benefits ("Environmental Benefits"); and

**WHEREAS**, Phase 1 of the C-51 Reservoir consisting of a reservoir with 14,000 acre-feet of water storage capacity and appurtenant facilities and works ("Phase 1") is currently under construction for public water supply purposes as a separate project. The C-51 Reservoir Phase II Cell 13 Project will consist of an anticipated additional 8,800 acre-feet of water storage capacity and appurtenant facilities and works ("Phase 2 Cell 13"). A separate grant agreement or modification to this Phase 2 Cell 13 grant agreement will address the development of a gated control structure and pump station connecting Phase 2 Cell 13 to improved farm canals and the L-8 Canal, including interim operations and maintenance while final improvements are completed ("Phase 2 Inflow/Outflow Infrastructure"); and

**WHEREAS**, County supports the development of additional water storage capacity provided by Phase 2 Cell 13, as set forth below (the "Capacity Reservation") to support the Environmental Benefits; and

**WHEREAS**, County has entered into that certain grant agreement between County and State of Florida Department of Environmental Protection ("FDEP"), identified as FDEP Agreement No. OWP05 ("FDEP Grant Agreement"); and

**WHEREAS**, this Agreement has been pre-approved by FDEP as the agreement with Sub-Recipient regarding the Project as referenced in Attachment 3, Grant Work Plan, to the FDEP Grant Agreement; and

**WHEREAS**, at completion of construction, Phase 2 Cell 13 will be conveyed to a Florida not-for-profit corporation similar to the ownership structure of Phase 1; and

**WHEREAS**, because the operation of Phase 2 Cell 13 is dependent upon the SFWMD's regional system, the Parties will request that SFWMD operate, maintain, repair, replace, and rehabilitate ("OMRRR") Phase 2 Cell 13 as the operations of Phase 2 Cell 13 would require real-time coordination with other SFWMD operations in the L-8 Basin. If SFWMD accepts the OMRRR, then a separate OMRRR Agreement ("SFWMD Phase 2 OMRRR Agreement") will be executed; and

**WHEREAS**, at such time as the entire storage capacity of Phase 2 Cell 13 is completed and the Phase 2 Inflow/Outflow Infrastructure is completed and operational (hereafter called "Fully Functional Cell 13"), then the Parties will request that SFWMD assume ownership and operations of Fully Functional Cell 13 and the Phase 2 Inflow/Outflow Infrastructure, to implement the Environmental Benefits set forth above.

**NOW, THEREFORE**, for mutual consideration, the Parties agree the above recitals are true and correct and are incorporated into this Agreement, and further agree as follows:

- 1. DEFINITIONS** – As used in this Agreement, the following terms shall have the following meanings:

- 1.1 **Affiliate** – shall mean, when used to indicate a relationship with a specific Person, another Person that directly or indirectly through one or more intermediaries or otherwise, controls, is controlled by, or is under common control with, such specific Person. A company shall be deemed to be an Affiliate of another company if one directly or indirectly controls the other or if each of them is directly or indirectly controlled by the same Person.
- 1.2 **C-51 Reservoir** – shall have the meaning set forth in the Whereas clauses and as defined in the Reservoir ERP Permit.
- 1.3 **Capacity Allocation** –shall mean the as-built water storage capacity in Phase 2 Cell 13 at the Operation Date as funded by the \$65,000,000 FDEP Grant, which equals 65/135 of the 8,800 acre feet capacity anticipated at build-out of Phase 2 Cell 13 (the “Initial Capacity Allocation”). The Initial Capacity Allocation may be increased by administrative amendment to this Capacity Allocation Agreement to 135/135 of the 8,800 acre feet (the “Full Capacity Allocation”) if the \$70,000,000 FY 2023 through 2024 appropriation is signed by the Governor and FDEP is provided the funds and increases the Grant.
- 1.4 **Capacity Allocation Agreement** – shall mean this agreement between the Company and County.
- 1.5 **Capacity Cost Share** – shall mean the \$65,000,000 FDEP Grant. The Capacity Cost Share may be increased by administrative amendment to this Capacity Allocation Agreement by \$70,000,000 to \$135,000,000 when the \$70,000,000 funds in the State’s FY 2024 budget are available to FDEP and FDEP increases the Grant.
- 1.6 **Contractor Warranty** – shall mean the construction warranty from the general contractor for the Phase 2 Cell 13 to the Company, in which the general contractor warrants to the Company that Phase 2 Cell 13 construction conforms to the requirements of Phase 2 Cell 13 construction plans and specifications and the Reservoir ERP Permit and will be free from defects. The Contractor Warranty will be for a period of two (2) years after the Operation Date.
- 1.7 **FDEP** – shall mean the Florida Department of Environmental Protection.

- 1.8 **FDEP Grant Agreement** - shall mean the Grant Agreement for Phase 2 Cell 13 entered into between FDEP and County to fund the construction of Phase 2 Cell 13 Water Storage Capacity pursuant to this Agreement.
- 1.9 **FDEP Sub-Grant Agreement** – shall mean this Sub-Grant Agreement to the FDEP Grant Agreement between Company and County in which Company agrees to construct Phase 2 Cell 13 and the Phase 2 Cell 13 Water Storage Capacity to County for the Environmental Benefits. The Sub-Grantee is also referred to as the Sub-Recipient in the FDEP Grant Agreement.
- 1.10 **Force Majeure** – shall mean a hurricane, earthquake, pandemic, or other casualty caused by nature, or labor strike, war, or law, order, pandemic, supply chain interruption, labor shortage, proclamation, regulation, or ordinance of any governmental agency that prevents the performance of this Agreement, or any obligation hereunder.
- 1.11 **Local Government Prompt Payment Act** – shall mean Section 218.70, et al., Florida Statutes.
- 1.12 **Manufacturers' Warranties** – shall mean the manufacturers' warranties for materials and equipment incorporated into Phase 2 Cell 13 construction, e.g., pumps, motors, gates, etc., which manufacturers' warranties will be for a period of one (1) year after the Operation Date.
- 1.13 **Month or Monthly** – shall mean a period extending from 9:00 a.m. Eastern Time on the first Day of a calendar month and ending at 8:59 a.m. Eastern Time on the first Day of the succeeding calendar month, unless otherwise agreed to by the Parties.
- 1.14 **Operations Agreement** – shall mean the anticipated agreement between SFWMD and Company for SFWMD to operate, maintain, repair, replace and rehabilitate Phase 2 Cell 13, or other agreement with a qualified operator for these purposes.
- 1.15 **Operation Date** – shall mean the date, as determined by County if the County remains responsible for OMRRR or by the SFWMD if the SFWMD has accepted the OMRRR responsibilities, whereby the construction of the initial Phase 2 Cell 13 Capacity has been

completed in all material respects, or if the final Phase 2 Cell 13 Capacity has been completed with the full \$135 million in grant funding and the Phase 2 Inflow/Outflow Infrastructure has been grant funded and completed and is capable of operating such that all of the Water Storage Capacity Allocation is available to the Regional System, specifically defined as the date when: (1) Phase 2 Cell 12 construction is fully complete (excavated to -20 feet NAVD-1988 with completed construction of the revetment); (2) the Phase 2 Cell 13 construction is fully complete (excavated to -20 feet NAVD-1988 with completed construction of the revetment); (3) the Phase 2 Cell 13 storage is connected to Phase 2 Cell 12; (4) the farm canals connecting Phase 2 Cell 13 to the L-8 Canal have been improved as necessary for the effective use of Phase 2 Cell 12 and Phase 2 Cell 13; (5) all other features of the Phase 2 Inflow/Outflow Infrastructure have been completed and are operationally capable of fully filling and emptying Phase 2 Cells 12 and 13; and (6) the as-built plans and operations manual have been completed. Interim operations may be implemented upon mutual agreement between the parties.

