



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.7.

4/7/2020

Subject:

Permission for Board of County Commissioner Chair to Execute Contract Amendments to Existing Contracts to Add Clauses Required by the Federal Emergency Management Agency (FEMA)

Fiscal Impact:

None Anticipated

Dept/Office:

Central Services

Requested Action:

It is requested that the Board of County Commissioners authorize the Chair to sign contract amendments to existing contracts to add clauses required by the Federal Emergency Management Agency (FEMA) in order to qualify those contracts for reimbursement related to past hurricanes and current emergencies, upon review and approval by the County Attorney's Office, Risk Management and Purchasing Services.

Summary Explanation and Background:

In the process of applying for federal reimbursement of expenses incurred during hurricane Dorian and the current COVID-19 Emergency, the Florida Department of Emergency Management (FDEM) has informed Brevard County that the Federal Emergency Management Agency (FEMA) is closely scrutinizing contracts to ensure that they have certain required federal contract clauses.

At the time that the contracts were awarded/executed it was not anticipated that the contracts would be utilized during a hurricane or the current COVID-19 emergency and as such the federal clauses were not included in the awarded contract.

If the federal clauses are absent, the County's claim may be denied. FDEM has informed the County that it is permissible to amend the contracts that were or are being utilized in response to these emergencies to add the federal clauses while the contracts are being routed for payment to FEMA.

Additionally, if the contracts do not currently include certain Brevard County clauses, like E-Verify, those clauses are also being added to the contract amendment.

All new contracts being awarded are being drafted with the required federal clauses so as to ensure they are eligible for reimbursement if they are utilized in the response of a declared emergency.

Central Services is requesting that the Board authorize the Chair or designee to execute the contract

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amendments, upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services, to existing contracts through the end of fiscal year 2019/2020 (September 30, 2020) in order to expeditiously route these existing contracts for reimbursement.

Clerk to the Board Instructions:

None



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

April 8, 2020

M E M O R A N D U M

TO: Steven Darling, Central Services Director

RE: Item F.7, Permission for Board of County Commissioner Chair to Execute Contract Amendments to Existing Contracts to Add Clauses Required by the Federal Emergency Management Agency (FEMA)

The Board of County Commissioners, in regular session on April 7, 2020, authorized the Chair to sign contract amendments to existing contracts to add clauses required by the Federal Emergency Management Agency (FEMA) in order to qualify those contracts for reimbursement related to past hurricanes and current emergencies, upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Deputy Clerk

/cw

cc: Contracts Administration
Finance
Budget

FIRST AMENDMENT
CONTRACT FOR THE
EMERGENCY DUNE PROJECTS
UNIVERSITY OF CENTRAL FLORIDA CONTRACT #3625
MARINE TURTLE NEST MONITORING HURRICANE IRMA
NATURAL RESOURCES MANAGEMENT DEPARTMENT

THIS AMENDMENT entered into this 17 day of NOVEMBER, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES, on behalf of its' Board of Trustees (herein referred to as the "CONTRACTOR"), whose primary business address is Office of Research, 12201 Research Parkway, Suite 501, Orlando, FL, 32826.

WHEREAS, the COUNTY and CONTRACTOR previously entered into this certain Contract, effective March 1, 2017, to provide Marine Turtle Nest Monitoring and other associated tasks as directed and required by state and federal agencies, for the shoreline along the Atlantic Ocean in Brevard County south of Patrick AFB, and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Original Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of March 1, 2017.
2. All other terms and conditions of the Original Contract, which are incorporated herein by this reference, not inconsistent with the provisions of this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: Lber
Bryan Andrew Lober, Chair

As approved by the Board on April 7, 2020

Date Signed: November 17, 2020

ATTEST:
Scott Ellis
Scott Ellis, Clerk

Reviewed for legal form and content by:

Christine Valliere
Christine Valliere, Assistant County Attorney

CONTRACTOR:

UNIVERSITY OF CENTRAL FLORIDA, BOARD OF TRUSTEES

By: [Signature]

Date: 10/26/2020

Joe Kennedy Assistant Director
Name and Title - Typed or Printed

ATTACHMENT A

CONTRACT CLAUSES REQUIRED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.)

The following provisions are applicable except as otherwise stated.

1. EQUAL EMPLOYMENT OPPORTUNITY

[Applicable to "federally assisted construction contracts" to perform "construction work," as those terms are defined in 41 C.F.R. § 60-1.3.]

During the performance of this contract, the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

2. CHANGES

No modification to this contract shall be binding on the COUNTY or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of the COUNTY and CONTRACTOR.

