

Meeting Date
August 8, 2017



AGENDA	
Section	New Business
Item No.	VI A 2

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Replacement Contract for U.S. 1 Dredging – Indian River Isles Muck Removal Project (Bid No. B-3-16-81)
DEPT/OFFICE:	Natural Resources Management Department (NRMD)

Requested Action:

It is requested that the Board of County Commissioners consider liquidated damages and authorize the Chairman to execute a replacement contract between Brevard County (Owner) and CCI Construction of Brevard, Inc. (Contractor). for the U.S. 1 Dredging – Indian River Isles Muck Removal Project.

Summary Explanation & Background:

This project includes dredging and disposal of approximately 2,000 cubic yards of organic material from the northern most east-west canal of the Indian River Isles subdivision (Zones I and II on the location map -Attachment A). The original contract between Brevard County and CCI Construction of Brevard, Inc. was executed on August 17, 2016 with a project completion date of March 30, 2017 and a total contract value of \$90,000. The project is funded by a state grant with a completion deadline of August 15, 2017.

A total of five (5) no-cost time extensions were issued for CCI Construction of Brevard, Inc. to complete the project. Additional extension requests were denied and the contract expired on July 3, 2017 with the project still incomplete. Liquidated damages began to accrue on July 5, 2017 at a rate of \$958 per day, per the contract terms and “Failure to Perform” Letter (Attachment B). As of August 3rd, liquidated damages totaled \$27,782 and were still accruing due to lack of project completion. CCI has requested that the Board consider waiving the liquidated damages (Attachment C).

The intent of the replacement contract is to ensure project completion by the grant deadline and attempt to avoid legal proceedings for the Contractor’s breach of contract. Two versions of a replacement contract have been prepared:

1. Attachment D applies if CCI completes the project before August 8th. Attachment D allows the Board to waive all, none or a portion of liquidated damages and removes miscellaneous contract deliverables that have not been provided but are not a requirement of the grant for reimbursement.
2. Attachment E applies if CCI has NOT completed construction before August 8th. Attachment E allows the Board to waive all, none or a portion of liquidated damages; removes deliverables that have not been provided but are not a requirement of the grant for reimbursement; extends the contract, adds indemnification and reduces the contract sum as needed to offset the County’s costs to complete the project by the August 15th grant deadline.

Clerk to the Board Instructions: Execute 2 originals – one for the Clerk of Courts and one for CCI Construction of Brevard, Inc.

Exhibits Attached:

- Attachment A:** 2-page Location Map
- Attachment B:** Failure to Perform Letter from Brevard County to CCI, dated July 7, 2017
- Attachment C:** Letter from CCI requesting that the Board of County Commissioners waive liquidated damages
- Attachment D:** Replacement Contract to use if CCI has completed the project before August 8, 2017
- Attachment E:** Replacement Contract to use if CCI has NOT completed the project before August 8, 2017
- Attachment F:** Original Contract with CCI, referenced in Attachments D and E

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
Interim County Manager	Assistant County Manager	Department Director / Extension Virginia Barker/ (321) 633-2016					
Frank Abbate	John Denninghoff, P.E.						



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

August 9, 2017

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item VI.A.2., Replacement Contract for U.S. 1 Dredging – Indian River Isles Muck Removal Project (Bid No. B-3-16-81)

The Board of County Commissioners, in regular session on August 8, 2017, approved Attachment D, Replacement Contract to use if CCI Construction of Brevard, Inc. has completed the project before August 8, 2017, with the liquated damages reduced to \$5,900. Enclosed are two executed Replacement Contracts.

Upon execution by CCI Construction of Brevard, Inc., please return a fully-executed Replacement Contract to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget



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August 9, 2017

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TO: Virginia Barker, Natural Resources Management Director

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Upon execution by CCI Construction of Brevard, Inc., please return a fully-executed Replacement Contract to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget

8/23/17
Hello Deborah,
Attached is the
original Agreement for
Item VI.A.2 - US1 Dredging -
Indian River Isles Muck
Removal Project.

Thank-you -
Carol Gerardo
Natural Resources
Mgmt. Dept.
321-633-2016

file

Deborah Thomas

From: Gerundo, Carol <Carol.Gerundo@brevardfl.gov>
Sent: Wednesday, August 23, 2017 10:16 AM
To: Deborah Thomas
Subject: Item VI.A.2_080817_Replacement Contr for US1 Dredging_Indian River Isles Muck Removal Proj (Bid No. B-3-16-81)
Attachments: Clerk Memo VI.A.2 2017-08-08 New Contract.pdf; Item VI.A.2_CCI_US1_Dredging_IndRivIsles_MuckRemovalProj080817.pdf

Hello Deborah,

I have attached the signed Agreement for Item VI.A.2 from the August 8, 2017 BoCC Meeting for your files. I will ask someone from my office to deliver the original contract to you if that is alright with you.

Let me know if there is anything else you will need.

Thank you.

Carol Gerundo

Administrative Assistant to Department Director
Brevard County Natural Resources Management
(321) 633-2016 X-52414



"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

REPLACEMENT CONTRACT

INDIAN RIVER ISLES MUCK REMOVAL PROJECT

THIS AGREEMENT, made and entered into this 8th day of August, 2017, A.D., by and between the **Board of County Commissioners of Brevard County, Florida**, party of the first part (hereinafter sometimes called the "Owner"), and **CCI Construction of Brevard Inc.**, party of the second part (hereinafter sometimes called the "Contractor").