- 1.16 **Phase 2 Cell 12** – shall mean Cell 12 of the C-51 Reservoir. The expected Water Storage Capacity of Phase 2 Cell 12 is 6,000 acre feet above -20 feet NAVD-1988. The Company shall have the SFWMD review the design using the SFWMD “Doc-Check” process. The design and constructed project meet the SFWMD standards for acceptance for OMRRR by the SFWMD and the provided design input.
- 1.17 **Phase 2 Cell 13** – shall mean Cell 13 of the C-51 Reservoir. The expected Water Storage Capacity of Phase 2 Cell 13 when fully funded is 8,800 acre feet above -20 feet NAVD-1988. The Company shall have the SFWMD review the design using the SFWMD “Doc-Check” process. The design and constructed project meet the SFWMD standards for acceptance for OMRRR by the SFWMD and the provided design input.
- 1.18 **Phase 2 Inflow/Outflow Infrastructure** – shall mean all of the improvements required to provide the required conveyance from Phase 2 Cell 13 to the L-8 Canal, including canal conveyance improvements, culverts, gates, pump station, pumps, control building power, and telemetry and other improvements to be determined during the design process for these facilities, with input from Company, County and SFWMD and subject to the approval of

the design, materials, and equipment by the SFWMD. The Company shall have the SFWMD review the design using the SFWMD “Doc-Check” process. The design and constructed project meet the SFWMD standards for acceptance for OMRRR by the SFWMD and the provided design input.

- 1.19 **Phase 2 Site** – shall mean an area owned by Company in Palm Beach County, Florida, that is located generally west of SFWMD L-8 Reservoir and north of State Road 80, lying generally to the west and north of the Phase 1 Reservoir site, as depicted on Appendix A, upon which Phase 2 Cell 13 will be constructed.
- 1.20 **Reservoir ERP Permit** – shall mean the Environmental Resource Permit No. EC 50-0301070-002 issued by FDEP for the C-51 Reservoir, as such Reservoir ERP Permit may be amended and renewed from time to time.
- 1.21 **OMRRR Cost** – shall mean the cost for the operation, maintenance, repair, replacement and rehabilitation of Phase 2 Cell 13 pursuant to the Operation Agreement, as provided in Section 6.3 below. The OMRRR Cost will be amended to add the Phase 2 Inflow/Outflow Infrastructure OMRRR cost upon completion of same.
- 1.22 **Water Storage Capacity for Cell 13** – shall mean usable contiguous storage volume above -20 feet NAVD-1988 and below 16.5 feet NAVD-1988 which is or can be directly connected to Phase 2 Cell 12. The storage capacity of Phase 2 Cell 13 shall be identified in the approved plans and specifications and confirmed by survey once construction is complete. If the Phase 2 Inflow/Outflow Infrastructure is unable to provide the negative 20 to positive 16.5 operational range the water storage capacity will be reduced correspondingly. Storage volume above 16.5 feet NGVD shall not count as Water Storage Capacity as 16.5 is the top of the normal operational range for the L-8 Canal. Based on an expected maximum survey error of 0.5 feet over the storage depth of 36.5 feet (from 16.5 feet NAVD to -20 feet NAVD) the expected maximum measurement error would be 1.4 percent. A place holder limit of 1.5 percent (132 acre-feet) unless mutually agreed upon survey error analysis justifies a larger value. At the Full Capacity Allocation, the upper limit for Allowable Volume Measurement Error (AVME) resulting in storage capacity less than 8,800 acre-feet shall be 2.0 percent (176 acre-feet). If at Full Capacity Allocation, the

surveyed volume results in a volume less than 8,800 acre-feet minus the Allowable Volume Measurement Error (8,800-AVME) then capacity payment will be prorated based on the ratio of the surveyed capacity divided by the 8,800 acre-feet. For example if the AVME is 1.5 percent (132 acre-feet) then the threshold for reduced payment would be a surveyed water storage capacity of less than 8,668 acre-feet. If the surveyed volume is measured at 8,492 acre-feet then the payment would be reduced by 2%  $\{[(8,800-AVME = 8,800-132 = 8,668) - 8,492]/8,800 = 176/8,800\}$ .

**2. C-51 RESERVOIR PHASE 2 CELL 12**

- 2.1 Company shall own and construct Phase 2 Cell 13 on the Phase 2 Site, pursuant to the Reservoir ERP Permit to provide the portions or all of the Water Storage Capacity Allocation. Company is responsible for preventing/repairing damage (e.g. erosion of embankment) until the embankment are fully complete with established grass. At the completion of construction and at such time as funding is available to the County or SFWMD sufficient to acquire the entire capacity of the Fully Functional Completed Phase 2 Cells 12 and 13, then the Parties will request that SFWMD assume ownership of the Fully Functional Phase 2 Cells 12 and 13, to be operated by SFWMD for benefit of the regional system, specifically to provide the Environmental Benefits. If SFWMD does not accept the OMRRR, then County can operate the Fully Functional Phase 2 Cells 12 and 13 on a minimal level with minimal expenses, such as allowing for gravity flow and cutting the grass, or pursuant to other agreement with a qualified operator for these purposes.
- 2.2 Company will comply with the requirements of the Reservoir ERP Permit.
- 2.3 County will be responsible for providing timely reviews, design input, payment approvals, and meeting attendance as set forth in the FDEP Grant Agreement. Company will be responsible for performing all of the remaining work required to develop and finalize the Grant Deliverables, including but is not limited to final engineering, construction plans, specifications, progress reports, payment requests, and construction as-built drawings.
- 2.4 Payments will be limited to the fund available from the \$65,00,000 with the corresponding limits on payments. Based on the County receiving a Grant prepayment of \$9,600,000 (based on the first three estimate payments) the payment requests by the Company shall

not exceed the grant funds available to the County. The County is not required to use County funds to provide payment to the Company if the payment request from the Company exceed the available Grant Funds. FDEP may provide but is not required to provide additional Grant prepayment if the FDEP increases the Grant. If FDEP increases the Grant and increases the prepayment amount the County will provide payment based on the available funds.

