



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Add-On

J.1.

3/21/2023

Subject:

Approval Re: Material Removal Agreement with Florida Inland Navigation District for Spoil Material - District 1

Fiscal Impact:

To be determined based on the amount of material removed from the site at a rate of \$0.20 per cubic yard. Each department will be responsible for paying this removal fee.

Dept/Office:

Public Works/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Material Removal Agreement with the Florida Inland Navigation District for removal of spoil material from DMMA BV-2C for use by the County. It is further requested the Board authorize the County Manager permission to execute future contract-related documents contingent upon review and approval by the County Attorney, Risk Management, and Purchasing Services.

Summary Explanation and Background:

The Material Removal Agreement with the Florida Inland Navigation District (FIND) enables the County to use spoil material, located DMMA BV-2C in North Brevard, which is ideal for roadway construction and maintenance. Subject to approval by FIND, other County departments, such as Parks and Recreation, may seek to use the FIND site for their projects, such as shoreline restoration and stabilization. The User Department from the County shall pay FIND an administrative removal fee in the amount of \$0.20 per cubic yard of material removed. The Agreement will terminate on January 31, 2028, unless extended by an amendment approved by both parties.

The Agreement has been reviewed and approved by the County Attorney and Risk Management.

Clerk to the Board Instructions:

Please return the Material Removal Agreement to the Public Works Department for further execution by FIND.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

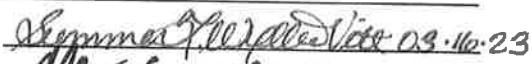
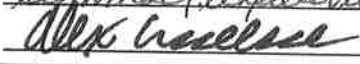
SECTION I - GENERAL INFORMATION

1. Contractor:		2. Amount:	
3. Fund/Account #:		4. Department Name:	
5. Contract Description: Material Removal Agreement with Florida Inland Navigation District BV-2C Site			
6. Contract Monitor: Jeanett Scott		8. Contract Type:	
7. Dept/Office Director: Marc Bernath		INTERGOVT/STATE	
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	☒	☐	
Purchasing	☐	☐	
Risk Management	☐	☐	
County Attorney	☐	☐	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	☒	☐	
Purchasing	☐	☐	
Risk Management	☒	☐	
County Attorney	☒	☐	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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



March 22, 2023

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

RE: Item J.1., Approval for Material Removal Agreement with Florida Inland Navigation District (FIND) for Spoil Material

The Board of County Commissioners, in regular session on March 21, 2023, approved and executed the Material Removal Agreement with the Florida Inland Navigation District (FIND) for removal of spoil material from DMMA BV-2C for use by the County; and authorized the County Manager to execute future contract-related documents contingent upon review and approval by the County Attorney, Risk Management, and Purchasing Services. Enclosed are two executed Agreements.

Upon execution by FIND, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

cc: County Manager
Contracts Administration
Finance
Budget

MATERIAL REMOVAL AGREEMENT

THIS MATERIAL REMOVAL AGREEMENT ("Agreement") dated as of this 22nd day of March, 2023 by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as "DISTRICT," and BREVARD COUNTY, FLORIDA a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

RECITALS

- A. DISTRICT is the owner of a parcel of land located in Brevard County, Florida and known as "Dredge Material Management Area BV-2C," as more particularly described in Exhibit "A" attached hereto and made a part hereof by reference ("DMMA BV-2C" or "Premises").
- B. COUNTY is a political subdivision of the State of Florida.
- C. COUNTY desires to obtain fill material from DMMA BV-2C for roadway construction and maintenance (the "Permitted Use"), more particularly described in Exhibit "B".
- D. COUNTY has requested the DISTRICT to allow the COUNTY to remove spoil material from the Premises for use in the Permitted Use.
- E. DISTRICT has determined that it will benefit the DISTRICT to allow the COUNTY to remove spoil material from the Premises, as this will help create additional capacity for future dredging events in connection with the maintenance and improvement of the Intracoastal Waterway.
- F. DISTRICT willingly allows the COUNTY to remove spoil material for use in the Permitted Use, upon the terms and conditions of this Agreement.

WITNESSETH

Therefore, in consideration of the terms below, the sufficiency of which is mutually acknowledged, DISTRICT and COUNTY agree that:

1. INCORPORATION OF RECITALS

The foregoing recitals are true, correct and incorporated herein by reference.