WHEREAS, the Parties previously entered into that certain Contract for services for the US1 Dredging – Indian River Isles Muck Removal Project (County Project), Bid Removal No. B-3-16-81, dated August 17, 2016 (“Original Contract”). A copy of the Original Contract is attached and incorporated herein; and

WHEREAS, the term of the Original Contract was extended to July 3, 2017; however, the Contractor did not complete all work before the term expired. Specifically, the Contractor failed to timely: complete muck removal from the canal, provide a certified as-built survey of the canal, remove all spoil material from the spoil management area and dispose of in an approved area, and return spoil management area to original grade; and

WHEREAS, pursuant to the Original Contract, liquidated damages began accruing on July 5, 2017, at a rate of \$958.00 per day. The Contractor continued to work towards completion of the County Project and completed all outstanding tasks on August 4, 2017, with the exception of restoration of the spoil management area; and

WHEREAS, the County recognizes that restoration of the spoil site area is premature considering the County Project is a portion of a larger muck dredging project sponsored by the Indian River Isles HOA (HOA Project), which is not yet complete; and

WHEREAS, funding for the County Project is provided through a reimbursement grant agreement with the Florida Department of Environmental Protection, which terminates prior to completion of the HOA Project. Restoration of the spoil management area is not a required task of the grant agreement; and

WHEREAS, the Parties desire to reinstate the Original Contract, with minor changes.

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

Section 1. The statements set forth above are true and correct in all respects and are incorporated herein by reference.

Section 2. The term of this Contract begins on July 4, 2017, and ends on August 15, 2017. The deadline for the Contractor to complete the County Project remains as July 3, 2017. Muck removal and disposal was completed on August 4, 2017. Liquidated damages accrued for

31 days at \$958.00 per day for a total of \$29,698.00. The County hereby reduces the liquidated damages to \$5900.00, to be deducted from the final payment.

Section 3. Subsection 48.1 of the Contract Documents, Section VII – General Conditions – Staging Area is amended as follows:

48.1 The Contractor shall make arrangements for and maintain at his own expense, any staging areas necessary for storage of materials, equipment and personnel. Contractors are advised that such areas may not be available within the limits of the construction area. Acquisition ~~and restoration~~ of such areas is ~~are~~ the Contractor's responsibility. A letter of permission is required from the property owner prior to mobilizing on the site, ~~and a letter of satisfaction will be required from the property owner prior to final payment.~~ The protection of stored materials shall be the Contractor's responsibility and the Owner shall not be liable for any loss of materials by theft or otherwise, nor for any damage to the stored materials. No payment shall be made for stored materials. All applicable, local and state regulations regarding hauling of materials and use of public streets shall apply. Contractors shall be responsible for obtaining and paying for any permits necessary for this portion of the project.

~~a) Restoration of any staging areas shall be the Contractor's responsibility and at the Contractor's expense. No separate payment shall be made for any restoration (including sod, landscaping etc.).~~

Section 4. Subsection 4.3 of Contract Documents Section VIII – Special Conditions – Operation and Maintenance is amended as follows:

4.3 Prior to commencement of work and within 2 weeks of Notice to Proceed, Contractor shall prepare and submit to the Owner and the Owner's Engineer for approval the Operation and Maintenance (O&M) Plan and will furnish all of the labor, materials, equipment, and incidentals necessary to implement the O&M plan specified herein during the life of the project. As a minimum the O&M plan shall include, but is not limited to, the following major components:

- a) Operation Plan
- b) Maintenance Plan (to include Maintenance of Traffic)
- c) Spoil Material Handling Plan
- d) Inspection Plan
- e) A detailed layout plan of the site to be used as staging area within the parcel limits shown on the plans.
- f) A detailed layout plan of any dewatering or other equipment setup and ancillary facilities including any necessary pumping facilities and temporary storage areas for dredged material.
- g) Disposal plan with detailed information about trucking routes to be used for the transport and disposal of the material.
- h) A detailed plan of the area selected for office and parking activities.
- i) The Contractor shall submit details of equipment setup, including the installation of the excess water return system.
- ~~j) A Health & Safety Plan (HSP) that defines all training, operation, and monitoring activities necessary to meet all occupational labor requirements.~~

k) ~~An Emergency Action Plan (EAP) for responding to the break or rupture of any project component. This plan shall also include details for cleanup and restoration of these areas afterwards.~~

l) A Weekly Operation and Monitoring Report. Contractor shall develop and submit for Owner's Engineer approval the format to be used for the monitoring report. ~~The report shall combine the previous week's daily reports which summarize dredging progress, approximate dredged volumes, and any required maintenance activities.~~ The Weekly Operation and Monitoring Report shall include copies of turbidity monitoring reports for dredge operations. Once dredging activities have begun the report will be due on the first working day of the following week.

m) Safety Data Sheets (SDS) for all chemicals to be used in the dredging or dewatering processes must be provided to, and authorized by, the Owner's Engineer prior to the commencement of work.

Section 5. All other terms and conditions of the Original Contract, which is incorporated herein by this reference, not inconsistent with the provisions of this Contract, shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have duly executed this Contract.

Attest:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



Curt Smith, Chairman
As approved by the Board on: 8-8-2017

Reviewed for legal form and content:

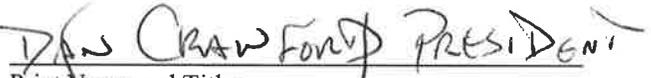
Christine Valliere, Assistant County Attorney

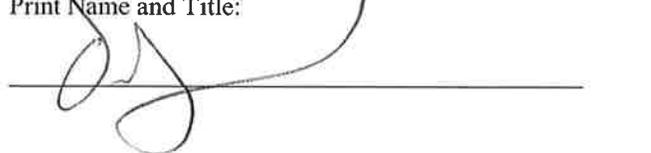
Witnessed in the presence of**

Print Name:

Print Name:

CONTRACTOR
CCI Construction of Brevard, Inc.



Print Name and Title:


- (*) In the event that the Contractor is a Corporation, there shall be attached to each counterpart, a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.
- (**) Two witnesses are required when Contractor is sole ownership or partnership.