3. OWNERSHIP

All records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of County, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract. However, CONTRACTOR may retain one copy for legal and archival purposes only.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at CONTRACTOR's expense, at termination or expiration of this contract. However, CONTRACTOR may retain one copy for legal and archival purposes only.

4. PAYMENT AND PERFORMANCE BOND

[This section applies to construction or facility improvement contracts or subcontracts in excess of \$150,000.]

CONTRACTOR shall provide a payment and performance bond (surety bond) in the amount of 100% of the contract price to insure the successful performance under the terms and conditions of this contract, in a form consistent with § 255.05, Florida Statutes and acceptable to the COUNTY. The payment and performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a payment and performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any payment and performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the payment and performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5. CONTRACT CONTROVERSIES

(a) Termination for Cause. This contract may be terminated by the COUNTY for cause in the event of any breach hereof, including, but not limited to, CONTRACTOR's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the regarding the Work; (9) failing to maintain a safe work site and to implement required safety practices; or (10) any other material breach of

this contract. In such event, the COUNTY shall provide CONTRACTOR with written notice of its intention to terminate this contract, stating the nature of the deficiency and the effective date of termination. At the County's sole judgment and discretion, the COUNTY may afford CONTRACTOR an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the COUNTY may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, CONTRACTOR shall not receive any further payment until the Work is completed by the County. CONTRACTOR shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to CONTRACTOR.

(b) Termination for Convenience. Notwithstanding any other provision hereof, the COUNTY may at any time terminate this contract or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become COUNTY property. Upon receipt of notice, CONTRACTOR shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. CONTRACTOR shall also make every reasonable effort to cancel, upon terms satisfactory to the County, all orders or subcontracts related to the terminated Work. CONTRACTOR may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

(c) Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The COUNTY may terminate this contract if CONTRACTOR fails or refuses to comply with a Stop Work Notice.

(d) Suspension for Convenience. The COUNTY may direct CONTRACTOR to stop Work, in whole or in part, whenever, in the County's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the County's objectives. The COUNTY shall provide CONTRACTOR not less than five (5) days written notice, except in emergency circumstances. CONTRACTOR shall immediately comply with such notice. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.

(e) CONTRACTOR's Right to Stop Work or Terminate Agreement.

(1) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(2) Termination. CONTRACTOR may terminate this Contract under only the following circumstances: (i) the Work is ordered discontinued by a court or other public authority, through no act or fault of CONTRACTOR, for a period of not less than three months; (ii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide not less than twenty (20) days written notice of its intention to terminate and afford the COUNTY the opportunity to cure said deficiency within said time period.

(3) Duty to Perform. Except as expressly provided above, in the event of any event, dispute, or other matter arising under this contract, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions, subject to the dispute resolution procedure.

(f) Dispute Resolution. During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the County's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

(g) Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the County Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection (f), above.

6. RIGHT TO AUDIT /ACCESS TO RECORDS

(a) The State Auditor General, State Division of Emergency Management (F.D.E.M.), United States Department of Homeland Security, Office of the Inspector General, F.E.M.A. and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose for five (5) years after final payment.

(b) The CONTRACTOR agrees to provide the COUNTY, F.D.E.M., the F.E.M.A. Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(c) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The CONTRACTOR agrees to provide the F.E.M.A. Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this contract.

7. CLEAN AIR ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by F.E.M.A.

8. ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9. CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the E.P.A. List of Violating Facilities.

10. FEDERAL WATER POLLUTION CONTROL ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY or local or and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, the COUNTY, and the appropriate Environmental Protection County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

11. ANTI-LOBBYING AND DEBARMENT ACT

The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

12. SUSPENSION AND DEBARMENT

[This section applies to: contracts or subcontracts values at \$25,000 or more; a contract that requires the approval of F.E.M.A.; or a contract for federally-required audit services.]

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered subcontracts.

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

[This section applies to contracts valued at \$100,000 or more.]

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(a) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15. DHS SEAL, LOGO AND FLAGS

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

16. COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply will all applicable federal law, regulations, executive orders, F.E.M.A. policies, procedures, and directives.

17. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

18. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS

The CONTRACTOR acknowledges that 31 U.S.C. Ch. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

19. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

[This section is applicable to construction contracts in excess of \$100,000 that use mechanics or laborers, as required by 40 U.S.C. §§ 3702, 3704 and 29 C.F.R. Part 5]

(a) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: University of Central Florida		2. Amount: N/A
3. Fund/Account #: 1442/293100	4. Department Name: Natural Res/Tourism	
5. Contract Description: Turtle Monitoring Contract - 4601		
6. Contract Monitor: Mike McGarry	8. Contract Type: INTERGOVT/STATE	
7. Dept/Office Director: Virginia Barker/Peter Cranis		
9. Type of Procurement: Exempt from Competition		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

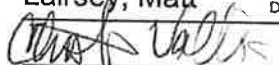
APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cranis, Peter	Digitally signed by Cranis, Peter Date: 2020.10.12 11:23:15 -04'00'
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven	Digitally signed by Darling, Steven Date: 2020.10.01 08:21:22 -04'00'
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt	Digitally signed by Lairsey, Matt Date: 2020.10.01 09:30:46 -04'00'
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	 11/1/20	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

FIRST AMENDMENT
CONTRACT FOR THE
EMERGENCY DUNE PROJECTS
UNIVERSITY OF CENTRAL FLORIDA CONTRACT #4601
MARINE TURTLE NEST MONITORING HURRICANES IRMA & DORIAN
NATURAL RESOURCES MANAGEMENT DEPARTMENT

THIS AMENDMENT entered into this 17 day of NOVEMBER, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES, on behalf of its' Board of Trustees (herein referred to as the "CONTRACTOR"), whose primary business address is Office of Research, 12201 Research Parkway, Suite 501, Orlando, FL, 32826.

WHEREAS, the COUNTY and CONTRACTOR previously entered into this certain Contract, effective March 1, 2018, to provide Marine Turtle Nest Monitoring and other associated tasks as directed and required by state and federal agencies, for the shoreline along the Atlantic Ocean in Brevard County south of Patrick AFB, and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency.


NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Original Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of March 1, 2018.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

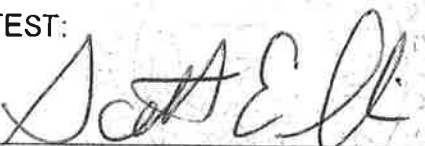
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 
Bryan Andrew Lober, Chair

As approved by the Board on April 7, 2020

Date Signed: NOVEMBER 17, 2020

ATTEST:


Scott Ellis, Clerk

Reviewed for legal form and content by:


Christine Valliere, Assistant County Attorney

CONTRACTOR:

UNIVERSITY OF CENTRAL FLORIDA, BOARD OF TRUSTEES

By: 

Date: 10/26/2020

JOEL KENNEDY, Assistant Director
Name and Title - Typed or Printed

ATTACHMENT A

CONTRACT CLAUSES REQUIRED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.)

The following provisions are applicable except as otherwise stated.

1. EQUAL EMPLOYMENT OPPORTUNITY

[Applicable to "federally assisted construction contracts" to perform "construction work," as those terms are defined in 41 C.F.R. § 60-1.3.]

During the performance of this contract, the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

2. CHANGES

No modification to this contract shall be binding on the COUNTY or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of the COUNTY and CONTRACTOR.

3. OWNERSHIP

All records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of County, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract. However, CONTRACTOR may retain one copy for legal and archival purposes only.

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4. PAYMENT AND PERFORMANCE BOND

[This section applies to construction or facility improvement contracts or subcontracts in excess of \$150,000.]

CONTRACTOR shall provide a payment and performance bond (surety bond) in the amount of 100% of the contract price to insure the successful performance under the terms and conditions of this contract, in a form consistent with § 255.05, Florida Statutes and acceptable to the COUNTY. The payment and performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a payment and performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any payment and performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the payment and performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5. CONTRACT CONTROVERSIES

(a) Termination for Cause. This contract may be terminated by the COUNTY for cause in the event of any breach hereof, including, but not limited to, CONTRACTOR's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the regarding the Work; (9) failing to maintain a safe work site and to implement required safety practices; or (10) any other material breach of

this contract. In such event, the COUNTY shall provide CONTRACTOR with written notice of its intention to terminate this contract, stating the nature of the deficiency and the effective date of termination. At the County's sole judgment and discretion, the COUNTY may afford CONTRACTOR an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the COUNTY may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, CONTRACTOR shall not receive any further payment until the Work is completed by the County. CONTRACTOR shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to CONTRACTOR.