2. CONSENT TO REMOVAL OF SPOIL MATERIAL

- a) DISTRICT hereby consents to the removal of some or all of the spoil material from DMMA BV-2C exclusively for use in the Permitted Use. The Agreement shall terminate on January 31, 2028 unless extended by an amendment approved by both parties. Prior to the removal of any spoil material from the Premises, the COUNTY

shall submit a detailed spoil material removal plan ("Plan") to the DISTRICT for approval by the DISTRICT's Engineer. The Plan shall insure, among other things, that the integrity of the dikes, weirs, storm water management system, monitoring wells, fences, gates, roadways and other facilities are not compromised. The COUNTY and its contractors shall comply with the Plan at all times. The Plan shall include an estimated quantity of spoil material to be removed.

- b) COUNTY shall complete, or cause to be completed, the Project in an orderly and efficient manner. The COUNTY shall restore the Site and access roads to the Site to their pre-approved uses condition unless otherwise agreed to by the District. The COUNTY shall not excavate into the existing dikes and ramps nor lower than the basin's constructed bottom elevation as shown on Exhibit D. The COUNTY must ensure the perimeter ditch is not blocked with fill material, both during their operations and prior to demobilizing from the site. Once the dredged material removal is completed, the COUNTY shall re-grade the remaining interior basin so that drainage freely flows toward the weirs.
- c) Prior to the removal of any spoil material from DMMA BV-2C, the COUNTY shall submit a detailed spoil material removal plan ("Plan") to the DISTRICT for approval by the DISTRICT's Engineer. The Plan shall clearly indicate how the dredged material will be removed from the Site, the equipment utilized for removal, and shall contain a site plan showing all loading areas, haul routes, staging areas, and equipment storage areas. This Plan will describe the means and methods of offloading and how these relate to ongoing operation and the geotechnical stability of the Site; and the timeline for the commencement and completion of the removal of dredged material from the Site. The Plan shall insure, among other things, that the integrity of the dikes, weirs, stormwater management system, monitoring wells, access roads, fences, and gates, and all other facilities pertinent to the DISTRICT Site are not compromised.
- d) The COUNTY shall provide a signed and sealed pre- and post-construction topographic survey of the Site that depicts the conditions of the Site and provides a detailed comparison of pre-removal and post-removal topographic survey conditions. Survey will include access ramps, access roads, placement and elevation of internal and external berms, surface drainage, seepage drainage, and erosion control features, etc. This submittal will include AutoCAD files of the site plan with detailed 3-D terrain model to demonstrate the quantity of dredged material placed and subsequently removed from the site. In addition to the topographic surveys, the COUNTY shall provide documentation to detail the amount of material removed from the site. This documentation shall include, at a minimum, a written log that lists the total number of trucks and their respective capacities for the duration of the material offloading process.

- e) The COUNTY shall, through its agents and employees, secure the Site and prevent the unauthorized use of the DISTRICT's property or any use thereof not in conformance with this Agreement during any material removal operation.
- f) Any structures, improvements, or signs constructed by the COUNTY in accordance with a plan approved by the DISTRICT shall be removed by the COUNTY at the termination of this Agreement. No trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of the DISTRICT. Removable equipment and removable improvements placed on the Site by the COUNTY and shall be removed by the COUNTY upon termination of this Agreement.
- g) In consideration for the privilege herein granted, the COUNTY shall not claim any damages from the DISTRICT in connection with, or on account of, the COUNTY's performance under this Agreement; and, as between the parties, the COUNTY shall be solely responsible for any injuries or damages arising in or on the Site while being used by the COUNTY and its agents, representatives and employees. The COUNTY shall maintain a program of insurance covering its liabilities as prescribed by Section 768.28 Florida Statutes, and shall be responsible for the acts and omission of its officers, employees, representatives, and agents in the event that such acts or omissions result in injury to persons or damage to property. The DISTRICT does not warrant or represent that the Site is safe or suitable for the purposes for which the COUNTY is permitted to use it, and the COUNTY assumes all risks in its use.
- h) The COUNTY shall require any third-party contractors and subcontractors to provide insurance as specified in Section 9 of this Agreement.
- i) The COUNTY shall insure that the COUNTY's employees and any third-party contractors and subcontractors are familiar with and fully comply with the Dredged Material Removal Plan, including the requirement to avoid excavating into the berms and benches.
- j) The COUNTY acknowledges and agrees that the COUNTY's use of the Site during the term of this Agreement is not exclusive and that the DISTRICT reserves the right to use the Site for or allow the U.S. Army Corps of Engineers to use the Site for maintenance dredging of the Intracoastal Waterway, and that such reserved right is superior to COUNTY's rights hereunder.