CERTIFICATE

STATE OF FLORIDA

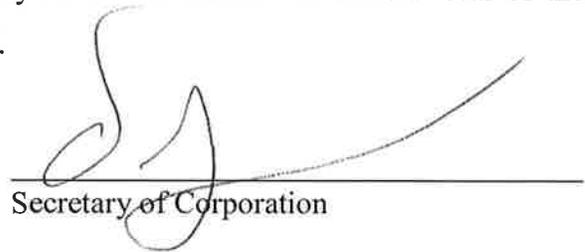
COUNTY OF BREVARD

I HEREBY CERTIFY that at a meeting of the Board of Directors of CLT CONSTRUCTION OF BREVARD INC., a corporation under the laws of the State of Florida, held on 17TH OF AUGUST, 2016, the following resolution was duly passed and adopted:

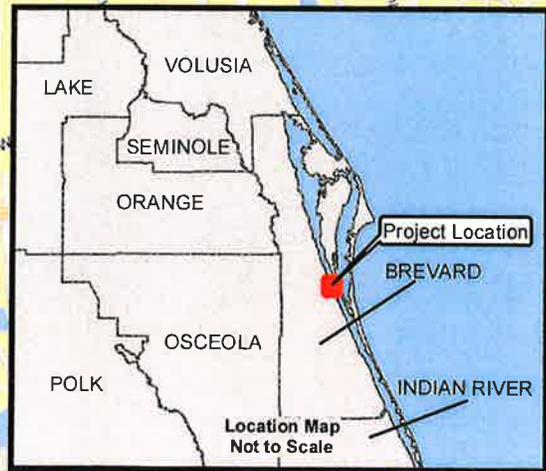
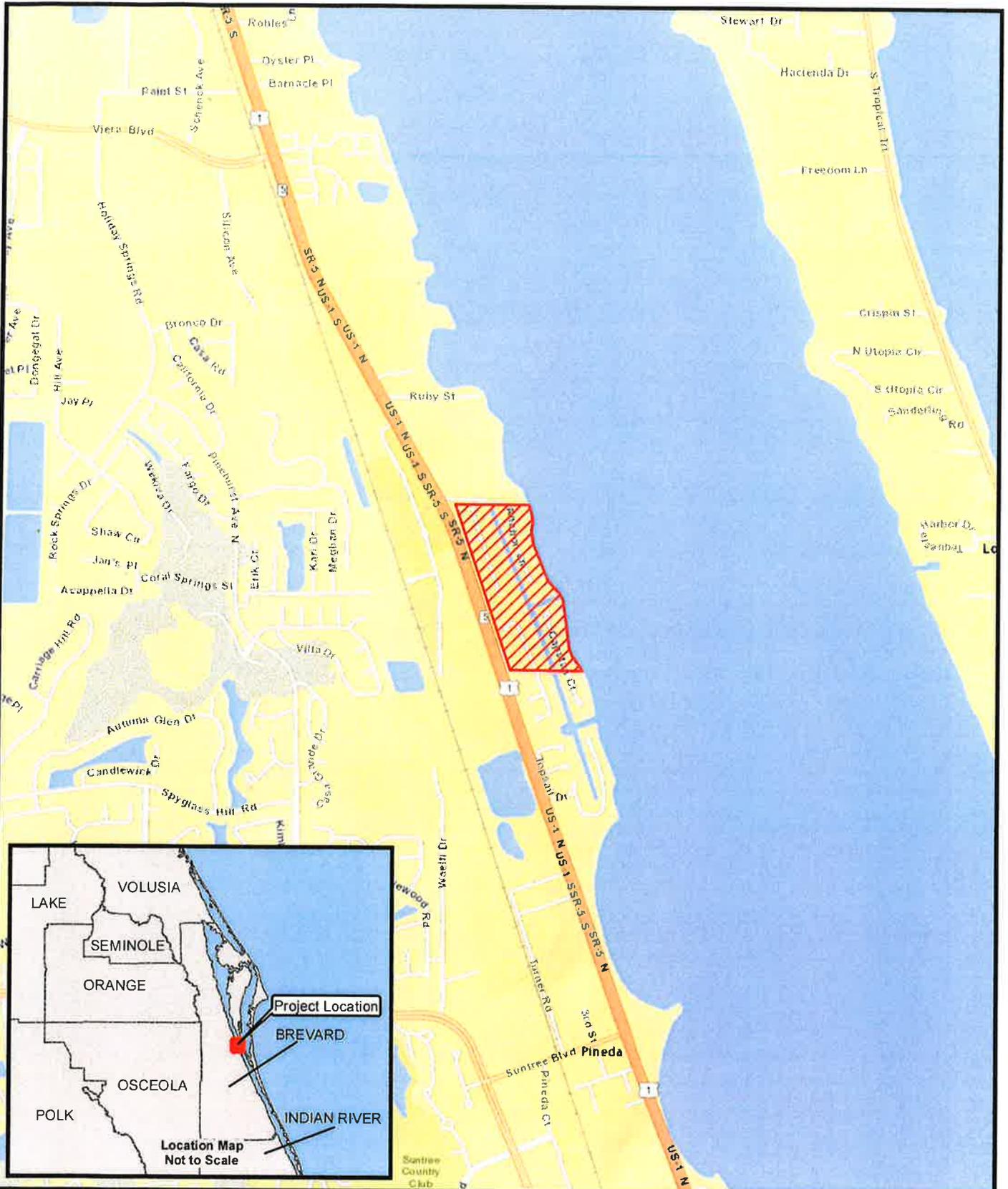
"RESOLVED, that DAN CRAWFORD, as ACTING President of the corporation, be is hereby authorized to execute the Contract dated AUGUST 8TH, 2017, between BREVARD COUNTY, FLORIDA, and this corporation, and that the execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation on this 11th day of AUGUST, 2017.



Secretary of Corporation



Notes:

1. Project No.: 600338x1
2. Data Source - ESRI World Street Map
3. This map is intended to be used for planning purposes only. It is not a survey.

Date: 07/07/2015
 Revised: KD
 Checked By: LL

Explanation of Features

 Project Area




amec foster wheeler
 Amec Foster Wheeler
 Environment & Infrastructure, Inc.
 2000 E. Edgewood Drive, Ste #210
 Lakeland, FL 33803
 CA-6392
 (863) 667-2345

Location Map
Indian River Isles
Canal Maintenance Dredging
Brevard County, Florida



Notes:

- 1- Project No.: 600338x1
- 2- Data Source - ESR1 Aerial Imagery
- 3- This map is intended to be used for planning purposes only. It is not a survey.