2.5 If the remaining \$70,000,000 funding required to complete the C-51 Reservoir Phase 2 Cell 13 is not available by December 2024 then construction will stop with the following progress and conditions:

- The entire embankment foundation will be cleared and prepared for construction of the embankment.
- The embankment will be built up to an elevation of 18 feet NAVD, 1988 with a width larger than the final embankment width to 1) facilitate the efficient installation of the seepage barrier and 2) provide a slightly higher and sacrificial border to minimize runoff over and erosion of the compacted soils that will become part of the final embankment.
- Installation of soil bentonite cut off wall from 18 feet NAVD, 1988 to negative 30 feet NAVD, 1988 along the entire length of the embankment alignment.
- Contractor will lower at least 68% of the Cell 13 bottom area to below negative 20 feet NAVD, 1988 leaving at most 32% in the rough dredged condition
- No installation of the Key Trench, Perimeter Ditch, and Toe Drain
- No installation of Roller Compacted Concrete
- No installation of the Boat Ramp
- No installation of the Storm Water Pond
- All General Contracting and Quality Control will end in January 2025
- Maintenance dewatering will extend through June 2026

### 3. **TERM OF AGREEMENT; TERMINATION**

3.1 **Term of Agreement.** The Term of this Agreement shall commence on the date the last party executes the Agreement and shall extend for the earlier of (i) the useful life of Phase

2 Cell 13, as may be extended through renewal and replacement, or (ii) the term of the Reservoir ERP Permit, as renewed from time to time. The Water Storage Capacity allocation of this Agreement may be transferred to the SFWMD if the SFWMD accepts the OMRRR responsibilities through the Operations Agreement or other agreement with a qualified operator for these purposes.

3.2 **Termination.** Upon delivery of written notice to Company, as defined by Article 15 below, County may terminate this Agreement:

3.2.1 If Company fails to notify County, on or before August 31, 2024, that it has commenced the construction of Phase 2 Cell 13; or

3.2.2 Pursuant to the provisions of Section 10.2; or

3.2.3 If Company fails to deliver a completed Phase 2 Cell 13 within thirty-six (36) months after commencement of construction, as may be extended by Force Majeure, provided, however, that the deadline to achieve Operation shall be extended automatically for a period of six (6) additional months in the event a surety under any completion or performance surety agreement exercises its surety rights to complete the Phase 2 Cell 13 (the "Long-Stop Date").

3.3 If County has not terminated the Agreement pursuant to Section 3.2.1 or Section 3.2.2, then County may not terminate the Agreement prior to the Long-Stop Date, except pursuant to Section 3.2.3.

#### 4. **ALLOCATION OF WATER STORAGE CAPACITY BY COMPANY**

4.1 Commencing on the Operation Date, Company shall provide to County the Initial Water Storage Capacity Allocation in the Phase 2 Cell 13 for the purposes as set forth in this Agreement, or the Full Water Storage Capacity Allocation if this Agreement is amended as provided above.

4.2 The Parties acknowledge that SFWMD is intended to eventually be responsible for the operation, maintenance, repair, replacement, and rehabilitation ("OMRRR") of the Regional System necessary for conveyance of the water from the Fully Functional Phase 2

Cells 12 and 13 from the connection to the L-8 Canal within the Regional System. Notwithstanding Company's commitment to provide the Final Capacity Allocation to County, Company shall not be responsible for, and undertakes no obligation to County for, physical delivery or conveyance of water from the Fully Functional Phase 2 Cells 12 and 13 beyond its delivery to the L-8 Canal. Company's sole obligation to County shall be Company's continued compliance with this Agreement and the Reservoir ERP Permit.

**5. MILESTONE PAYMENTS**

5.1 As set forth in the Attachment 3 of the FDEP Grant Agreement, Company shall submit invoices monthly to County and must include FDEP's written approval of each preceding deliverable, based on the Schedule of Values for Payment Milestones, and include written approval of the engineering firm approved by Grantee but paid from grant funds by Company ("Third-Party Engineer"). County shall make periodic milestone progress payments based on Company's schedule of values for work completed, in accordance with the FDEP Grant Agreement.

5.2 Company must send each Payment Request Summary Form to the County and FDEP in accordance with the FDEP Grant Agreement to the following addresses:

PALM BEACH COUNTY  
2300 NORTH JOG ROAD  
WEST PALM BEACH, FL 33411-2743  
DEPARTMENT OF ENVIRONMENT RESOURCES MANAGEMENT  
4TH FLOOR

ATTENTION: PAUL F. LINTON  
WATER RESOURCES MANAGER

Additional Contact Information  
plinton@pbcgov.org  
Office: 561-355-4600 Mobile: 561-718-2830

And

Grant Manager
Dana Jones, or Successor
Florida Department of Environmental Protection

Office of Ecosystem Projects
3900 Commonwealth Blvd., MS# 24
Tallahassee, Florida 32399
Telephone No.: (850) 245-2228
E-mail Address: <a href="mailto:Dana.R.Jones@dep.state.fl.us">Dana.R.Jones@dep.state.fl.us</a>

Assistant Grant Manager
Ed Cambeiro, or Successor
Florida Department of Environmental Protection
Office of Ecosystem Projects
3900 Commonwealth Blvd., MS# 24
Tallahassee, Florida 32399
Telephone No.: (850) 245-3176
E-mail Address: <a href="mailto:Ed.Cambeiro@deo.state.fl.us">Ed.Cambeiro@deo.state.fl.us</a>

5.3 Company acknowledges that payment will be made by FDEP in accordance with the FDEP Agreement and County shall have no obligation to make such payments if it does not receive the grant funds from FDEP.

County acknowledges that entering into this Agreement does not convey any ownership, equity, or property rights in the Phase 2 Cell 13, other than the use of the Water Storage Capacity Allocation and any easements or licenses that may be necessary for access to the L-8 Canal and for OMRRR. During the time period between the completion of Phase 2 Cell 12 construction and the completion of the Fully Functional Phase 2 Cell 13, the Company shall provide the required OMRRR which is expected to be limited to quarterly mowing of the grass. At such time as funding is available to the County sufficient to complete and acquire the entire storage capacity of the Fully Functional Phase 2 Cells 12 and 13, then the Parties will request that SFWMD assume OMRRR of the Fully Functional Phase 2 Cells 12 and 13, to implement the Environmental Benefits set forth above. or other agreement with a qualified operator for these purposes.

