

DEP AGREEMENT NO. MV078
AMENDMENT NO. 1

THIS AGREEMENT as entered into on the 12th day of June, 2012, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department") and the CITY OF KEY WEST (hereinafter referred to as the "Recipient") is hereby amended.

WHEREAS, due to an engineering change in the pipe material, the Grantee has requested an increase funding for material and labor costs and an extension to complete the project; and,

WHEREAS, the Grantee has requested a time extension and increase in funding; and,

WHEREAS, the Department has agreed to the extension and to increase the funding from \$69,780.14 to \$96,393.75; and,

WHEREAS, other changes to the Agreement are necessary.

NOW, THEREFORE, the parties hereto agree as follows:

1. Paragraph 4A is hereby revised to change the completion date to August 31, 2014.
2. Paragraph 5 is hereby deleted in its entirety and replaced with the following:
 5. A. As consideration for the services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis up to a maximum of \$96,393.75 towards the Total Project Cost as described in **Attachment A-1, Revised Scope of Work and Conditions**. This Agreement may be amended to provide for additional services if additional funding is made available by the U.S. Fish and Wildlife Service and/or the Florida Legislature.
 - B. Prior written approval from the Department's Grant Manager shall be required for changes within approved task budget categories of up to 10% of the total task budget amount. The DEP Grant Manager will transmit a copy of the written approval and revised budget to the DEP Procurement Office and the DEP Contracts Disbursements Office for inclusion in the Agreement file. Changes greater than 10% of the total approved task budget will require a formal change order to the Agreement. Changes that transfer funds from one task to another or that increase or decrease the total funding amount will require a formal amendment to the Agreement.
 - C. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs upon the completion, submittal and approval of the deliverables identified in **Attachment A-1**, in accordance with the schedule therein. No travel expenses are authorized under the terms of this Agreement.
 - i. Reimbursement shall be requested utilizing **Attachment B, Grant Payment/Match Request Form**. In conjunction with Attachment B, an itemized listing (by deliverable) of all expenditures claimed (including the dates of service).
 - ii. The Chief Financial Officer requires detailed supporting documentation of all costs under a cost reimbursement agreement. In accordance with **Attachment C, Contract Payment Requirements**, the Grantee shall comply with the minimum requirements set forth therein. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

- iii. The Grantee shall submit a final invoice to the Department no later than **September 14, 2014**, to assure the availability of funds for final payment. The final invoice shall be accompanied by a completed and signed Project Completion Form to be provided by the Department, an Operational Plan as described in the Operations section of Attachment A of this Agreement, a copy of the operational log required under the Operations section of Attachment A, a photograph of the completed pumpout installation as well as a photograph of the pumpout logo sign and informational sign.
 - iv. Each payment request submitted shall document all matching funds and/or match efforts (i.e. in-kind services) provided during the period covered by each request. The final payment will not be processed until the match requirement has been met.) Upon approval and payment of the final invoice, any funds remaining under this Agreement will be unencumbered.
- D. For the purchase of goods or services costing more than \$2,500 and less than \$100,000 the Grantee shall obtain at least two written quotes. The quotes must be submitted to the Department for review and approval of the quote amount prior to the commencement of any work under this Agreement. Written quotes shall be for items that are alike in function, operation and purpose. An explanation must be provided whenever the Grantee proposes the use of a vendor quoting other than the lowest price. The Department has the right to reject all quotes and require additional documentation supporting the anticipated Project costs. The Department shall make no reimbursement from grant funds until this documentation has been provided and approved. Any purchase over \$100,000 shall comply with the procurement requirements described in 43 CFR 12.76.
- E. The parties hereto understand and agree that this Agreement requires a cost sharing or match in the form of cash or third party in-kind, on the part of the Grantee. The match expended by the Grantee shall be at least 25% of the total amount actually expended on the Project. All cost sharing/match shall meet the federal requirements established in 43 CFR, Part 12 and OMB Circulars A-87 (2 CFR 225), A-122 (2 CFR 230) and A-21 (2 CFR 220).
- F. The Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits) if applicable. State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at <http://www.fldfs.com/aadir/reference%5Fguide> and allowable costs for Federal Programs can be found under 48 CFR Part 31 and Appendix E of 45 CFR Part 74, at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html> and OMB Circulars A-87 (2 CFR 225), A-122 (2 CFR 230), A-21 (2 CFR 220); and administrative requirements can be found in OMB Circulars A-102 and A-110 (2 CFR 215) at <http://www.whitehouse.gov/omb/circulars/index.html#numerical>.