Date: 07/07/2015
 Revised: KD
 Checked By: LL

Explanation of Features

 Canal Zones
 Brevard County Parcels




 1" = 300'



amec
 foster
 wheeler

Amec Foster Wheeler
 Environment & Infrastructure, Inc.
 2000 E. Edgewood Drive Ste #216
 Lakeland, FL 33803
 CA-6382
 (883) 867-2348

Detail Map
Indian River Isles
Canal Maintenance Dredging
Brevard County, Florida



Natural Resources Management Department
2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

July 7, 2017
Daniel Crawford, President
CCI Construction of Brevard, Inc.
5 Shoreview Circle
Indiatlantic, FL32903

RE: FAILURE TO PERFORM WORK US 1 Dredging Indian River Isles Muck Removal

Dear Mr. Crawford:

CCI Construction of Brevard, Inc. has failed to complete the above-referenced project in the time allotted and is now beyond its July 3, 2017 contract expiration date. Your request for a time extension has been denied and the County has initiated assessment of liquidated damages in the amount of \$958.00 per day, as specified in Section 5.1 of the contract, beginning July 4, 2017.

You are instructed to complete the project per contract specifications immediately. While the County is aware that progress has been made on the project, substantial portions of the project remain unfinished. You are hereby notified that the following items must be completed and a site inspection must be scheduled prior to 10:00 AM July 21, 2017 to avoid further corrective action by the County:

- Complete removal of material from the westernmost portion of the canal as specified in the plans
- Provide a certified as-built survey of the canal with reference to MLW elevation
- Remove all spoil material from the spoil management area and dispose of in a County-approved area
- Return spoil management area to original grade

Failure to complete the above activities by the time specified shall result in additional actions taken by the County, up to and including legal proceedings for breach of contract. Please contact Lydia Jackson or Matt Culver at (321) 633-2016 or by e-mail at Lydia.Jackson@brevardfl.gov or matt.culver@brevardfl.gov with any questions or if further clarification is required.

Sincerely,

Virginia Barker, Director
Natural Resources Management Department (NRM)

Copies:

Christine Valliere, Assistant County Attorney
Leslie Rothering, Brevard County Purchasing Manager
Dena VanLandingham, FDEP Grant Manager
Lance Lombard, Sr. Scientist, Amec Foster Wheeler Environment & Infrastructure, Inc.
Lydia Jackson, NRM Project Manager
Matt Culver, NRM Boating and Waterways Coordinator

To: Matt Culver, Brevard County
From: CCI Construction of Brevard Inc. CGC1514582
Date: 8/2/2017
Re: Liquidated Damages

To Mr. Dawson:

This letter is to respectfully request a waiver for the liquidated damages for the Indian River Isle dredging project. The reasons we ask you to consider waiving the liquidated damages are as follows:

1. In our original draw request, we requested a deposit of \$45,000
2. The excavator broke down forcing us to lease an excavator for an additional cost of \$20,000.
3. Waterway traffic on the weekends made it impossible for us to perform work during those days.
4. There was excessive Manatee presence, which is an environmental concern.
5. Excessive rain flooded us out, which is an environmental concern.
6. We needed to relocate our spoil dump site due to a zoning issue which pushed us into the rainy season. As you know, muck is transported at a higher rate if it is wet.

It was a \$90,000 project which was less than half the price of the next lowest bid due to the Brevard County budget. At that time we were able to accommodate the budget due to dump site and season with a minimum profit margin which was lost by the purchasing of additional equipment and the extra time necessary to complete the job. Please keep in mind there were no neighborhood complaints, no damage was done, the job was completed, and exceeded the expectations of the residents due to the depth acquired. Please understand that we are a small company and any liquidated damages would cause major financial hardship. Please consider waiving the liquidated damages.

Thank you for your consideration!

Sincerely,

Dan Crawford
President
CCI Construction

REPLACEMENT CONTRACT

INDIAN RIVER ISLES MUCK REMOVAL PROJECT

THIS AGREEMENT, made and entered into this 8th day of August, 2017, A.D., by and between the **Board of County Commissioners of Brevard County, Florida**, party of the first part (hereinafter sometimes called the "Owner"), and **CCI Construction of Brevard Inc.**, party of the second part (hereinafter sometimes called the "Contractor").

WHEREAS, the Parties previously entered into that certain Contract for services for the US1 Dredging – Indian River Isles Muck Removal Project (County Project), Bid Removal No. B-3-16-81, dated August 17, 2016 ("Original Contract"). A copy of the Original Contract is attached and incorporated herein; and

WHEREAS, the term of the Original Contract was extended to July 3, 2017; however, the Contactor did not complete all work before the term expired. Specifically, the Contractor failed to timely: complete muck removal from the canal, provide a certified as-built survey of the canal, remove all spoil material from the spoil management area and dispose of in an approved area, and return spoil management area to original grade; and

WHEREAS, pursuant to the Original Contract, liquidated damages began accruing on July 5th, 2017, at a rate of \$958.00 per day. The Contractor continued to work towards completion of the County Project and completed all outstanding tasks on August __, with the exception of restoration of the spoil management area; and

WHEREAS, the County recognizes that restoration of the spoil site area is premature considering the County Project is a portion of a larger muck dredging project sponsored by the Indian River Isles HOA (HOA Project), which is not yet complete; and

WHEREAS, funding for the County Project is provided through a reimbursement grant agreement with the Florida Department of Environmental Protection, which terminates prior to completion of the HOA Project. Restoration of the spoil management area is not a required task of the grant agreement; and

WHEREAS, the Parties desire to reinstate the Original Contract, with minor changes.

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

Section 1. The statements set forth above are true and correct in all respects and are incorporated herein by reference.

Section 2. The term of this Contract begins on July 4, 2017, and ends on August 15, 2017. The deadline for the Contractor to complete the County Project remains as July 3, 2017. The County hereby waives *all, none, or a portion* of the liquidated damages that accrued under the Original Contract.