3. PAYMENTS:

- a) COUNTY shall pay DISTRICT an administrative removal fee in the amount of \$0.20 per cubic yard of material removed. The COUNTY acknowledges that any removed

material shall only be utilized for the Permitted Use. Upon completion of the Permitted Use, the COUNTY shall deliver to the DISTRICT a certified tally sheet of the volume of spoil material removed from BV-2C in order to calculate this applicable fee.

- b) COUNTY shall make any and all payments due hereunder to DISTRICT at that address set forth as follows unless otherwise notified by DISTRICT in writing:

FLORIDA INLAND NAVIGATION DISTRICT
ATTN: EXECUTIVE DIRECTOR
1314 MARCINSKI ROAD
JUPITER, FL 33477-9427

- c) COUNTY shall pay all administrative removal fees without demand as required to be paid by COUNTY under this Agreement.

4. USE OF PREMISES/CONDUCT OF BUSINESS:

- a) COUNTY and its authorized contractor shall occupy and use the Premises solely for the removal of spoil material for use in the Permitted Use. COUNTY shall not use the Premises or construct other improvements thereupon except as specifically provided above without DISTRICT's prior written consent.
- b) COUNTY and its authorized contractor shall, at COUNTY's expense, comply with all laws, ordinances and regulations of the United States, State of Florida and the County of Brevard, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises, and shall not make any use of the Premises which shall unreasonably disturb DISTRICT's neighbors or otherwise become a nuisance.
- c) The DISTRICT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. DISTRICT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered

5. COUNTY'S FIXTURES AND ALTERATIONS:

- a) COUNTY agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to the Premises.
- b) In addition to the above, COUNTY shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with

any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at COUNTY's expense.

6. ASSIGNMENT:

- a) COUNTY shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Agreement or any interest of COUNTY herein, in whole or in part, nor permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of DISTRICT in each and every instance, which may be unreasonably and arbitrarily withheld. The consent of DISTRICT to any assignment shall not constitute a waiver of the necessity for such consent to any subsequent assignment. If this Agreement or any interest of COUNTY herein be assigned or if the whole or any part of the Premises be used or occupied by others after having obtained DISTRICT's prior written consent thereto, COUNTY shall nevertheless remain fully liable for the full performance of all obligations under this Agreement to be performed by COUNTY and COUNTY shall not be released therefrom in any manner.
- b) Should COUNTY, in violation of the provisions of this Paragraph, assign this Agreement, or allow the Premises to be used or occupied by others without obtaining DISTRICT's prior written consent, then such assignment or occupancy shall be null and void and of no force and effect. Such act on the part of COUNTY shall be deemed a default of COUNTY entitling DISTRICT to exercise any of the rights and remedies therefor as set forth in Paragraph 13 hereof.

7. LIENS

- a) Mechanics' or Materialmen's Liens: COUNTY shall not cause any liens of mechanics, laborers or materialmen to stand against the Premises for any labor or material furnished or claimed to have been furnished to COUNTY in connection with any work of any character performed or claimed to have been performed on the Premises, by or at the direction of COUNTY.
- b) If the Premises or any part thereof or COUNTY's interest therein becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter called a "lien"), other than a lien caused by the actions of the DISTRICT, COUNTY shall promptly notify DISTRICT of the filing or the threatened filing of any such lien, shall promptly cause the lien to be satisfied or transferred to other security.
- c) DISTRICT's Liability for COUNTY's Liens: It is hereby agreed by the parties hereto that DISTRICT will not be liable for any labor, services or materials furnished or to

be furnished to COUNTY or to anyone holding the Premises, or any part thereof, through or under COUNTY, and that no liens for any labor or material shall attach to or affect the interest of DISTRICT in and to the Premises. All contracts for construction or repair shall contain the above cautionary language and shall require all subcontractors, materialmen and laborers to be so advised. Failure of COUNTY to so notify and advise such contractor(s) in writing prior to the commencement of any work to be performed shall constitute a default hereunder and entitle DISTRICT to those rights and remedies set forth in Paragraph 17 hereof.