(b) Termination for Convenience. Notwithstanding any other provision hereof, the COUNTY may at any time terminate this contract or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become COUNTY property. Upon receipt of notice, CONTRACTOR shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. CONTRACTOR shall also make every reasonable effort to cancel, upon terms satisfactory to the County, all orders or subcontracts related to the terminated Work. CONTRACTOR may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

(c) Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The COUNTY may terminate this contract if CONTRACTOR fails or refuses to comply with a Stop Work Notice.

(d) Suspension for Convenience. The COUNTY may direct CONTRACTOR to stop Work, in whole or in part, whenever, in the County's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the County's objectives. The COUNTY shall provide CONTRACTOR not less than five (5) days written notice, except in emergency circumstances. CONTRACTOR shall immediately comply with such notice. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.

(e) CONTRACTOR's Right to Stop Work or Terminate Agreement.

(1) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(2) Termination. CONTRACTOR may terminate this Contract under only the following circumstances: (i) the Work is ordered discontinued by a court or other public authority, through no act or fault of CONTRACTOR, for a period of not less than three months; (ii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide not less than twenty (20) days written notice of its intention to terminate and afford the COUNTY the opportunity to cure said deficiency within said time period.

(3) Duty to Perform. Except as expressly provided above, in the event of any event, dispute, or other matter arising under this contract, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions, subject to the dispute resolution procedure.

(f) Dispute Resolution. During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the County's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

(g) Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the County Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection (f), above.

6. RIGHT TO AUDIT /ACCESS TO RECORDS

(a) The State Auditor General, State Division of Emergency Management (F.D.E.M.), United States Department of Homeland Security, Office of the Inspector General, F.E.M.A. and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose for five (5) years after final payment.

(b) The CONTRACTOR agrees to provide the COUNTY, F.D.E.M., the F.E.M.A. Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(c) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The CONTRACTOR agrees to provide the F.E.M.A. Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this contract.

7. CLEAN AIR ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by F.E.M.A.

8. ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9. CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the E.P.A. List of Violating Facilities.

10. FEDERAL WATER POLLUTION CONTROL ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY or local or and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, the COUNTY, and the appropriate Environmental Protection County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

11. ANTI-LOBBYING AND DEBARMENT ACT

The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

12. SUSPENSION AND DEBARMENT

[This section applies to: contracts or subcontracts values at \$25,000 or more; a contract that requires the approval of F.E.M.A.; or a contract for federally-required audit services.]

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered subcontracts.

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

[This section applies to contracts valued at \$100,000 or more.]

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(a) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15. DHS SEAL, LOGO AND FLAGS

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

16. COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, F.E.M.A. policies, procedures, and directives.

17. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

18. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS

The CONTRACTOR acknowledges that 31 U.S.C. Ch. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

19. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

[This section is applicable to construction contracts in excess of \$100,000 that use mechanics or laborers, as required by 40 U.S.C. §§ 3702, 3704 and 29 C.F.R. Part 5]

(a) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

FIRST AMENDMENT
CONTRACT FOR THE
HURRICANE IRMA BEACH BERM PROJECT
BID #3-18-22
BREVARD – IRMA SEA OAT INSTALLATION 2018
NATURAL RESOURCES MANAGEMENT DEPARTMENT

THIS AMENDMENT entered into this 4th day of September, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and A+ ENVIRONMENTAL RESTORATION, LLC (herein referred to as the "CONTRACTOR"), whose primary business address is PO Box 3410, Arcadia, FL, 34265.

WHEREAS, the COUNTY and CONTRACTOR previously entered into that certain Contract, effective December 13, 2017, to furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation to plant sea oats on oceanfront constructed beach berms meeting all technical specifications and requirements established in the Bidding Documents, executed for emergency response to Hurricane Irma and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Original Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of December 13, 2017.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: Lloer
Bryan Andrew Lober, Chair

As approved by the Board on April ⁷/₂₀, 2020

Date Signed: 11/5/2020

ATTEST:

[Signature]
Scott Ellis, Clerk

Reviewed for legal form and content by:

[Signature]
Christine Valliere, Assistant County Attorney

CONTRACTOR:

A+ ENVIRONMENTAL RESTORATION, LLC

By: J. Deriso II

Date: 9-4-2020

JC Deriso II - President
Name and Title - Typed or Printed

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The following provisions are applicable except as otherwise stated.

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(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

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[This section applies to construction or facility improvement contracts or subcontracts in excess of \$150,000.]