Section 3. Subsection 48.1 of the Contract Documents, Section VII – General Conditions – Staging Area is amended as follows:

48.1 The Contractor shall make arrangements for and maintain at his own expense, any staging areas necessary for storage of materials, equipment and personnel. Contractors are advised that such areas may not be available within the limits of the construction area. Acquisition ~~and restoration~~ of such areas is ~~are~~ the Contractor's responsibility. A letter of permission is required from the property owner prior to mobilizing on the site, ~~and a letter of satisfaction will be required from the property owner prior to final payment.~~ The protection of stored materials shall be the Contractor's responsibility and the Owner shall not be liable for any loss of materials by theft or otherwise, nor for any damage to the stored materials. No payment shall be made for stored materials. All applicable, local and state regulations regarding hauling of materials and use of public streets shall apply. Contractors shall be responsible for obtaining and paying for any permits necessary for this portion of the project.

~~a) Restoration of any staging areas shall be the Contractor's responsibility and at the Contractor's expense. No separate payment shall be made for any restoration (including sod, landscaping etc.).~~

Section 4. Subsection 4.3 of Contract Documents Section VIII – Special Conditions – Operation and Maintenance is amended as follows:

4.3 Prior to commencement of work and within 2 weeks of Notice to Proceed, Contractor shall prepare and submit to the Owner and the Owner's Engineer for approval the Operation and Maintenance (O&M) Plan and will furnish all of the labor, materials, equipment, and incidentals necessary to implement the O&M plan specified herein during the life of the project. As a minimum the O&M plan shall include, but is not limited to, the following major components:

- a) Operation Plan
- b) Maintenance Plan (to include Maintenance of Traffic)
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- d) Inspection Plan
- e) A detailed layout plan of the site to be used as staging area within the parcel limits shown on the plans.
- f) A detailed layout plan of any dewatering or other equipment setup and ancillary facilities including any necessary pumping facilities and temporary storage areas for dredged material.
- g) Disposal plan with detailed information about trucking routes to be used for the transport and disposal of the material.
- h) A detailed plan of the area selected for office and parking activities.
- i) The Contractor shall submit details of equipment setup, including the installation of the excess water return system.
- ~~j) A Health & Safety Plan (HSP) that defines all training, operation, and monitoring activities necessary to meet all occupational labor requirements.~~

k) An Emergency Action Plan (EAP) for responding to the break or rupture of any project component. This plan shall also include details for cleanup and restoration of these areas afterwards.

l) A Weekly Operation and Monitoring Report. Contractor shall develop and submit for Owner's Engineer approval the format to be used for the monitoring report. ~~The report shall combine the previous week's daily reports which summarize dredging progress, approximate dredged volumes, and any required maintenance activities.~~ The Weekly Operation and Monitoring Report shall include copies of turbidity monitoring reports for dredge operations. Once dredging activities have begun the report will be due on the first working day of the following week.

m) Safety Data Sheets (SDS) for all chemicals to be used in the dredging or dewatering processes must be provided to, and authorized by, the Owner's Engineer prior to the commencement of work.

Section 5. All other terms and conditions of the Original Contract, which is incorporated herein by this reference, not inconsistent with the provisions of this Contract, shall remain in full force and effect.

REPLACEMENT CONTRACT**INDIAN RIVER ISLES MUCK REMOVAL PROJECT**

THIS AGREEMENT, made and entered into this 8th day of August, 2017, A.D., by and between the **Board of County Commissioners of Brevard County, Florida**, party of the first part (hereinafter sometimes called the "Owner"), and **CCI Construction of Brevard Inc.**, party of the second part (hereinafter sometimes called the "Contractor").

WHEREAS, the Parties previously entered into that certain Contract for services for the US1 Dredging – Indian River Isles Muck Removal Project (County Project), Bid Removal No. B-3-16-81, dated August 17, 2016 ("Original Contract"). A copy of the Original Contract is attached and incorporated herein; and

WHEREAS, the term of the Original Contract was extended to July 3, 2017; however, the Contractor did not complete all work before the term expired. Specifically, the Contractor failed to timely: complete muck removal from the canal, provide a certified as-built survey of the canal, remove all spoil material from the spoil management area and dispose of in an approved area, and return spoil management area to original grade; and

WHEREAS, pursuant to the Original Contract, liquidated damages began accruing on July 5th, 2017, at a rate of \$958.00 per day. The Contractor continues to work towards completion of the County Project but has not completed the Project as of August 8, 2017; and

WHEREAS, the County recognizes that restoration of the spoil site area is premature considering the County Project is a portion of a larger muck dredging project sponsored by the Indian River Isles HOA (HOA Project), which is not yet complete; and

WHEREAS, funding for the County Project is provided through a reimbursement grant agreement with the Florida Department of Environmental Protection (FDEP), which terminates prior to completion of the HOA Project. Restoration of the spoil management area is not a required task of the grant agreement; and

WHEREAS, the County Project engineer, Amec Foster Wheeler, Environment & Infrastructure, Inc., must certify to FDEP that the project is complete on or before August 15th, 2017, to comply with the FDEP grant agreement; and

WHEREAS, in order to meet the completion certification deadline, the parties agree the County will serve as a subcontractor to haul and dispose of the remaining spoil from the staging area; and

WHEREAS, the parties further agree that the Contract sum shall be reduced to reflect the County's cost to haul and dispose of the remaining soil at the County Landfill.

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

Section 1. The statements set forth above are true and correct in all respects and are incorporated herein by reference.

Section 2. The term of this Contract begins on July 4, 2017, and ends on August ~~15~~⁸, 2017. The deadline for the Contractor to complete the County Project remains as July 3, 2017. The County hereby *waives all (or a portion)* of the liquidated damages that accrued under the Original Contract. The Contractor agrees to vacate the spoil management area immediately and allow the County access to the site to complete removal of the remaining spoil.