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- G. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. For purposes of this Agreement, the following cost principles are incorporated by reference.

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

- H. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.
- I.
- i. The Grantee's accounting systems must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - ii. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - iii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department by the Grantee.

- J. The federal funds awarded under this Agreement must comply with *The Federal Funding Accountability and Transparency Act (FFATA) of 2006*. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. Grant Recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010 are subject to the FFATA. The Grantee agrees to provide the information necessary, over the life of this Agreement, for the Department to comply with this requirement.
3. Paragraph 15 is hereby revised as follows:
15. The Grantee shall comply with all applicable federal, state and local rules and regulations in performing under this Agreement. The Grantee acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.
4. Paragraph 30 is hereby replaced with the following:
30. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
5. The following paragraph will be added to the Agreement as paragraph 32:
32. No payment will be made for unsatisfactory deliverables. In the event that a deliverable is deemed unsatisfactory by the Department, the Grantee shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within ten (10) days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate this Agreement for failure to perform, or 2) the Department Grant Manager may, by letter specifying the failure of performance under this Agreement, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.
- A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
- B. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate

performance deficiencies by Grantee, the Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.

- C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement

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

- 6. Attachment A, Grant Work Plan is hereby deleted in its entirety and replaced with **Attachment A-1, Revised Grant Work Plan**, attached hereto and made a part of the Agreement. All references in the Agreement to Attachment A shall hereinafter refer to **Attachment A-1, Revised Grant Work Plan**
- 7. Attachment E, Special Audit Requirements, Page 5 of 5 is hereby deleted in its entirety and replaced with Attachment E, Special Audit Requirements, Page 5 (Revised) of 5, attached hereto and made a part of the Agreement.

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

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

CITY OF KEY WEST

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
*Title:

By: _____
Secretary or Designee


Date: _____

Date: _____


Brenda Leonard, DEP Grant Manager


DEP Contracts Administrator

Approved as to form and legality:


DEP Attorney

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

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

| <u>Specify Type</u> | <u>Letter/Number</u> | <u>Description (include number of pages)</u> |
|---------------------|----------------------|--|
| Attachment | A-1 | Revised Scope of Work and Conditions (4 Pages) |
| Attachment | E | Special Audit Requirements, Page 5(Revised)of 5 (1 Page) |

ATTACHMENT A-1
Clean Vessel Act Grant Program
Revised Scope of Work and Conditions
INSTALLATION OF PUMPOUT STATION

PURPOSE

The purpose of the Clean Vessel Act Grant Program is to establish or restore pumpout facilities that are operational and accessible to the general boating public for the useful life of the facilities. The purpose of these conditions is to ensure compliance with 50 CFR Part 85, Subpart D - Conditions on Use/Acceptance of Funds, for the Agreement period, including the five (5) year reporting period extending beyond the date of equipment installation or construction completion, if applicable. These conditions cover pumpout facilities and equipment purchased with Clean Vessel Act Grant funds.

This is a cost reimbursement Agreement with matching requirement based on the amount actually paid by the Department to the Grantee. The Department agrees to pay the Grantee, on a cost reimbursement basis, a grant award in an amount not to exceed \$96,393.75 for satisfactory completion of the project outlined herein and the Grantee agrees to undertake the project as described and submitted by the Grantee in the Grant Application, CVA 12-643, and provide a minimum 25% non-federal matching funds. The project is located at City of Key West at 1800 N Roosevelt Boulevard, Key West, Florida 33040.