**6. OPERATION AND MAINTENANCE OF THE PHASE 2 CELL 12**

6.1 The Parties acknowledge that in the long term SFWMD is intended to be responsible for OMRRR of Phase 2 Cell 13 pursuant to the Operations Agreement. County acknowledges that Company shall not be responsible for and has no obligation to operate and maintain or fund the OMRRR of Phase 2 Cell 13 beyond the quarterly grass cutting responsibilities. The quarterly grass cutting responsibilities end with the completion and transfer of the Fully Functional Cells 12 and 13. It shall not be a default of Company's obligations to

County or a Force Majeure event if SFWMD issues water use restrictions or takes other actions pursuant to its regulatory authority that may impact the County's Water Storage Capacity Allocation, or if SFWMD determines not to maintain or operate Phase 2 Cell 13 under the Operations Agreement, in which event County may seek to enter into an agreement with another entity to operate and maintain Phase 2 Cell 13 on substantially the same terms as the Operations Agreement. While the County is identifying the long term OMRRR entity the operations will be limited to gravity flow, exercising of the pumps, and quarterly cutting of the grass. Notwithstanding anything to the contrary herein, should the SFWMD determine not to enter into the Operations Agreement for Phase 2 Cell 13, or for the Fully Functional Cells 12 and 13, the County shall not be obligated to provide any operations beyond the limited operations of gravity flow, exercising of the pumps, and quarterly cutting of the grass, or in accordance with other agreement with a qualified operator for these purposes.

- 6.2 Company shall use reasonable efforts to obtain and maintain any and all governmental permits, certifications or other authorizations which are required by applicable law as prerequisites for Company's engaging in the activities envisioned by this Agreement.

**7. INSURANCE**

- 7.1 Company shall provide and maintain, at a minimum, the insurance coverage and limits set forth in the FDEP Grant Agreement at all times during this Agreement. Proof of coverage shall be provided to County each month during construction.

**8. LIMITATIONS OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR

RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT, BUT SUCH SURVIVAL SHALL APPLY ONLY TO THOSE CAUSES OF ACTION, IF ANY, ARISING PRIOR TO TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

**9. COMPANY CONDITIONS PRECEDENT TO AGREEMENT**

9.1 All of Company's obligations under this Agreement are expressly made subject to all of the following conditions, which Company agrees to use its reasonable efforts to promptly pursue and satisfy, time being of the essence:

- 9.1.1 Company's entering into final engineering and construction contracts for Phase 2 Cell 13, including the contract with the Third-Party Engineer approved by Company and County.
- 9.1.2 Company receiving all permits and government approvals to construct Phase 2 Cell 13.

9.1.3 Company's securing a completion and performance bond or other equivalent surety to assure completion of the Phase 2 Cell 13 construction ("Completion Surety").

9.1.4 Reserved.

9.1.5 Prior to August 31, 2023, County adopts all required resolutions and other approvals necessary to execute the FDEP Grant Agreement, and to pay invoices with funding provided by DEP Grant in accordance with Attachment 3 of the FDEP Grant Agreement.

9.2 If the conditions precedent set forth above have not been fully satisfied or waived, then Company may terminate this Agreement without liability or further liabilities or performance obligations to the other Party, by providing written notice of termination to the other Party.

9.3 Appendix B (Phase 2 Cell 13 Project Completion Schedule), attached hereto and incorporated herein, sets forth Company's estimated outside dates for completion of construction and commencement of operations of Phase 2 Cell 13. Company shall use its best efforts to achieve the project milestones listed in Appendix B within the time periods specified. If Company anticipates a delay in achieving any of the project milestones listed in Appendix B, Company shall promptly notify County in writing of such anticipated delay. Company and County agree that the schedule may be extended to the limit of the Grant's time schedule for payment. If the Grant schedule is extended by FDEP due to funding limitation that require extension of the construction schedule or the addition of work, the schedule may be changed by the Company submitting a revised schedule approved by FDEP.

## **10. COUNTY CONDITIONS PRECEDENT TO AGREEMENT**

10.1 The parties' obligations under this Agreement are expressly made subject to FDEP entering into the FDEP Grant Agreement with County.

10.2 If the conditions precedent set forth above have not been fully satisfied or waived, then County may terminate this Agreement without liability or further liabilities or performance obligations to the other Party, by providing written notice of termination to Company.

## 11. DEFAULT

11.1 Notwithstanding anything else to the contrary contained in this Agreement, the following each constitute an "Event of Default" regardless of any claim of Force Majeure as described in Section 13 herein or otherwise:

11.1.1 Company or County (i) files a voluntary petition in bankruptcy, (ii) is adjudicated bankrupt or insolvent, (iii) files any petition or answers seeking or acquiescing in any reorganization, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief of debtors, (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, or liquidator of itself or of all or any substantial portion of its assets, (v) makes any admission in writing of its inability to pay its debts generally as they become due, or (vi) files or suffers involuntarily the filing of a petition in bankruptcy or otherwise seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similarly under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief of debtors, which remains unvacated or unstayed for an aggregate of thirty (30) days, whether or not consecutive.

11.1.2 Any trustee, receiver, or liquidator of all or any substantial portion of their respective assets is appointed, which appointment shall remain un-vacated and un-stayed for an aggregate of thirty (30) days, whether or not consecutive.

11.1.3 Company or County defaults in the due and punctual performance of any other material covenants, conditions, agreements and provisions contained in this Agreement, and such default has not been cured as soon as possible with reasonable efforts, but in any case not more than thirty (30) days after notice

from the other Party specifying such default; provided, however, if it is not feasible to correct such default within thirty (30) days after notice of such default has been delivered to the defaulting Party by the other, but it is and remains feasible to correct such default after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date when a cure could be effected so long as (i) corrective action by the defaulting Party is instituted within thirty (30) days of the date of such notice, (ii) such corrective action is diligently pursued with reasonable efforts, and (iii) the defaulting Party provides to the other Party written reports each month as to the nature and progress of such corrective action.

- 11.2 If a Company Event of Default should occur, then County may, as its sole remedy for such Event of Default against Company or its surety, seek either (i) specific performance of Company's obligations under this Agreement or (ii) in the alternative, seek direct damages against Company. County acknowledges and agrees that County's right to seek specific performance or, in the alternative, to seek direct damages shall, except as set forth in this Section below, be the sole remedy for any default by Company under this Agreement. Notwithstanding any termination of this Agreement, any and all representations and indemnities of Company set forth in this Agreement shall remain in full force and effect.
- 11.3 Termination of this Agreement shall not affect the limitations of liability contained in Article 8 or the application and survival on termination of Section 11.2 for obligations arising prior to such termination or for damages, if any, resulting from default under the Agreement.

## **12. FORCE MAJEURE**

In the event of Force Majeure, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-

performance exceeds sixty (60) days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any other right the parties may otherwise have to terminate this Agreement.

### 13. NOTICES

13.1 Any notices required in this Agreement must be in writing and be delivered in person, sent by certified mail, return receipt requested, sent by overnight delivery services, return receipt requested, or sent by electronic delivery system with receipt acknowledgment, as specified below:

To Company: Palm Beach Aggregates, LLC  
20125 State Road 80  
P.O. Box 700  
Loxahatchee, Florida 33470  
Attn: Enrique Tomeu, President  
etomeu@siboneycc.com  
(561) 832-3110

With copy to: Greenberg Traurig, P.A.  
777 So. Flagler Drive, Suite 300 East  
Attn: Phillip C. Gildan  
West Palm Beach, FL 33401

To County: Water Resources Manager  
301 N. Olive Avenue, 11<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Paul F. Linton e-mail: [plinton@pbcgov.org](mailto:plinton@pbcgov.org)  
Office: 561-355-4600 Cell: 561-718-2830

With copy to: County Attorney 301 N. Olive Avenue, 6<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Michael W. Jones  
[mjones@pgcgov.org](mailto:mjones@pgcgov.org)

Notices shall be effective upon receipt. Notices may be given by counsel to a Party.