Section 3. Section 2.2 of the Original Contract is amended as follows to reflect reduction of the contract sum to offset the County's cost to complete the County Project:

2.2 Based upon the price shown in the Proposal heretofore submitted to the Owner by the Contractor, a copy of said Proposal being a part of these Contract Documents, the aggregate amount of this Contract including dredging of material from zones I and II to an elevation of 4 feet below MLW - MINUS the cost to the County to complete removal of the spoil from the staging area and the disposal cost at the County Landfill in Cocoa, \$11,500.00 is the sum of:

~~Ninety thousand dollars and zero cents.~~
(\$90,000.00 - \$11,500.00 = \$78,500.00)

Section 4. Section 16. Indemnification is amended to add the following:

16.2 As a political subdivision of the State of Florida, the County's liability is regulated by Florida law. Except for negligent acts or omissions of its employees acting within the course and scope of their employment, the County shall not indemnify any entity or person and, then such indemnification is limited to the express terms of Section 768.28 Florida Statutes. The County is self-insured to the extent of its liability under law and any liability in excess of that specified in statute may be awarded only through special legislative action. Accordingly, the County's liability and indemnification obligations in this contract shall be effective only to the extent expressly required by 768.28 Florida Statutes or other limitations imposed on the County's potential liability under state or federal law.

Section 5. Subsection 48.1 of the Contract Documents, Section VII – General Conditions – Staging Area is amended as follows to remove restoration of the spoil management area from the scope of services:

48.1 The Contractor shall make arrangements for and maintain at his own expense, any staging areas necessary for storage of materials, equipment and personnel. Contractors

are advised that such areas may not be available within the limits of the construction area. Acquisition ~~and restoration~~ of such areas is ~~are~~ the Contractor's responsibility. A letter of permission is required from the property owner prior to mobilizing on the site, ~~and a letter of satisfaction will be required from the property owner prior to final payment.~~ The protection of stored materials shall be the Contractor's responsibility and the Owner shall not be liable for any loss of materials by theft or otherwise, nor for any damage to the stored materials. No payment shall be made for stored materials. All applicable, local and state regulations regarding hauling of materials and use of public streets shall apply. Contractors shall be responsible for obtaining and paying for any permits necessary for this portion of the project.

~~a) Restoration of any staging areas shall be the Contractor's responsibility and at the Contractor's expense. No separate payment shall be made for any restoration (including sod, landscaping etc.).~~

Section 6, Subsection 4.3 of Contract Documents Section VIII – Special Conditions – Operation and Maintenance is amended as follows:

4.3 Prior to commencement of work and within 2 weeks of Notice to Proceed, Contractor shall prepare and submit to the Owner and the Owner's Engineer for approval the Operation and Maintenance (O&M) Plan and will furnish all of the labor, materials, equipment, and incidentals necessary to implement the O&M plan specified herein during the life of the project. As a minimum the O&M plan shall include, but is not limited to, the following major components:

- a) Operation Plan
- b) Maintenance Plan (to include Maintenance of Traffic)
- c) Spoil Material Handling Plan
- d) Inspection Plan
- e) A detailed layout plan of the site to be used as staging area within the parcel limits shown on the plans.
- f) A detailed layout plan of any dewatering or other equipment setup and ancillary facilities including any necessary pumping facilities and temporary storage areas for dredged material.
- g) Disposal plan with detailed information about trucking routes to be used for the transport and disposal of the material.
- h) A detailed plan of the area selected for office and parking activities.
- i) The Contractor shall submit details of equipment setup, including the installation of the excess water return system.
- ~~j) A Health & Safety Plan (HSP) that defines all training, operation, and monitoring activities necessary to meet all occupational labor requirements.~~
- ~~k) An Emergency Action Plan (EAP) for responding to the break or rupture of any project component. This plan shall also include details for cleanup and restoration of these areas afterwards.~~
- l) A Weekly Operation and Monitoring Report. Contractor shall develop and submit for Owner's Engineer approval the format to be used for the monitoring report. ~~The report shall combine the~~

~~previous week's daily reports which summarize dredging progress, approximate dredged volumes, and any required maintenance activities.~~ The Weekly Operation and Monitoring Report shall include copies of turbidity monitoring reports for dredge operations. Once dredging activities have begun the report will be due on the first working day of the following week.

m) Safety Data Sheets (SDS) for all chemicals to be used in the dredging or dewatering processes must be provided to, and authorized by, the Owner's Engineer prior to the commencement of work.

Section 7. All other terms and conditions of the Original Contract, which is incorporated herein by this reference, not inconsistent with the provisions of this Contract, shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have duly executed this Contract.

Attest:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Curt Smith, Chairman
As approved by the Board on: 8-8-2017

Reviewed for legal form and content:

Christine Valliere, Assistant County Attorney

Witnessed in the presence of**

CONTRACTOR
CCI Construction of Brevard, Inc.

Print Name:

Print Name and Title:

Print Name:

(*) In the event that the Contractor is a Corporation, there shall be attached to each counterpart, a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.

(**) Two witnesses are required when Contractor is sole ownership or partnership.

CERTIFICATE

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that at a meeting of the Board of Directors of _____
_____, a corporation under the laws of the State of Florida, held on
_____, 2016, the following resolution was duly passed and adopted:

"RESOLVED, that _____, as _____ President of the corporation,
be is hereby authorized to execute the Contract dated _____, 2017, between
BREVARD COUNTY, FLORIDA, and this corporation, and that the execution thereof, attested
by the Secretary of the corporation and with corporate seal affixed, shall be the official act and
deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
corporation on this ___ day of _____, 2017.

Secretary of Corporation

CONTRACT

THIS AGREEMENT, made and entered into this 17th day of August, 2016, by and between the Board of County Commissioners of Brevard County, Florida, ("Owner"), and CCI Construction of Brevard, Inc. ("Contractor").

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1. SCOPE OF THE WORK

1.1 The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown on and described in the Specifications and Contract Documents entitled:

**US 1 DREDGING-INDIAN RIVER ISLES MUCK REMOVAL
BID NO. B-3-16-81**

as prepared by Amec Foster Wheeler Environment & Infrastructure, Inc., acting as, and in the Contract Documents entitled as the Owner's Engineer, and shall do everything required by these Contract Documents.