CONDITIONS OF THE PROJECT AGREEMENT

Project Reimbursement

1. Match documentation shall be provided in accordance with instructions on Attachment B, Grant Payment/Match Request Form. Any credit for the match by the Grantee shall be based on forms completed and documented to the satisfaction of the Department.
2. Grantee invoices must be accompanied by all required deliverables as identified in this Attachment and all documentation as outlined in Paragraphs 5.C. through 5.F. of the Agreement. The Department shall have thirty (30) days to review and approve all invoices and deliverables. Upon review and approval of the required deliverables, the Grant Payment/Match Request Form and required documents, the Department will process the request for payment.
3. The final request shall be accompanied by a completed and signed Pumpout Project Certification of Completion Form which is provided by the Clean Vessel Act Grant Program as part of the grant award package mailed to Grantee, a copy of the Pumpout Station Operational Plan, a copy of the Pumpout Log, and photographs of the installed pumpout project including required signage.

Project Requirements

1. The Grantee shall obtain all required permits and approvals prior to commencement of the project. A grant award is not an indication of permitability of a project. A Site Visit/Permit Verification Form, completed by the Department District Office shall be on file with the Department Grant Manager before invoices will be processed for payment.
2. Pumpout facilities will be designed and operated in accordance with state and local health regulation.
3. Each pumpout facility or dump station funded under this Agreement shall be open and available to the recreational boating public. Each pumpout facility, pumpout vessel, or dump station shall be operated, maintained, and continue to be reasonably accessible to all recreational vessels for the full five (5) year period as described and set forth in Paragraph 4.A. of the Agreement.

4. The Grantee will conduct operations of the pumpout facility, pumpout vessel, or dump stations under a Pumpout Station Operational Plan that specifies hours of operation, maintenance principles, methods in determining volume of material pumped including the use of flow meters as may be necessary, informational/educational materials on pumpout operation and assurances that the pumpout facility, pumpout vessel, or dump station will be used solely for the collection of recreational boat sewage. Pumpout vessels are to be used solely for the collection and hauling of recreational boat sewage. This plan will be submitted to the Department with the Pumpout Project Certification of Completion.
5. The location of each pumpout facility, pumpout vessel, or dump station will be continually identified through informational markers using the International Pumpout Symbol on a sign of at least three feet by four feet (3 x 4') in size. Any informational markers should be located on a dock or on land clearly visible from the waterway. Any informational markers located in the waters of the state shall be with prior approval of the Florida Fish and Wildlife Conservation Commission as required by permitting procedures established by Florida Statutes and the Florida Administrative Code.
6. Informational placards stating fees, hours of operations, instructions, and operator name and telephone number shall be posted in a clearly visible location at the pumpout location. The placard shall have posted emergency phone numbers for reporting service problems and shall include the following statement:

Funded in part by the U. S. Fish and Wildlife Service, the Florida Inland Navigation District, and the Clean Vessel Act through the Florida Department of Environmental Protection.
7. Pumpout facilities, pumpout vessels, or dump station services will be provided free of charge or for a fee not to exceed \$5 per vessel. Fees greater than \$5 requires prior written cost justification approval by the Department. If fees are collected, such proceeds shall be accounted for, and used by the operator exclusively to defray operation and maintenance costs of the pumpout equipment and associated materials. An accounting of all fees collected will be provided with the quarterly log described below.
8. The pumpout facility operator shall maintain a pumpout log to be submitted to the Department no later than fifteen (15) days of each calendar quarter following the quarter during which completion of construction or installation of equipment occurred and continues until the end of the Agreement period including the five (5) year reporting period ending August 31, 2019. The log shall document use of the equipment by number of pumpout services events, gallons pumped, number of out of state vessels pumped, fees charged, and maintenance, labor, or other operational costs incurred. Volume of sewage handled must be determined as described in the approved pumpout station operational plan.
9. The pumpout facility operator shall submit Attachment D, Progress Report Form, to the Department each quarter no later than fifteen (15) days of each calendar quarter and with each reimbursement request beginning with the quarter during which this Agreement was executed.
10. The Grantee shall provide marine sanitation and pumpout information for boat owners and training for pumpout operators. These services may be provided through such methods as informational materials, on-site instruction or audio-visual methods by the marina owner/operator, equipment vendors, harbormaster or local government personnel.