CONTRACTOR shall provide a payment and performance bond (surety bond) in the amount of 100% of the contract price to insure the successful performance under the terms and conditions of this contract, in a form consistent with § 255.05, Florida Statutes and acceptable to the COUNTY. The payment and performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a payment and performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any payment and performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the payment and performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5. CONTRACT CONTROVERSIES

(a) Termination for Cause. This contract may be terminated by the COUNTY for cause in the event of any breach hereof, including, but not limited to, CONTRACTOR's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the regarding the Work; (9) failing to maintain a safe work site and to implement required safety practices; or (10) any other material breach of

this contract. In such event, the COUNTY shall provide CONTRACTOR with written notice of its intention to terminate this contract, stating the nature of the deficiency and the effective date of termination. At the County's sole judgment and discretion, the COUNTY may afford CONTRACTOR an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the COUNTY may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, CONTRACTOR shall not receive any further payment until the Work is completed by the County. CONTRACTOR shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to CONTRACTOR.

(b) Termination for Convenience. Notwithstanding any other provision hereof, the COUNTY may at any time terminate this contract or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become COUNTY property. Upon receipt of notice, CONTRACTOR shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. CONTRACTOR shall also make every reasonable effort to cancel, upon terms satisfactory to the County, all orders or subcontracts related to the terminated Work. CONTRACTOR may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

(c) Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The COUNTY may terminate this contract if CONTRACTOR fails or refuses to comply with a Stop Work Notice.

(d) Suspension for Convenience. The COUNTY may direct CONTRACTOR to stop Work, in whole or in part, whenever, in the County's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the County's objectives. The COUNTY shall provide CONTRACTOR not less than five (5) days written notice, except in emergency circumstances. CONTRACTOR shall immediately comply with such notice. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.

(e) CONTRACTOR's Right to Stop Work or Terminate Agreement.

(1) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(2) Termination. CONTRACTOR may terminate this Contract under only the following circumstances: (i) the Work is ordered discontinued by a court or other public authority, through no act or fault of CONTRACTOR, for a period of not less than three months; (ii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide not less than twenty (20) days written notice of its intention to terminate and afford the COUNTY the opportunity to cure said deficiency within said time period.

(3) Duty to Perform. Except as expressly provided above, in the event of any event, dispute, or other matter arising under this contract, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions, subject to the dispute resolution procedure.

(f) Dispute Resolution. During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the County's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

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6. RIGHT TO AUDIT /ACCESS TO RECORDS

(a) The State Auditor General, State Division of Emergency Management (F.D.E.M.), United States Department of Homeland Security, Office of the Inspector General, F.E.M.A. and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose for five (5) years after final payment.

(b) The CONTRACTOR agrees to provide the COUNTY, F.D.E.M., the F.E.M.A. Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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7. CLEAN AIR ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by F.E.M.A.

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The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

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[This section is applicable to contracts in excess of \$150,000.]

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(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

11. ANTI-LOBBYING AND DEBARMENT ACT

The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

12. SUSPENSION AND DEBARMENT

[This section applies to: contracts or subcontracts values at \$25,000 or more; a contract that requires the approval of F.E.M.A.; or a contract for federally-required audit services.]

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered subcontracts.

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

[This section applies to contracts valued at \$100,000 or more.]

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(a) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15. DHS SEAL, LOGO AND FLAGS

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

16. COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, F.E.M.A. policies, procedures, and directives.

17. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

18. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS

The CONTRACTOR acknowledges that 31 U.S.C. Ch. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

19. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

[This section is applicable to construction contracts in excess of \$100,000 that use mechanics or laborers, as required by 40 U.S.C. §§ 3702, 3704 and 29 C.F.R. Part 5]

(a) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

FIRST AMENDMENT
CONTRACT FOR THE
HURRICANE IRMA BEACH BERM PROJECT
BID #3-18-10
NATURAL RESOURCES MANAGEMENT DEPARTMENT

THIS AMENDMENT entered into this _____ day of _____, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and SOUTHERN DISASTER RECOVERY, LLC (herein referred to as the "CONTRACTOR"), whose primary business address 109 White Oak Road, Greenville, SC, 29609.

WHEREAS, the COUNTY and CONTRACTOR previously entered into that certain Contract, effective December 4, 2017, to furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation to perform all work or services specified in Attachments 1, 2, 3, 4, A, and B (Original Contract) and including Contract Change Orders 1 through 5, executed for emergency response to Hurricane's Irma and Dorian; and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Original Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of December 4, 2017.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: Lher
Bryan Andrew Lober, Chair

As approved by the Board on April 20, 2020

Date Signed: 11/5/2020

ATTEST:

Scott Ellis
Scott Ellis, Clerk

Reviewed for legal form and content by:

Christine Valliere
Christine Valliere, Assistant County Attorney

CONTRACTOR:

Southern Disaster Recovery, LLC

By: CCM

Date: 09/03/2020

Al McClean CEO/Member
Name and Title – Typed or Printed

ATTACHMENT A

CONTRACT CLAUSES REQUIRED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (F.E.M.A.)