The project generally includes removal of organic material within the canal to a maximum elevation equal to four feet below Mean Low Water (MLW). Total material volume for Zones I and II (east-west canal) dredged to this elevation is approximately 2,000 cubic yards in-situ. It is the Contractor's responsibility to select the means and methods to perform the work in accordance with Brevard County's specifications and all permit conditions and complies with all applicable Federal, state, and local regulations. The Contractor is responsible for developing an Operation and Maintenance Plan (O&M) for review and approval by the Owner and the Owner's Engineer that includes the proposed dredging, dewatering and spoil handling and disposal methods. The proposed work qualifies for a permit exemption provided all conditions stipulated in the exemption are met. Conditions and Specifications relevant to this project are provided in detail as part of the Bid Documents.

2. THE CONTRACT SUM

2.1 The Owner shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents.

2.2 Based upon the price shown in the Proposal heretofore submitted to the Owner by the Contractor, a copy of said Proposal being a part of these Contract Documents, the aggregate amount of this Contract including dredging of material from zones I and II to an elevation of 4 feet below MLW is the sum of:

Ninety thousand dollars and zero cents.
(\$90,000.00)

3. COMMENCEMENT AND COMPLETION OF WORK

- 3.1 The Contractor shall commence work within 5 calendar days after issuance of Notice to Proceed.
- 3.2 The Contractor shall prosecute the work with faithfulness and diligence and shall cause substantial completion of the work not later than one hundred and fifty (150) calendar days after the issuance of Notice to Proceed and cause final completion of the work within 30 days after substantial completion.
- 3.3 Prior to commencing the work, the Contractor shall execute, deliver to the Owner, and record in the public records of Brevard County, required payment and performance bonds in substantially the same format provided in Section VI.

4. CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- 4.1 The Contractor hereby agrees that the project site has been carefully examined and that sufficient observations have been made such that Contractor is completely familiar with all site conditions and requirements as they relate to the work described in these Contract Documents, and assumes full responsibility therefore.
- 4.2 The provisions of this Contract shall control any inconsistent provisions contained in the specifications. All Drawings and Specifications have been read and carefully considered by the Contractor, who understands and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations, shall this Contract be more strongly construed against the Owner than against the Contractor and the Surety.
- 4.3 Any ambiguity or uncertainty in the Drawings or Specifications shall be interpreted and construed by the Owner's Engineer and the decision shall be final and binding upon all parties.
- 4.4 It is distinctly understood and agreed that the passing, approval and acceptance of any part of the work or material by the Owner, the Owner's Engineer, or by any agent or representative of the Owner or Owner's Engineer as in compliance with the terms of this Contract and of the Drawings and Specifications covering said work, shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, and/or the Drawings and Specifications covering said work; and the Owner may require the Contractor and the surety to repair, replace, restore and/or make the work comply strictly, and in all things, with this Contract

and the Drawings and Specifications. Any and all of said work and/or materials which within a period of one year from and after the date of the passing, approval, and/or acceptance of any such work or material, are found to be defective or to fail in any way to comply with this Contract or with the Drawings and Specifications, shall be reconstructed as directed by the Owner. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Contractor shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Contractor and the Surety to immediately repair or replace any such defective materials and workmanship shall entitle the Owner, in the Owner's sole discretion, to replace or repair the same and, after notice, recover the reasonable cost of such replacement and repair from the Contractor and the Surety, who shall in any event be jointly and severally liable to the Owner for all damage, loss and expense caused to the Owner by reason of the Contractor's breach of this Contract and the Contractor's failure to comply strictly and in all things with this Contract and with the Drawings and Specifications.

5. LIQUIDATED DAMAGES

- 5.1 It is mutually agreed that time is of the essence of this Contract and should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, and the Owner will retain the amount of liquidated damages stated in Section 8-10.2 of F.D.O.T. Standard Specifications for Road and Bridge Construction, per calendar day elapsing beyond the specified time for completion or any authorized extension thereof, which sum shall represent the actual damages which the Owner will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that said sum is not a penalty, but is the stipulated amount of damages sustained by the Owner in the event of such default by the Contractor.
- 5.2 For the purposes of this Article, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.

6. PARTIAL AND FINAL PAYMENTS

- 6.1 In accordance with the provisions fully set forth in the General Conditions (Section VII), and subject to additions and deductions as provided, the Owner shall pay the Contractor as follows:
- a) Within 30 days after receipt of the Contractor's request for partial payment by the Owner, accompanied by partial release of liens and waivers from all subcontractors and suppliers, for the previous payment, the Owner shall make partial payments to the Contractor, on the basis of the estimate of

work as approved by the Owner or the Owner's Engineer, for work performed during the preceding calendar month, less ten percent (10%) of the amount of such estimate which is to be retained by the Owner as retainage. Notwithstanding the foregoing, pursuant to section 255.05(11), Florida Statutes, when the Contractor has furnished and recorded a payment and performance bond and provided the Owner with a written consent from the Surety regarding the Project or payment in question, no such releases shall be required. The Surety may, in a writing served on the Owner, revoke its consent or direct that the Owner withhold a specified amount from a payment, which shall be effective upon receipt. After the Owner or Owner's Engineer determine that 50-percent of the construction has been completed pursuant to the Contract, the Contractor shall reduce the amount withheld from each subsequent progress payment to five (5) percent of the payment until all work has been performed, and accepted by the Owner or Owner's Engineer, strictly in accordance with this Agreement.

- b) Upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, and also, after all guarantees that may be required have been furnished and are found acceptable by the Owner, final payment on account of this Agreement shall be made within sixty (60) days after completion by the Contractor of all work covered by this Agreement and acceptance of such work by the Owner.

7. ADDITIONAL BOND

- 7.1 It is further mutually agreed between parties hereto that if, at any time after the execution of this Agreement and the Public Construction Performance Bond and the Public Construction Payment Bond hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at the Contractor's expense, and within three days after the receipt of Notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

8. CONTRACT DOCUMENTS

8.1 The Contract Documents, as that term is defined in the Instructions to Bidders and attached hereto, are as fully a part of this Contract as if herein repeated, whether or not those documents are actually attached to this Contract. The permit information and permit requirements are contained in Section X, Appendix 1. The Drawings are provided separately on 8.5 x 11 sheets.

