

Meeting Date: April 21, 2014

1. Requested Motion:

Approval of a modification to the Sub-Grant Agreement between the Town of Fort Myers Beach and the Florida Department of Emergency Management for the Neighborhood Basin Based Drainage Improvement Project to extend the term of the Agreement to November 30, 2014.

Why the action is necessary:

To extend the term of the Agreement to provide adequate time for construction of the project.

What the action accomplishes:

Approval of this Agreement provides for additional time to properly complete the project.

2. Agenda:

☒ Consent
☐ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance
☒ Other

4. Submitter of Information:

☐ Council
☒ Town Staff – Public Works
☐ Town Attorney

5. Background:

The Basin Based Drainage Improvement Project has been funded through the Hazard Mitigation Grant Program. The project has been slowed down due to the need to obtain easements and a design evaluation related to certain project areas.

This amendment extending the sub-grant agreement until November 30, 2014, will allow adequate time to meet those goals.

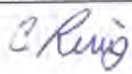
6. Alternative Action:

Do not seek additional time to complete the project.

7. Management Recommendations:

Approve

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

Contract Number: 11HM-3B-09-46-02-001

Project Number: 1609-48-R

MODIFICATION TO SUBGRANT AGREEMENT BETWEEN
THE DIVISION OF EMERGENCY MANAGEMENT AND
THE TOWN OF FORT MYERS BEACH

This Modification Number Three is made and entered into by and between the State of Florida, Division of Emergency Management, ("the Division"), and the Town of Fort Myers Beach ("Recipient") to modify Contract Number 11HM-3B-09-46-02-001, dated March 1, 2011 ("the Agreement").

WHEREAS, the Division and the Recipient have entered into the Agreement, pursuant to which the Division has provided a subgrant to Recipient under the Hazard Mitigation Grant Program of \$422,622.00; and

WHEREAS, the Division and the Recipient desire to modify the Agreement; and

WHEREAS, the Agreement will expire on April 30, 2014; and

WHEREAS, the Division and the Recipient desire to reinstate and extend the terms of the Agreement, and

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. The Agreement is hereby reinstated and extended as though it had never expired.
2. Paragraph 3 of the Agreement is hereby amended to read as follows:

This Agreement shall begin September 28, 2010 and shall end November 30, 2014 unless terminated earlier in accordance with the provisions of paragraph (12) of this Agreement.

3. (11) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement, provided that the Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (13) herein;

(b) Begin an appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend payment of all or any part of a request for payment;
(d) Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds;

(e) Exercise any corrective or remedial actions, to include but not be limited to:

1. Request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance;
2. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected;
3. Advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
4. Require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.

(f) Exercise any other rights or remedies which may be available under law;

(g) Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

4. The 1st Revised Attachment A, Budget and Scope of Work to the Agreement, is hereby deleted in its entirety, and the 2nd Revised Attachment A, Budget and Scope of Work to this Modification, which is attached hereto and incorporated herein by reference, is substituted in its place and stead.
5. All provisions of the Agreement being modified and any attachments thereto in conflict with this Modification shall be and are hereby changed to conform with this Modification, effective as of the date of the last execution of this Modification by both parties.
6. All provisions not in conflict with this Modification remain in full force and effect, and are to be performed at the level specified in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Modification as of the dates set out below.

RECIPIENT: TOWN OF FORT MYERS BEACH

DIVISION OF EMERGENCY MANAGEMENT

By: _____

By: _____

Name and Title: _____

Name and Title: Bryan W. Koon, Director

Date: _____

Date: _____

2nd Revised Attachment A

Budget and Scope of Work

Scope of Work

As a Hazard Mitigation Grant Program project, the Recipient, Town of Fort Myers Beach, will provide protection by constructing a drainage system capable of solving or reducing the flooding problem along Estero Boulevard from Carolina Drive to Tropical Shores Way within the Town of Fort Myers Beach, Lee County, Florida. The scope consists of the installation of additional concrete pipes and strategically placed inlets to the existing system to more effectively convey runoff to the outfalls.

Environmental Review Project Conditions:

1. The Recipient must follow all applicable state, local and federal laws regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. If project work is delayed for a year or more after the date of the CATEX, then coordination with and project review by regulatory agencies must be redone.
2. Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time) will require re-submission of the application to FEMA for NEPA re-evaluation before starting project work.
3. If historic or archaeological materials (or evidence thereof) are discovered, the Applicant shall stop work immediately, notify the Federal Emergency Management Agency (FEMA), and take all reasonable measures to avoid or minimize harm to the property.
The Applicant will not proceed with work until FEMA, in consultation with the State Historic Preservation Officer (SHPO), determines that appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act.
The Recipient will contact also the DHS/FEMA Region IV Environmental Officer and FDEM State Environmental Liaison Officer for further guidance.
4. If endangered/threatened species or species of special concern are discovered on the project site, prior to or during construction, the Applicant shall not proceed with work until FEMA, in consultation with the U.S. Fish and Wildlife Service, determines that appropriate measures have been taken to ensure that there is no incidental take of aforementioned species.
5. If the project size is more than one acre, the Applicant will need to submit a Notice of Intent (NOI) for coverage under the Florida Department of Environmental Protection (FDEP) General Permit, prepare and implement a storm water pollution prevention plan (SWPPP), and submit the Notice of Termination (NOT) after completion of the site activities. The NOI and NOT should be provided at project close-out.
6. For projects involving groundwater dewatering activities at the construction site, provide Documentation of coverage under the Florida Department of Environmental Protection (FDEP) "Generic Permit for the Discharge of Produced Ground Water from any Non-contaminated Site Activity."
7. Any hazard materials and waste associated with this project will be stored, handled, transported and disposed in appropriate containers and/or facilities and in accordance with all applicable local, State, and Federal laws and regulations. The Contractor will implement measures to prevent spillage or runoff of chemicals, fuels, oils or sewer-related wastes during project work. If any hazardous materials are discovered within the project area, all ground disturbing activities will cease and the Florida Department of Environmental Protection will be contacted.
8. Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.
9. The Recipient must adhere to all conditions of all issued permits.

This is FEMA project **1609-48-R**, funded under **1609-DR-FL**.

The Period of Performance of this project ends on **November 30, 2014**.

Schedule of Work

Construction:	12 months
State Contracting:	1 month
State Final Inspection	1 month
State Closeout	2 months
Total Period of Performance:	16 months

Budget

Line Item Budget*

	Project Cost	Federal Share	Local Share
Materials:	\$ 440,945.00	\$ 330,708.75	\$110,236.25
Labor:	\$ 107,915.00	\$ 80,936.25	\$ 26,978.75
Sub-Total:	\$ 548,860.00	\$ 411,645.00	\$137,215.00
Administrative Cost:	\$ 0.00	\$ 10,977.00	\$ 0.00
Total:	\$ 548,860.00	\$ 422,622.00	\$137,215.00

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

Funding Summary

Federal Share:	\$ 411,645.00 (75%)
Local Share:	\$ 137,215.00 (25%)
Total Project Cost:	\$ 548,860.00 (100%)

Recipient Administrative Allowance up to **\$10,977.00**.