The following provisions are applicable except as otherwise stated.

1. EQUAL EMPLOYMENT OPPORTUNITY

[Applicable to "federally assisted construction contracts" to perform "construction work," as those terms are defined in 41 C.F.R. § 60-1.3.]

During the performance of this contract, the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

2. CHANGES

No modification to this contract shall be binding on the COUNTY or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of the COUNTY and CONTRACTOR.

3. OWNERSHIP

All records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of County, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

4. PAYMENT AND PERFORMANCE BOND

[This section applies to construction or facility improvement contracts or subcontracts in excess of \$150,000.]

CONTRACTOR shall provide a payment and performance bond (surety bond) in the amount of 100% of the contract price to insure the successful performance under the terms and conditions of this contract, in a form consistent with § 255.05, Florida Statutes and acceptable to the COUNTY. The payment and performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a payment and performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any payment and performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the payment and performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5. CONTRACT CONTROVERSIES

(a) Termination for Cause. This contract may be terminated by the COUNTY for cause in the event of any breach hereof, including, but not limited to, CONTRACTOR's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the regarding the Work; (9) failing to maintain a safe work site and to implement required safety practices; or (10) any other material breach of

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The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

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12. SUSPENSION AND DEBARMENT

[This section applies to: contracts or subcontracts values at \$25,000 or more; a contract that requires the approval of F.E.M.A.; or a contract for federally-required audit services.]

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered subcontracts.

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

[This section applies to contracts valued at \$100,000 or more.]

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(a) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

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(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site:

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The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

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The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

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[This section is applicable to construction contracts in excess of \$100,000 that use mechanics or laborers, as required by 40 U.S.C. §§ 3702, 3704 and 29 C.F.R. Part 5]

(a) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**FIRST AMENDMENT
CONTINUING CONTRACT FOR COASTAL ENGINEERING SERVICES
OLSEN ASSOCIATES, INC.
NATURAL RESOURCES MANAGEMENT DEPARTMENT**

THIS AMENDMENT entered into this _____ day of _____, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and Olsen Associates, Inc. (herein referred to as the "CONTRACTOR"), whose primary business address is 2618 Herschel Street, Jacksonville, FL 32204-4512.

WHEREAS, the COUNTY and CONTRACTOR previously entered into this certain Contract, effective November 17, 2008, to provide Professional Coastal Engineering Services and other associated tasks for Brevard County and to meet all technical specifications and requirements for construction of FEMA oceanfront emergency dune sand placement projects in response to erosion caused by Hurricanes and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency during FEMA emergency response dune projects.


NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Original Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of September 15, 2015 for FEMA eligible emergency response projects.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 
Bryan Andrew Lober, Chair


As approved by the Board on April ~~20~~⁷, 2020

Date Signed: 11/5/2020

ATTEST:

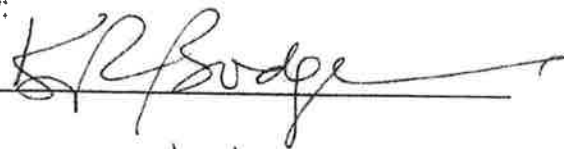

Scott Ellis, Clerk

Reviewed for legal form and content by:


Christine Valliere, Assistant County Attorney

CONTRACTOR:

OLSEN ASSOCIATES, INC.

By: 

Date: September 2, 2020

KEVIN R. BODGE, Ph.D., P.E. / PRESIDENT
Name and Title - Typed or Printed

ATTACHMENT A
**CONTRACT CLAUSES REQUIRED BY THE FEDERAL EMERGENCY
MANAGEMENT AGENCY (F.E.M.A.)**

The following provisions are applicable except as otherwise stated.

1. EQUAL EMPLOYMENT OPPORTUNITY

[Applicable to "federally assisted construction contracts" to perform "construction work," as those terms are defined in 41 C.F.R. § 60-1.3.]

During the performance of this contract, the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

2. CHANGES

No modification to this contract shall be binding on the COUNTY or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of the COUNTY and CONTRACTOR.