9. AUDIT RIGHTS

9.1 In performance of the Contract, the Contractor shall keep books and records, and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Contractor in conjunction with the Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by the Contractor for a period of five (5) years after the termination of this Contract, unless such records are exempt from Section 24 (a) of Article I of the State Constitution and Section 119.07 (1) Florida Statutes. If any litigation, claim or audit is started before the five year period expires, and extends beyond the five year period, the records shall be retained until the litigation, claims or audit findings involving the records have been resolved.

9.2 No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by the Contractor in the United States or any other country.

10. ATTORNEY'S FEES

10.1 In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs, provided, this clause shall only apply to the Contractor and County, as parties to this agreement, and shall not be construed to prevent the Owner from covering its attorney's fees, expert witness fees or costs against a surety in accordance with the provisions of the performance bond or under any provision of state law requiring the surety to pay attorney's fees or costs.

11. GOVERNING LAWS

11.1 This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

12. COMPLIANCE WITH STATUTES

12.1 It shall be the Contractor's responsibility to be aware of and comply with all federal, state and local laws.

13. VENUE

13.1 Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County Florida, and any trial shall be non-jury.

14. CONFLICT OF INTEREST

14.1 The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency board or commission thereof, to provide services relating to this Contract without written consent from the County.

14.2 The Contractor shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements.

14.3 The Contractor shall not award a contract or subcontract under this Agreement to any company who the Owner has a financial or any other interest in, including but not limited to employing an employee of the Owner or any member of an employee's, agents, or officer's immediate family.

15. INFORMATION RELEASE/GRANTOR RECOGNITION

15.1 News releases, publicity releases, or advertisements relating to this Agreement or the tasks or projects associated with the project, shall be submitted in writing to the County and be approved in advance of any release or publication. Releases shall identify the funding entity as well as the funding source.

16. INDEMNIFICATION

16.1 The Contractor shall indemnify and hold harmless the County and its agents and employees from and against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, reasonable attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death; or damage to property, arising out of or incidental to the negligence, recklessness or intentional wrongful misconduct of the general contractor and any person or entity used by the general contractor, including without limitation its employees, agent, representatives, and subcontractors, in the performance of its work under this Agreement. In any and all claims against the County, or any of its agents or anyone directly or indirectly

employed by the Contractor, or anyone for whose acts any of them may be liable, indemnification obligation under this Paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. This indemnification shall survive the term of this Agreement. The parties acknowledge specific consideration has been exchanged for this provision.

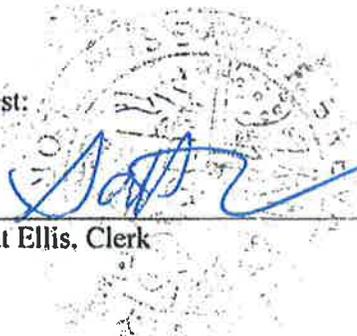
17. UNAUTHORIZED ALIEN WORKERS

17.1 The County will not intentionally award publicly funded contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) Section 274(e) of the Immigration and Nationality Act (INA). The County shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274(e) of the INA shall be grounds for unilateral cancellation of this Contract by the County.

18. WITNESS AND SIGNATURES

IN WITNESS WHEREOF the parties have set their hands and as of the date on which the last of the parties hereto executes this Agreement.

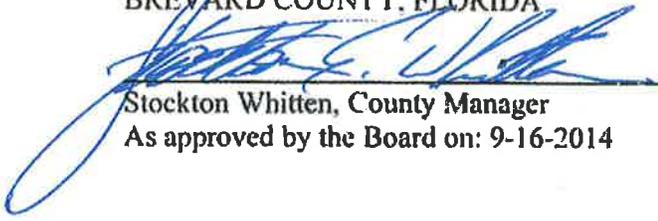
Attest:




Scott Ellis, Clerk

OWNER:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA



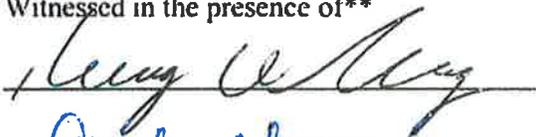
Stockton Whitten, County Manager
As approved by the Board on: 9-16-2014



Christine Lepore, Assistant County Attorney

(SEAL)

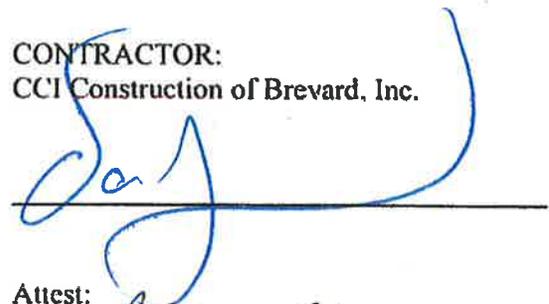
Witnessed in the presence of**





CONTRACTOR:

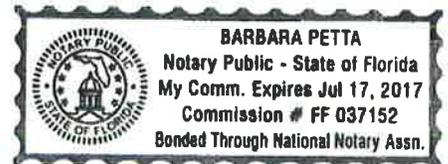
CCI Construction of Brevard, Inc.



Attest:


_____ (Seal)

(**) Two witnesses are required when Contractor is sole ownership or partnership.



CERTIFICATE

STATE OF FLORIDA

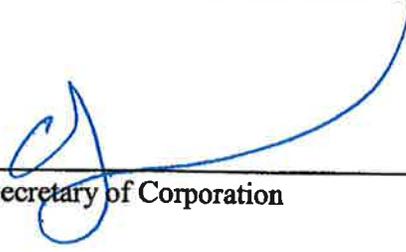
COUNTY OF BREVARD

I HEREBY CERTIFY that at a meeting of the Board of Directors of CCI CONSTRUCTION OF BREVARD INC., a corporation under the laws of the State of FLORIDA, held on 17TH DAY OF AUGUST, 2016, the following resolution was duly passed and adopted:

"RESOLVED, that DAN CRAWFORD, as ACTING President of the corporation, be is hereby authorized to execute the Contract dated 17TH DAY OF AUGUST.2016, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and this corporation, and that the execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation on this 17TH day of AUGUST, 2016.



Secretary of Corporation