8. LIABILITY OF DISTRICT/WAIVER/INDEMNIFICATION:

- a) As a consideration for the making of this Agreement and in light of the fact that COUNTY has had the opportunity to make such inspections and tests as COUNTY, in COUNTY's judgment, has deemed necessary, COUNTY accepts the Premises in its "As-Is Condition" and DISTRICT shall not be liable for any condition, latent or patent, existing in, on or under the Premises, nor for injury or damage which may be sustained to person or property of COUNTY or any other person caused by or resulting from water, rain, groundwater, soil, sand, silt or any other material which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defect of the dikes, pipes, weirs, or other fixtures, from noise, vibration, smoke or odors emanating from the Premises, or from any other source or cause whatsoever, nor the interference with light or incorporeal hereditaments, specifically excluding from such indemnification such damage or injury which results from the gross negligence of DISTRICT, nor shall DISTRICT be liable for any defect in the Premises, latent or otherwise, except as provided by law.
- b) Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the COUNTY shall indemnify, defend and hold harmless the DISTRICT against any actions, claims or damages arising out of the COUNTY'S negligence in connection with this Agreement, and the DISTRICT shall indemnify, defend and hold harmless the County against any actions, claims, or damages arising out of the DISTRICT negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.
- c) COUNTY shall include in any construction contract for work upon or involving the Premises that the contractor shall indemnify and hold harmless the COUNTY and DISTRICT, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the

negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.

- d) COUNTY shall be responsible for the payment of any fines or administrative penalties assessed and any remedial or mitigation actions required due to or arising out of any violation or alleged violation by COUNTY or COUNTY's employees, agents or contractors of laws, ordinances and regulations of the United States, State of Florida, and the County of Brevard, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises.
- e) The provisions of this Section 8 shall survive the termination of this Agreement.

9. INSURANCE

- a) COUNTY will keep in force, with companies and in a form acceptable to DISTRICT, at COUNTY's expense, during the term of this Agreement and any extension or renewal thereof, during the term of the License, and during such other time as COUNTY occupies the Premises or any part thereof, commercial general liability insurance with respect to the Premises with a minimum Two Million Dollars (\$2,000,000.00) combined single limit coverage of bodily injury, property damage or combination thereof.
- b) COUNTY will further deposit a certificate (s) of insurance for all policies of insurance required by the provisions of this Paragraph 9 together with satisfactory evidence of the payment of the required premium or premiums therefor with DISTRICT at or prior to the commencement date and before first utilizing the Premises, and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. At DISTRICT's option, COUNTY shall deliver copies of insurance policies and all endorsements thereto, together with a certificate that such copies are true and complete.
- c) All policies of insurance required to be carried by COUNTY by Paragraph 9 (a) hereof shall provide that the policy shall not be subject to cancellation, termination or change except after thirty (30) days prior written notice to DISTRICT and shall name DISTRICT as an Additional Insured.
- d) All such policies required hereunder shall be obtained from companies licensed, organized and authorized to do business in the State of Florida.
- e) The COUNTY's insurance shall be primary insurance as respects the DISTRICT, its Commissioners, officers, employees and agents, and any insurance or self-insurance maintained by the DISTRICT, its Commissioners, officers, employees and agents shall be excess of the COUNTY's insurance and shall not contribute to it.

- f) The policies shall contain a waiver of subrogation against the DISTRICT, its Commissioners, officers, employees and agents for any claims arising out of the work of the COUNTY.
- g) The policy may provide coverage which contains deductible or self-insured retentions of not more than \$50,000.00 as to COUNTY and no deductible or self-insured retention as to any additional insured without prior approval of the DISTRICT. The COUNTY shall be solely responsible for deductible and/or self-insured retention.
- h) Liability insurance carriers must have a Best's "Financial Strength Rating" of at least "A-" and a "Financial Size Category" of a minimum of "VII" and must be admitted in the State of Florida.
- i) If used to satisfy the minimum coverage, Umbrella Liability or Excess Liability insurance must be maintained with coverage at least as broad as the underlying policies. This insurance shall be in addition to and in excess of any other insurance coverages required hereunder. The applicable policies of insurance shall indicate which policies the Umbrella Liability or Excess Liability includes as underlying and a deductible or self-insured retention of not more than \$50,000.00 as to COUNTY (unless approved in writing by the DISTRICT) and no deductible or self-insured retention as to any additional insured.
- j) COUNTY may substitute a general liability policy issued to COUNTY's contractor provided that such policy names both COUNTY and DISTRICT as "additional insureds" and otherwise meets the requirements of this Section 9.