13.2 Either Party, at any time, by notice to the other Party may designate any different person(s) or different addresses for receipt of notices and correspondence.

#### **14. GENERAL APPLICATION**

- 14.1 County may not assign any of its rights or obligations under this Agreement, except with the consent of Company, which may not be unreasonably withheld. An assignment shall be evidenced by a written assignment in form and substance approved by Company. Company may transfer all or any part of its ownership rights in Phase 2 Cell 13 and assign its obligations under this Agreement with the consent of County, which may not be unreasonably withheld, provided any assignee of Company agrees to assume all of Company's obligations under this Agreement. This Agreement remains in full force and effect notwithstanding any assignment by Company, change in control or ownership of Company. This Agreement is binding upon, and inures to the benefit of, the Parties, and the Parties' respective assigns, successors-in-interest and legal representatives. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to this subject matter. No modification or waiver of any term of this Agreement, or any amendment of this Agreement, shall be effective unless it is in writing and signed by the Parties.
- 14.2 All provisions of the FDEP Grant Agreement specifically applicable to Company, as the sub-recipient under the FDEP Grant Agreement, are incorporated into this Agreement and shall supercede any provisions of this Agreement in the event of a conflict.
- 14.3 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, will not be deemed a waiver with respect to any subsequent default (including Events of Default).
- 14.4 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 14.5 Nothing contained in this Agreement may be construed to create an association, trust, partnership or joint venture between the Parties.

- 14.6 Section headings, titles and indexes appearing in this Agreement are inserted for convenience only and may not be construed as interpretations of text.
- 14.7 Time is of the essence in the performance of this Agreement.
- 14.8 This Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any other third party as a third-party beneficiary to this Agreement or for the services to be provided hereunder. Nothing in this Agreement nor any action taken hereunder may be construed to create any duty, liability, or standard of care to any Person that is not a Party, and any Person that is not a Party will have no rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, except that each Person identified as a Financing Party is an express third party beneficiary to this Agreement, with the right to enforce the Financing Party's rights and remedies against County on its own behalf.
- 14.9 In the event that Phase 2 Cell 13 or any part thereof is taken by the exercise of the power of eminent domain (or transferred to the holder of such power pursuant to a threatened taking) before the Operation Date, *i.e.* while ownership to Phase 2 Cell 13 capacity is still owned by the Company, County will have no right in or to the proceeds of any award made in such condemnation (or agreed consideration in the event of a transfer pursuant to a threatened taking). However, said taking shall be subject to the provisions of this Agreement, the FDEP Grant Agreement, and any executed Operations Agreement. To the extent that said taking is not subject to these agreements, Company shall be required to refund all payments made in accordance with the FDEP Grant Agreement.
- 14.10 This Agreement is governed by and will be construed in accordance with the laws of the State of Florida. Venue for any action arising under this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.
- 14.11 All provisions of the Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement will remain in effect and be enforceable following such expiration or termination.

- 14.12 This Agreement may be executed in any number of counterparts and each counterpart will represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument. Delivery hereof may be performed by facsimile of, or the electronic transmission of scanned, signature pages.
- 14.13 Each Party will pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement. Each Party will provide such information, execute and deliver any instruments and documents, and take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 14.14 The Parties undertake to act fairly and in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives.
- 14.15 Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in the Whereas clauses and Section 1; (b) the gender of all words used herein shall include the masculine, feminine and neuter and the singular will include the plural; (c) unless otherwise specified, references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced from time to time hereunder; (d) all references to a Person includes a reference to such Person's successors and permitted assigns; (e) the words "herein," "hereof" and "hereunder" will refer to this Agreement as a whole and not to any particular Section or Subsection of this Agreement; (f) all accounting terms not specifically defined herein will be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) references to this Agreement will include a reference to all Articles, Sections, Schedules, Annexes, Appendices, and Exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or instrument will mean a reference to such agreement, document, or

instrument as the same may be amended, modified, supplemented, or replaced from time to time; (i) the use of the word “including” in this Agreement to refer to specific examples will be construed to mean “including, without limitation” or “including but not limited to” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to an applicable law will mean a reference to such applicable law as the same may be amended, modified, supplemented or restated and be in effect from time to time; and (k) the headings contained herein are used solely for convenience and do not constitute a part of this Agreement nor should they be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

14.16 Company will indemnify and hold harmless County, its commissioners, officers, employees and agents (“Indemnified Parties”), from and against any and all claims, obligations, liability, expenses, losses and causes of action, including attorneys’ fees and costs, to the extent the same are caused by: (i) an act, negligence, recklessness or intentional wrongful misconduct of Company or its subcontractors, while engaged in or about the performance of the Agreement; or (ii) arising from accident or any injury to Company or its subcontractors while engaged in or about the performance of the Agreement, not caused by act of the Indemnified Party; or (iii) arising out of the violation of federal, state, county or municipal laws, ordinances or regulations by Company or its subcontractor; or (iv) arising from liens or claims for services rendered for labor or materials furnished in or for the performance of the Agreement. This paragraph may not be construed to require Company to indemnify an Indemnified Party for the Indemnified Party’s own negligence, or intentional acts. Nothing in this paragraph may be construed as a contractual waiver by any of the Indemnified Parties of the limits of sovereign immunity under Sec 768.28, Florida Statutes.

## **15. MANDATORY DISPUTE RESOLUTION**

15.1 Any controversy, dispute, claim, counterclaim or crossclaim (collectively, “Dispute”) regarding, resulting from, arising out of or in way related to this Agreement, will be governed by the mandatory dispute resolution procedures set forth below.

- 15.2 In the event that Company or County (each a "Claimant") has a Dispute that has not been, or could not possibly be, cured, pursuant to Section 13.1.3 above, the Claimant will notify the other Party (the "Notified Party") in writing of the claim, which writing must describe the nature of the dispute and any proposed remedy (the "Dispute Notice").
- 15.3 Within 10 days after receipt of the Dispute Notice, the Notified Party and the Claimant must meet to discuss the Dispute. The Parties will negotiate in an attempt to resolve the Dispute.
- 15.4 If the Parties fail to resolve the Dispute by negotiation within thirty (30) days after delivery of the Dispute Notice, the Claimant may submit the matter to mediation pursuant to the Mediation Rules of the American Arbitration Association applicable to such disputes (except as such procedures are modified by these provisions or such other mediation service selected by the Notified Party), on or before the thirty-first (31<sup>st</sup>) day after the date of delivery of the Dispute Notice. If the Claimant fails to timely submit the Dispute to mediation, then the Dispute will be deemed waived and abandoned and the Parties will be relieved and released from any and all liability relating to the Dispute. The Parties must mutually agree on the selection of a mediator. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation or any relationship with a Party, except by the written consent of the Parties. Prior to accepting any appointment, the prospective mediator must disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.
- 15.5 Within ten (10) days of the selection of the mediator, each Party may submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator will have the right to schedule a pre-mediation conference and the Parties shall attend unless otherwise agreed. The mediation must be commenced within ten (10) days following the date for submittal of the memoranda, if any, and must be concluded within fifteen (15) days from the commencement of the mediation unless the Parties mutually agree to extend the mediation period.
- 15.6 The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute, consistent with the mediation rules applicable to the Dispute. The mediator is authorized to conduct joint and

separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the Parties.