3. OWNERSHIP

All records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of County, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

4. PAYMENT AND PERFORMANCE BOND

[This section applies to construction or facility improvement contracts or subcontracts in excess of \$150,000.]

CONTRACTOR shall provide a payment and performance bond (surety bond) in the amount of 100% of the contract price to insure the successful performance under the terms and conditions of this contract, in a form consistent with § 255.05, Florida Statutes and acceptable to the COUNTY. The payment and performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Florida domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholder's surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Florida or owned by Florida residents and is licensed to write surety bonds.

No surety or insurance company shall write a payment and performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Florida domiciled insurance company with an A-rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

In addition, any payment and performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Florida.

The CONTRACTOR shall maintain the payment and performance bond for the full term of this contract. Failure to comply shall be grounds for termination of this contract.

5. CONTRACT CONTROVERSIES

(a) Termination for Cause. This contract may be terminated by the COUNTY for cause in the event of any breach hereof, including, but not limited to, CONTRACTOR's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the regarding the Work; (9) failing to maintain a safe work site and to implement required safety practices; or (10) any other material breach of

this contract. In such event, the COUNTY shall provide CONTRACTOR with written notice of its intention to terminate this contract, stating the nature of the deficiency and the effective date of termination. At the County's sole judgment and discretion, the COUNTY may afford CONTRACTOR an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the COUNTY may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, CONTRACTOR shall not receive any further payment until the Work is completed by the County. CONTRACTOR shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to CONTRACTOR.

(b) Termination for Convenience. Notwithstanding any other provision hereof, the COUNTY may at any time terminate this contract or any Work issued under it, in whole or in part, without cause, upon thirty (30) days written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become COUNTY property. Upon receipt of notice, CONTRACTOR shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. CONTRACTOR shall also make every reasonable effort to cancel, upon terms satisfactory to the County, all orders or subcontracts related to the terminated Work. CONTRACTOR may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.

(c) Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The COUNTY may terminate this contract if CONTRACTOR fails or refuses to comply with a Stop Work Notice.

(d) Suspension for Convenience. The COUNTY may direct CONTRACTOR to stop Work, in whole or in part, whenever, in the County's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the County's objectives. The COUNTY shall provide CONTRACTOR not less than five (5) days written notice, except in emergency circumstances. CONTRACTOR shall immediately comply with such notice. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.

(e) CONTRACTOR's Right to Stop Work or Terminate Agreement.

(1) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(2) Termination. CONTRACTOR may terminate this Contract under only the following circumstances: (i) the Work is ordered discontinued by a court or other public authority, through no act or fault of CONTRACTOR, for a period of not less than three months; (ii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the County Project Manager. In such event, CONTRACTOR shall provide not less than twenty (20) days written notice of its intention to terminate and afford the COUNTY the opportunity to cure said deficiency within said time period.

(3) Duty to Perform. Except as expressly provided above, in the event of any event, dispute, or other matter arising under this contract, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions, subject to the dispute resolution procedure.

(f) Dispute Resolution. During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the County's written instructions and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the County's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

(g) Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the County Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection (f), above.

6. RIGHT TO AUDIT /ACCESS TO RECORDS

(a) The State Auditor General, State Division of Emergency Management (F.D.E.M.), United States Department of Homeland Security, Office of the Inspector General, F.E.M.A. and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose for five (5) years after final payment.

(b) The CONTRACTOR agrees to provide the COUNTY, F.D.E.M., the F.E.M.A. Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(c) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) The CONTRACTOR agrees to provide the F.E.M.A. Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this contract.

7. CLEAN AIR ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or County Regional Office.

(c) The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by F.E.M.A.

8. ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9. CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the E.P.A. List of Violating Facilities.

10. FEDERAL WATER POLLUTION CONTROL ACT

[This section is applicable to contracts in excess of \$150,000.]

(a) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The CONTRACTOR agrees to report each violation to the COUNTY or local or and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to F.D.E.M., Federal Emergency Management Agency, the COUNTY, and the appropriate Environmental Protection County Regional Office.