10. REPAIRS AND MAINTENANCE OF PREMISES

- a) COUNTY shall at all times at its sole cost and expense keep and maintain the Premises in good order, condition and repair and shall not commit or suffer any waste on the Premises.
- b) COUNTY will repair promptly at its own expense any damage to the Premises caused by bringing into the Premises any property or equipment for COUNTY's use, or by the installation or removal of such property or equipment, regardless of fault or by whom such damage shall be caused.
- c) COUNTY, at COUNTY's sole cost, shall completely remove COUNTY's materials and equipment from the Premises and properly dispose or reuse the same not later than January 31, 2028.

- d) In the event COUNTY defaults in the performance of any of its obligations under this Paragraph 10, DISTRICT, in addition to DISTRICT's other remedies under this Agreement, at law or in equity, may, but shall not be obligated to, cure such default, following reasonable notice and opportunity for County to cure such default on behalf of COUNTY and COUNTY shall reimburse DISTRICT upon demand for any sums paid or costs incurred curing such default.
- e) The provisions of this Paragraph 10 shall survive the termination of this Agreement.

11. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- a) If COUNTY defaults in the payment of any sum of money due hereunder and such default shall continue for three (3) days after the date of notice from DISTRICT to COUNTY.
- b) If COUNTY defaults in fulfilling any of the other covenants of this Agreement on COUNTY's part to be performed hereunder and such default shall continue for the period of thirty (30) days after notice from DISTRICT to COUNTY specifying the nature of said default, or, if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said thirty (30) day period, if COUNTY shall not in good faith have commenced the curing or remedying of such default within such thirty (30) day period and shall not thereafter diligently proceed therewith to completion.

12. REMEDIES IN EVENT OF DEFAULT

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or DISTRICT.

13. Notices

Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

If to COUNTY: Brevard County

With copy to:

If to DISTRICT:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477
Attention: Executive Director

With a copy to: Peter L. Breton, Esq.
The Law Office of Peter L. Breton, PLLC
2427 Ashbury Circle
Cape Coral, FL 33991

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

14. MISCELLANEOUS

- a) COUNTY has inspected the Premises and is familiar with its present condition and takes said Premises in "As-Is" condition.
- b) The failure of DISTRICT or COUNTY to take any action against the other for

violation of any of the terms of the Agreement shall not prevent a subsequent act of a similar nature from being a violation of the Agreement.

- c) No act or agreement to accept surrender of the Premises from COUNTY shall be valid unless in writing signed by the parties hereto.
- d) This Agreement fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed or terminated unless in writing and signed by the parties hereto.
- e) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR COUNTY'S USE AND OCCUPANCY OF THE PREMISES.
- f) COUNTY hereby acknowledges COUNTY's responsibility to insure COUNTY's property maintained within or upon the said Premises at COUNTY's expense.
- g) COUNTY shall not change or install additional locks on any gates without DISTRICT's express written consent. In the event COUNTY changes or installs additional locks, COUNTY shall provide DISTRICT with duplicate keys therefor at COUNTY's expense.
- h) If any term or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall not be affected thereby, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- i) This Agreement shall not be recorded in the Office of the Clerk of any Circuit Court in the State of Florida, except that DISTRICT may file a memorandum of this Agreement.
- j) This Agreement shall be construed under the laws of the State of Florida.
- k) The Section headings of this Agreement are for convenience only and are not to be considered in construing the same.