- 15.7 Any admissions, offers of compromise, settlement negotiations and communications and all confidential information disclosed to the mediator at the mediation will be confidential and excluded in any litigation or subsequent dispute resolution forum to the extent permitted by applicable law.
- 15.8 Persons other than the Parties, their representatives and the mediator may attend mediation sessions only with the permission of both Parties and the consent of the mediator. There shall be no stenographic record of the mediation process.
- 15.9 All expenses of the mediation, including the fees and costs charged by the mediator, the expenses of any witnesses, and the cost of any proof or expert advice produced at the direct request of the mediator will be borne equally by the Parties unless each Party agrees otherwise. Each Party to the mediation will bear its own attorneys' fees and costs in connection with such mediation, including expert witnesses.
- 15.10 Should mediation not be successful in resolving any Dispute, then the Claimant will have ten (10) days after the date of termination of the mediation or determination by the mediator of an impasse to file a court action on the Dispute. Each party will bear its own expenses of the court action, including attorneys' fees, court costs, and the expenses of any witnesses and experts. Venue for any alternative dispute resolution or Court proceedings will lie exclusively in Palm Beach County.
- 15.11 The parties may mutually agree to extend any of the deadlines set forth in this Section.

**16. AUDIT RIGHTS, AND RETENTION OF RECORDS.**

- 16.1 County will have the right to audit the books, records, and accounts of Company and its contractors that are related to the Annual Operations Payment. Company and its Contractors will keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Annual Operations Payments and performance thereunder. All books, records, and accounts of Company and its contractors will be kept in written form, or in a form capable of conversion into written form within a

reasonable time, and upon request to do so. Company or its Contractors, as applicable, will make same available at no cost to County in written form.

- 16.2 Company and its contractors will preserve and make available, at reasonable times at Company's place of business for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to the Annual Operations Payments for a minimum period of five (5) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this Section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Company's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.
- 16.3 Any incomplete or incorrect entry in such books, records, and accounts will be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to County of any nature by the Company in excess of one percent (1%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit will be reimbursed to County by Company in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection will be made within thirty (30) days after presentation of County's findings to Company.
- 16.4 Company will ensure that the requirements of this Section are included in all agreements with its Contractor(s).

**17. LAW, WAIVER OF JURY TRIAL.**

- 17.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. **BY ENTERING INTO THIS AGREEMENT, COMPANY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL WILL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE**

**OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

**18. PUBLIC RECORDS**

- 18.1 To the extent Chapter 119, Florida Statutes may apply to this Agreement, Company shall comply with all statutory requirements as to this Agreement and records associated with this Agreement. Either party asserts any exemptions to Florida's public records laws, such party has the burden of establishing and defending the exemption. A party's failure to comply with this section constitutes a default under this Agreement.
- 18.2 If Company receives a request from any member of the public for a record associated with this Agreement, if Chapter 119, Florida Statutes applies to the request, Company must promptly provide the requested records to the person requesting them and provide written notice to the County of what was requested and what it provided to the requestor.
- 18.3 Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Company: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Company shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Company is specifically required to:
- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
  - B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Company further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. 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 Agreement, if the Company does not transfer the records to the public agency.

D. Upon completion of the Agreement, the Company shall transfer, at no cost to the County, all public records in possession of the Company unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Company transfers all public records to the County upon completion of the Agreement, the Company shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Company keeps and maintains public records upon completion of the Agreement, the Company shall meet all applicable requirements for retaining public records. All records stored electronically by the Company must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Company to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Company acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT**

**19. OTHER TERMS**

- 19.1 A Change Order to this Agreement is required when task timelines within the current authorized Agreement period change, and/or when the cumulative transfer of funds between approved budget categories, as defined in **Attachment 3 to the DEP Grant Agreement**, are more than ten percent (10%) of the total budget as last approved by the Department. All Change Orders are subject to the mutual agreement of both Parties as evidenced in writing.
- 19.2 A formal Amendment to this Agreement is required for changes which cause any of the following: an increase or decrease in the Agreement funding amount; a change in the expiration date of the Agreement; and/or changes to the cumulative amount of funding transfers between approved budget categories, as defined in **Attachment 3 to the DEP Grant Agreement**, exceeds or is expected to exceed ten percent (10%) of the total budget as last approved by the Department. All Amendments are subject to the mutual agreement of both Parties as evidenced in writing.
- 19.3 The County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transaction, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.
- 19.4 Company is an independent contractor and neither Party is considered an employee or agent of the other Party. Nothing in this Agreement will be interpreted to establish any relationship other than that of independent contractor between the Parties and their respective employees, agents, subcontractors, or assigns during or after the performance on this Agreement. Both Parties are free to enter into agreements with other parties for

similar services. Company, its officers, agents, and employees, are not entitled to any employment benefits from the County. Company waives and agrees not to make any claim to participate in any of the County's employee benefits or benefit plans should Company or any of its officers, agents, or employees be adjudicated for any reason to be an employee of the County. Company shall exclusively provide all benefits available to Company or Company's employees. Company shall provide all billing, collection, payroll services and tax withholding, among other things, for all Company staff performing services under this Agreement.

- 19.5 Company, its employees, suppliers and Contractors shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement including those pertaining to safety, labor and unemployment. The County undertakes no duty to ensure such compliance, but will attempt to advise Company, upon request, as to any such laws of which it has present knowledge. Company is responsible for the compliance of its employees, suppliers and Contractors with this section.
- 19.6 Pursuant to Section 255.099, Florida Statutes, Company shall give preference to the employment of state residents in the performance of the work on the Project if the state residents have substantially equal qualifications to those of the non-state residents.
- 19.7 Company shall not use the County's exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the County. Company is responsible for the payment of all applicable FICA/Social Security and other taxes resulting from this Agreement.
- 19.8 Company shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. Pledging the County's credit includes the use of "factoring agents" or the practice of selling business accounts receivable to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.
- 19.9 Company shall not directly or indirectly, or through any other person, agency, company or organization, solicit the project manager or any of the evaluation committee members who selected Company, to undertake employment with it, its parent company, or any subsidiary company or any affiliated company during the performance of this Agreement. The County

is committed to ensuring that its employees abide by the Florida Code of Ethics and, as such, the County does not condone offers of employment made by Company to County employees in exchange for the award of County work. Further, the County is committed to avoiding even the appearance of impropriety which could arise when an offer of employment is made after the award of County work.