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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Southern Disaster Recovery		2. Amount: N/A
3. Fund/Account #: 1442/293100	4. Department Name: Natural Res/Tourism	
5. Contract Description: Hurricane Response Beach Berm Project		
6. Contract Monitor: Mike McGarry	8. Contract Type: CONSTRUCTION	
7. Dept/Office Director: Virginia Barker/Peter Cranis		
9. Type of Procurement: Invitation to Bid (ITB)		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cranis, Peter <small>Digitally signed by Cranis, Peter Date: 2020.10.12 11:24:56 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven <small>Digitally signed by Darling, Steven Date: 2020.10.01 08:20:01 -04'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2020.10.01 09:28:42 -04'00'</small>
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete <input checked="" type="checkbox"/>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

ATTACHMENT A

FEMA REQUIRED CLAUSES

1. TERMINATION OF THIS CONTRACT FOR CAUSE

Either party may terminate this contract for cause based upon the failure of the other party to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the non-defaulting party shall give the defaulting party written notice specifying that party's default. If within thirty (30) days after receipt of such notice, the defaulting party shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the non-defaulting party may, at its option, place the defaulting party in default and the contract shall terminate on the date specified in such notice.

2. TERMINATION OF THIS CONTRACT FOR CONVENIENCE

Either party may terminate this Contract at any time by giving thirty (30) days written notice to the other party of such termination.

The CONTRACTOR shall be entitled to payment for completed work and deliverables in progress, to the extent work has been performed satisfactorily.

3. OWNERSHIP

If required by law, all records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of COUNTY, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

If required by law, all records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at COUNTY'S expense, at termination or expiration of this contract.

4. RESERVED

5. SUSPENSION OF CONTRACT

(1) COUNTY Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The CONTRACTOR shall be entitled to payment for completed work and deliverables in progress, to the extent work has been performed satisfactorily prior to the Stop Work Notice.

(5) Contractor's Right to Stop Work.

(a) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the COUNTY Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(6) Dispute Resolution.

(a) During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the COUNTY's written instructions (or applicable law) and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the COUNTY's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

(b) Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the COUNTY Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection (a), above.

6. RIGHT TO AUDIT

The State Auditor General, State Division of Emergency Management, US DHS-OIG, FEMA and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours upon prior reasonable notice for this purpose for (3) years after final payment.

7. CLEAN AIR ACT

The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The CONTRACTOR agrees to report each violation to the (COUNTY or local or Indian tribal government) and understands and agrees that the (COUNTY or local or Indian tribal government) will, in turn, report each violation as required to assure notification to FDEM, Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or COUNTY Regional Office.

The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8. ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9. CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water

Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

10. FEDERAL WATER POLLUTION CONTROL ACT

The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The CONTRACTOR agrees to report each violation to the (name of the state COUNTY or local or Indian tribal government) and understands and agrees that the (name of the state COUNTY or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, the COUNTY, and the appropriate Environmental Protection COUNTY Regional Office.

The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA."

11. ANTI-LOBBYING AND DEBARMENT ACT

The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

12. SUSPENSION AND DEBARMENT

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15. DHS SEAL, LOGO AND FLAGS

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

16. COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

FIRST AMENDMENT

CLASS III WASTE DISPOSAL SERVICES: SOUTH BREVARD
SOLID WASTE MANAGEMENT DEPARTMENT

THIS AMENDMENT (the "Amendment") entered into this 15th day of September 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, (herein referred to as the "COUNTY") and Waste Connections of Osceola County, LLC f/k/a OMNI Waste of Osceola, LLC (herein referred to as the "CONTRACTOR"), whose business address 1501 Omni Way, St. Cloud, Florida 34773.

WHEREAS, the COUNTY and CONTRACTOR previously entered into that certain Contract, effective September 15, 2015, for the disposal of Class III solid waste including vegetative debris, collected from the south Brevard County area during declared and undeclared emergencies including hurricanes, storms or other natural disasters (The "Contract"); and

WHEREAS, the parties desire to amend the Original Agreement to incorporate terms required by the Federal Emergency Management Agency.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereby agree as follows:

1. The Contract is hereby amended to include Attachment A, FEMA Required Clauses, retroactively effective as of September 15, 2015, except as to Section 3 of Attachment A which shall apply as of the date this Amendment is executed.

2. All other terms and conditions of the Contract, which are incorporated herein by this reference, not inconsistent with the provisions of this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by its duly authorized representatives, effective as of the date on which the last of the parties hereto executes this Contract.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Bryan Andrew Lober, Chair

As approved by the Board on September 15, 2020

Date signed: 9/11/2020

ATTEST:

By: 

Scott Ellis, Clerk

Reviewed for legal form and content by:

A handwritten signature in cursive script, appearing to read "Christine Valliere", written over a horizontal line.

Christine Valliere, Assistant County Attorney

CONTRACTOR:

Waste Connections of Osceola County, LLC.

A handwritten signature in cursive script, appearing to read "Damian Ribar", written over a horizontal line.

Damian Ribar, Division Vice President