TASKS/DELIVERABLES FOR PROJECT REIMBURSEMENT

The following is a schedule of tasks/deliverables and budget detail for the completion of the tasks required to complete this project. Prior written approval from the Department's Grant Manager shall be required for changes within approved task budget categories of up to 10% of the total task budget amount. The DEP Grant Manager will transmit a copy of the written approval and revised budget to the DEP Procurement Office and the DEP Contracts Disbursements Office for inclusion in the Agreement file. Changes greater than 10% of the total approved task budget will require a formal change order to the Agreement. Changes that transfer funds from one task to another or that increase or decrease the total funding amount will require a formal amendment to the Agreement. No reimbursement will be made that exceeds the grant award amount. An increase in funding or a completion date extension will require a formal written amendment to this Agreement.

Task 1.

Equipment Purchase & Installation: The Grantee will purchase authorized pumpout or waste receptacle equipment. The Grantee will be responsible for ensuring proper installation of the equipment purchased. This includes materials and labor for installing plumbing and electrical service for pumpout equipment. Equipment purchase and equipment installation may be included on one invoice.

Deliverable: Dated photograph of pumpout equipment purchased and a copy of paid invoice and delivery receipt.

Performance Standard: Documentation will be reviewed to verify authorized equipment has been purchased.

Task Timeline: After agreement execution and before project completion date of August 31, 2014.

Budget: Allowable costs for this task are for equipment and installation.

Note: Payment can be requested upon submission and review and approval of the deliverable identified above.

Task 2.

Pumpout Signage: The Grantee will install the signage required in paragraph 5 of this attachment under Project Requirements.

Deliverable: Photographs of the installed signage showing the pumpout logo sign, equipment instructional sign and Pumpout information sign with accrediting information.

Performance Standard: Photographs will be reviewed to ensure signage requirements are met.

Task Timeline: After agreement execution and prior project completion date of August 31, 2014.

Budget: Allowable costs for this task are for signage costs.

Note: Payment can be requested upon submission and review and approval of the deliverable identified above.

Task 3.

Education and Instructional Materials: The Grantee will provide educational and instructional materials to be distributed to recreational boaters on the effects of sewage in the waterways.

Deliverable: Copies of brochures or handout information about the Clean Vessel Act, effects of sewage in waterways, and the equipment available for public use.

Performance Standard: Educational materials will be reviewed to insure they address programmatic topics.

Task Timeline: After agreement execution and before project completion date of August 31, 2014.

Budget: Allowable costs for this task include miscellaneous printing/reproduction costs.

Note: Payment can be requested upon submission and review and approval of the deliverable identified above.

Approved Tasks/Deliverables and Amounts

| Tasks | Deliverables | Total Project Amount (100%) |
|--|---|--|
| 1. Equipment Purchase & Installation | Dated photograph of pumpout equipment purchased and a copy of paid invoice and delivery receipt. Plumbing, electrical, supplies and labor. | \$127,725.00 |
| 2. Pumpout Signage | Photographs of the installed signage showing the pumpout logo sign, equipment instructional sign and Pumpout information sign with accrediting information. | \$500.00 |
| 3. Education and Instructional Materials | Copies of brochures or handout information about the Clean Vessel Act, effects of sewage in waterways, and the equipment available for public use. | \$300.00 |
| | | |
| | Total Project Amount 100% | \$128,525.00 |
| | Total Grant Award Amount 75% | \$96,393.75 |
| | Total Match Amount 25% | \$32,131.25 |

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EXHIBIT - 1

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

| Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following: | | | | | |
|--|---------------------------------|-------------|--------------------------------|----------------|------------------------------|
| Federal Program Number | Federal Agency | CFDA Number | CFDA Title | Funding Amount | State Appropriation Category |
| Original Agreement | U.S. Department of the Interior | 15.616 | Clean Vessel Act Grant Program | \$69,780.14 | 140122 |
| Amendment No. 1 | U.S. Department of the Interior | 15.616 | Clean Vessel Act Grant Program | \$26,613.61 | 140122 |

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

| State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.: | | | | | | |
|--|----------------|-------------------|-------------|--|----------------|------------------------------|
| State Program Number | Funding Source | State Fiscal Year | CSFA Number | CSFA Title or Funding Source Description | Funding Amount | State Appropriation Category |
| | | | | | | |
| | | | | | | |

| | | | | | |
|--------------------|--|--|--|--|--------------------|
| Total Award | | | | | \$96,393.75 |
|--------------------|--|--|--|--|--------------------|

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fidfs.com/fsaa/searchCatalog.aspx>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.