19.10 Under Section 216.347, F.S., Company is prohibited from using any funds under this Agreement to lobby the Legislature, the judicial branch or another state agency.

19.11 Company, its employees, subcontractors, and agents shall refrain from acting adverse to the County's interest in promoting the goals and objectives of this project. Company shall take all reasonable measures necessary to effectuate these assurances. In the event Company determines it is unable to meet or promote the goals and objectives of the project, it shall immediately notify the County and the County may then, in its discretion, terminate this Agreement.

19.12 Land acquisition is not authorized under the terms of this Agreement, although it is anticipated that upon completion of all construction that Phase 2 Cell 12 will be conveyed to a Florida not-for-profit corporation similar to the ownership structure of Phase 1, or to a government or quasi-government entity. Sub-recipient will provide all easements or licenses as needed for OMRRR.

19.13

19.13.1 Company's accounting systems, and those of its subcontractors, must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Company may not commingle funds on either a program-by-program or a project-by-project basis, but shall be kept in separate accounts. Funds specifically budgeted and/or received for one project may not be used to support another project.

19.13.2 If Company's system, or its subcontractor's, accounting system cannot comply with this requirement, Company or its subcontractor shall establish a system to provide adequate fund accountability for each project it has been awarded.

- 19.13.3 If the County or Department find that these funds have been commingled, the County shall have the right to demand a refund from Company, either in whole or in part, of the funds provided to Company under this Agreement for non-compliance with the material terms of this Agreement. Upon such written notification from the County, Company shall refund and pay forthwith to the County, the amount of money demanded. 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 County by Company to the date repayment is made by Company to the County.
- 19.14 Company has verified that its employees are authorized to work in the U.S. and certifies that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the Department of Homeland Security, U.S. Citizenship, and Immigration Services Form I-9. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).
- 19.15 Company warrants that it has not employed or retained any person, other than a bona fide employee working solely for Company, to solicit or secure this Agreement, other than its engineers, lawyers, accountants, consultants, etc., who have worked on Phase 2 Cell 12 and this Agreement. Further, Company warrants that it has not paid or agreed to pay any person, other than a bona fide employee working solely for Company, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the County may terminate this Agreement without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.
- 19.16 Company acknowledges and attests that neither it nor any of its suppliers, contractors or subcontractors who shall perform work which is intended to benefit the County is listed on either the *Scrutinized Companies with Activities in Sudan List* or the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, created pursuant to section 215.473, Florida Statutes. Company further understands and accepts that this Agreement shall be either voidable by the County or subject to immediate termination by

the County in the event there is any misrepresentation or false certification on the part of the Company. The County, in the event of such termination, shall not incur any liability to Company for any work or materials furnished.

- 19.17 Company certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Company agrees to observe the requirements of Section 287.135, F.S. for the Sub-Recipient Agreement. Pursuant to Section 287.135, F.S., the County may immediately terminate this Agreement for cause if the Company or its affiliates, its subcontractors, or sub-Recipients are found to have submitted a false certification; or if the Company, its affiliates, its subcontractors, or sub-Recipients 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. Company acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work is included on the list of Specially Designated Nationals and Blocked Persons, which is administered by the U.S. Department of Treasury, Office of Foreign Assets Control. Company further understands and accepts that this Agreement shall be either void by the County or subject to immediate termination by the County, in the event there is any misrepresentation. The County, in the event of such termination, shall not incur any liability to the Company for any work or materials furnished.
- 19.18 No person, on the grounds of race, creed, color, religion, national origin, age, gender, 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.
- 19.19 An entity or affiliate who has been placed on the discriminatory vendor list pursuant to Section 287.134, F.S., 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.

19.20 Company understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the FDEP's Inspector General in any investigation, audit, inspection, review, or hearing. Company will comply with this duty and will impose this requirement, in writing, on its subcontractors.

19.21 Company shall comply with the Special Audit provisions of Section 11.A of the FDEP Grant Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF the Parties, by and through their duly authorized representatives hereto have executed and delivered this AGREEMENT and have intended the same to be and become effective as of the last date executed by the Parties.

**ATTEST:**

Joseph Abruzzo  
Clerk of the Circuit Court & Comptroller

**PALM BEACH COUNTY, FLORIDA**  
by its Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Gregg K. Weiss, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: [Signature]  
Assistant County Attorney

By: [Signature] 6/30/2023  
PBC Water Resources Manager

C-51 RESERVOIR CELL 13, LLC  
By: Palm Beach Aggregates, LLC, its  
Managing Member

By: [Signature]  
Alberto A. Moragues, Secretary

By: [Signature]  
Enrique A. Tomeu, President

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 2<sup>nd</sup> day of June, 2023, by Enrique A. Tomeu, as President, and Alberto A. Moragues, as Secretary, of Palm Beach Aggregates, LLC, the Managing Member of C-51 Reservoir Cell 13, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced (type of identification) as identification.