- l) This Agreement may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- m) Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Agreement; (b) it has all necessary power and authority to enter into this Agreement and to perform the agreements contained in this Agreement; and (c) the person signing this Agreement on behalf of such party is authorized to execute and deliver this Agreement on behalf of such party.
- n) The parties participated in the drafting of this Agreement and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of: or against, any party in interpreting this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

APPROVED TO FORM AND
LEGAL SUFFICIENCY:

DocuSigned by:
Peter L. Breton
Peter L. Breton, Esq., General Counsel

DATED: 3/23/2023

AS TO LANDLORD:
FLORIDA INLAND NAVIGATION DISTRICT

DocuSigned by:
J. Carl Blow
J. Carl Blow, Chair

DATED: 3/22/2023

ATTEST:

CLERK

BY: Rachel Sadoff
Rachel Sadoff, Clerk of the Court

AS TO COUNTY:

Brevard County, a political subdivision of the
State of Florida

BY: Rita Pritchett

NAME: Rita Pritchett

TITLE: Chair

As approved by the Board on 3/21/2023

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: *Alex G. Reese*
ASSISTANT COUNTY ATTORNEY
Deputy

DATED: 3/16/23

APPROVED AS TO TERMS
AND CONDITIONS:

BY: _____

DATED: _____

EXHIBIT A

LEGAL DESCRIPTION OF DMMA BV-2C

A PORTION OF INDIAN RIVER PARK SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 107 OF THE PUBLIC RECORDS OF BREVARD COUNTY, LYING IN SECTION 16, TOWNSHIP 20 SOUTH, RANGE 35 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF WHEELER ROAD (A 40' RIGHT OF WAY) AND THE WASTERLY RIGHT OF WAY LINE OF DIXIE WAY (A 60' RIGHT OF WAY); THENCE NORTH 78 DEGREES 17 MINUTES 35 SECONDS EAST ALONG THE SOUTHERLY RIGHT OF WAT LINE OF SAID WHEELER ROAD, A DISTANCE OF 3845.43 FEET TO A POINT OF THE WESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY COMPANY (A 200' RIGHT OF WAY); THENCE SOUTH 13 DEGREES 42 MINUTES 53 SECONDS EAST ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID FLORIDA EAST COAST RAILWAY COMPANY, A DISTANCE OF 3238.59 FEET TO A POINT OF THE SOUTHERLY RIGHT OF WAY OF AURANTIA ROAD (A 60' RIGHT OF WAY); THENCE SOUTH 78 DEGREES 18 MINUTES 11 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID AURANTIA ROAD, A DISTANCE OF 312.70 FEET TO THE NORTHWEST CORNER OF BLOCK 33 OF SAID INDIAN RIVER PARK SUBDIVISION; THENCE SOUTH 13 DEGREES 27 MINUTES 03 SECONDS EAST ALONG THE WESTERLY LINE OF SAID BLOCK 33, A DISTANCE OF 610.01 FEET; THENCE SOUTH 76 DEGREES 18 MINUTES 11 SECONDS WEST, A DISTANCE OF 1900.00 FEET TO A POINT OF THE WESTERLY RIGHT OF WAY LINE 13 DEGREES 27 MINUTES 06 SECONDS WEST ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID 40 FOOT ROAD, A DISTANCE OF 670.01 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF INDIAN RIVER AVENUE (A 60' RIGHT OF WAY); THENCE SOUTH 70 DEGREES 18 MINUTES 11 SECONDS WEST ALONG THE NORTHERLY RIGHT OG WAY LINE OF SAID INDIAN RIVER AVENUE, A DISTANCE OF 1565.01 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID DIXIE WAY; THENCE NORTH 16 DEGREES 44 MINUTES 26 SECONDS WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID DIXIE WAY, A DISTANCE OF 3162.38 FEET TO THE POINT OF BEGINNING.

CONTAINING 311.39 ACRES MORE OR LESS.

SAID LANDS SITUATE, LYING, AND BEING IN BREVARD COUNTY, FLORIDA.

EXHIBT B
BREVARD COUNTY ROAD CONSTRUCTION PROJECT



Site	BV-2C
Common Name	Scottsmore
County/City	Brevard/Unincorporated
Geographic Proximity	South of Scottsmoor Flatwoods
Acquisition Dates	Not located
Status	Constructed; 129255-001
Year Constructed	~1999
Reach/Cuts	BV-1 / V-26 to BV-7
Site Acres	311
Basin Acres	169.19
Design Capacity (cy)	3,241,188

0 1,000 2,000 3,000
Feet

Orlando Titusville Melbourne
FLA. 192 1

Legend

- Site
- Easement (if shown)
- Reaches (if shown)
- Cuts (if shown)