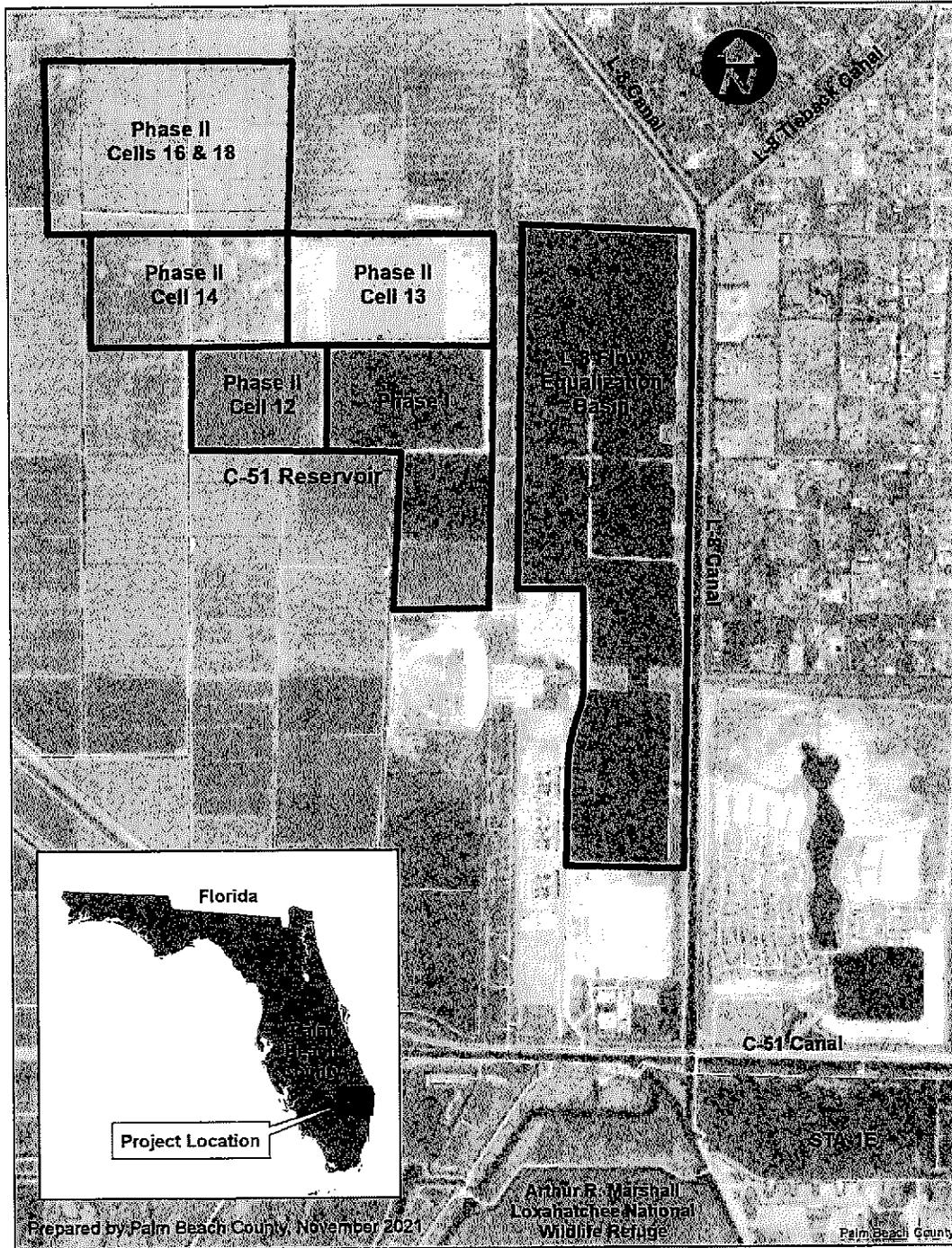


[Signature]  
(Signature of person taking acknowledgment)  
Mauren Funez  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Serial number, if any)

**Appendix A**

**Phase 2 Site**



Appendix B

**C-51 Reservoir – Phase 2 Cell 13  
Project Schedule and Values**

**C-51 Reservoir Phase II Cell 13  
Schedule of Values for Payment Milestones**

<b>Description</b>	<b>Schedule of Values</b>
Mobilization	\$ 3,321,000
General Conditions	\$ 867,584
Environmental Controls/SWPPP	\$ 306,447
Dewatering	\$ 3,421,295
Maintenance Dewatering	\$ 2,799,241
Soil Bentonite Wall	\$ 11,944,718
Stormwater Pond	\$ -
Boat Ramp	\$ -
Engineering & Construction Mngmt	\$ 2,254,550
QA/QC Including Materials Testing	\$ 2,831,376
Relocation of Conveyor & Powerlines	\$ 6,272,489
Foundation Stripping	\$ 877,236
Key Trench Excavation	\$ -
Foundation Excavation to Embankment	\$ 5,318,528
Perimeter Ditch	\$ -
Toe Drain In Place	\$ -
Interior Cell Excavation	\$ 13,815,391
RCC Plating Complete	\$ -
Payment & Performance Bonding	\$ 457,451
Existing Storage Capacity /CIP	\$ 10,512,694
<b>Cell 13 Totals</b>	<b>\$ 65,000,000</b>

**Monthly Draw Requests to be based on % completion by category**

Table will be revised with quantities once the initial surveying is completed and the embankment design is finalized

**C-51 Reservoir – Phase 2 Cell 13  
Project Completion Schedule**

<b>Description</b>	<b>Milestone Dates</b>
Commence Project	August 2023
Conveyor and Powerline Relocation	October 2023 – February 2024
Dewatering	December 2023 – June 2025
Foundation, Excavation, Embankment	December 2023 – January 2025
Interior Cell Excavation	April 2024 – January 2025
Soil Bentonite Wall	April 2024 – January 2025
Continuation of Construction with additional funding (all dates below with additional funding)	February 2025 – June 2025
Substantial Completion of Cell 13	June 2025
Final Inspections, Cleanup and Demobilization	July 2025
Closing and Turnover to Non-Profit	August 2025
Commence Operations with Cell 13 Pump Station	December 2025

Company shall use its best efforts to achieve the project milestones listed above within the time periods specified. If Company anticipates a delay in achieving any of the project milestones listed above, Company shall promptly notify County in writing of such anticipated delay and work with County to minimize the delay and develop an amended schedule.

**Monthly Earned Value Limits  
For \$65,000,000 Funding**

Cell 13 \$65,000,000			
Month	Date	Monthly Payment Limits	Advanced Payment based on Standard Terms
1	Aug-23	\$ 6,500,000.00	
2	Sep-23	\$ 6,500,000.00	
3	Oct-23	\$ 6,500,000.00	\$ 19,500,000.00
4	Nov-23	\$ 6,500,000.00	\$ 19,500,000.00
5	Dec-23	\$ 6,500,000.00	\$ 19,500,000.00
6	Jan-24	\$ 6,500,000.00	\$ 19,500,000.00
2	Feb-24	\$ 6,500,000.00	\$ 19,500,000.00
8	Mar-24	\$ 6,500,000.00	\$ 19,500,000.00
3	Apr-24	\$ 6,500,000.00	\$ 19,500,000.00
10	May-24	\$ 6,500,000.00	\$ 19,500,000.00

**Monthly Earned Value Limits  
For \$135,000,000 Funding**

<b>Continuation: Cell 13 \$70,000,000</b>			
<b>Month of \$70,000,000 funding</b>	<b>Date</b>	<b>Monthly Payment Limits</b>	<b>Advanced Payment based on Standard Terms</b>
1 (11)	Jun-24	TBD	\$ 19,500,000.00
2 (12)	Jul-24	TBD	\$ 19,500,000.00
3 (13)	Aug-24	TBD	\$ 19,500,000.00
4 (14)	Sep-24	TBD	\$ 19,500,000.00
5 (15)	Oct-24	TBD	\$ 19,500,000.00
6 (16)	Nov-24	TBD	\$ 19,500,000.00
7 (17)	Dec-24	TBD	\$ 19,500,000.00
8 (18)	Jan-25	TBD	\$ 19,500,000.00
9 (19)	Feb-25	TBD	\$ 19,500,000.00
10 (20)	Mar-25	TBD	\$ 19,500,000.00
11 (21)	Apr-25	TBD	\$ 18,000,000.00
12 (22)	Apr-25	TBD	\$ 11,500,000.00
13 (23)	Apr-25	TBD	\$ 5,000,000.00
11 (21)	Apr-25	TBD	\$ -
<b>Notes</b>			
Numbers in parenthesis are from start of construction			
Monthly Payment Limits To Be Determined (TBD) based on FDEP approved schedule and values			