



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Community Services Group

J.2.

7/21/2020

Subject:

Staff Direction, Re: Tourism Development Council's Recommendation to Place a 12-Month Hold On Indian River Lagoon Grant Program and Lori Wilson Park Project Until End of Fiscal Year 2020-2021.

Fiscal Impact:

\$6 million total reduction of expenditures from the Tourism Development Office Beach Improvement, Fund 1442 (\$1 million reduction for the Indian River Lagoon Grant Program and \$5 million reduction for Lori Wilson Park project).

Dept/Office:

Tourism Development Office

Requested Action:

It is requested that the Board of County Commissioners provide staff direction regarding the Tourist Development Council's (TDC) unanimous recommendation to place Indian River Lagoon Grant Program for future grants and the Lori Wilson Park project on hold for 12 months, with the exception of expenses needed for Park maintenance and repairs. This recommendation would remove funding both items from the Tourist Development Office's budget for the Fiscal Year 2020-2021 budget year. Both projects would be brought back to the TDC's Beach Committee and the TDC for review next year for the Fiscal Year 2021-2022 budget.

If the Board agrees with the recommendation of the TDC to suspend spending for Lori Wilson Park, except for repair and maintenance for the next Fiscal Year, it is requested the Board further grant permission to reject all 6 submissions received to RFQ 5-19-12, Redesign of Lori Wilson Park for the reasons cited below.

If the Board rejects the recommendation of the TDC to hold on spending for 12 months for the Lori Wilson Park project, except for repair and maintenance, it is requested the Board grant permission to re-advertise revised Request for Qualifications as listed below and specify the budget level for that project (up to \$5 million minus amount needed for repairs and maintenance):

- Reject all six submissions received in response to RFQ 5-19-12, Redesign of Lori Wilson Park
- Authorize Staff to Revise and Advertise a Request for Qualifications for a Redesign of Lori Wilson Park
- Appoint a Selection and Negotiation Committee Consisting of:
 - o Tourism Development Office Director, Peter Cranis, or Designee
 - o Central Services Director, Steven Darling, or Designee
 - o Facilities Manager, Tim Lawry, or Designee
- Authorize the County Manager, or Designee to Execute any and all resulting Contract(s) and Any Contract Related Documents upon review by the County Attorney's Office, Risk Management, and Purchasing Services
- Authorize the County Manager, or Designee to approve all necessary Budget Change Requests

Summary Explanation and Background:

The Tourist Development Council's Beach Committee reviewed three potential 50-year Beach Plans (attached) that are related to the agreement with the Army Corps of Engineers (attached). Two of the beach plans show that if we continue 389

with the current anticipated budget and do not adjust the Indian River Lagoon Grants for the future, and the Lori Wilson Park Project, the Beach Fund will be in the negative within the next several years and risk violating project cooperation agreements with the Army Corps of Engineers. This would result in loss of financial support for beach renourishment projects that could amount to multi millions of dollars. For example, in the last 20 years, the Army Corps has helped conduct beach renourishment projects in the total amount of \$218 million. The TDC only had to pay \$26 million of those construction costs. Having the agreement in place and a plan to make sure funds remain available to pay the Army Corps, when needed, are critical to ensure the County continues to receive the same level of support as in the past.

When the Indian River Lagoon Grant Program and Lori Wilson Park project, were included in the Beach Improvement Fund budget by the Board in 2018, it was during a time of unprecedented Tourist Development Tax collection growth. Both the grant program and park project funded as secondary priorities to beach renourishment projects. This was to account for potential reduction in expenditures to the Indian River Lagoon Grant Program and Lori Wilson Park project if a drop in TDT tax revenue were to occur. A drop in Tourist Development Tax Funds has occurred, with a projected decrease of \$5.6 million (33.7%) in Fiscal Year 2020-2021

Regarding the previously issued RFQ, in July of 2019 Purchasing Services issued a Request for Qualifications for qualified firms to complete a redesign of Lori Wilson Park. At the time the RFQ was issued there was an expectation of \$5M in funding for the project and the list of scope requirements was based upon that. The County received six responses to this RFQ. After RFQ submissions were received discussion was held with the City of Cocoa Beach about transferring the park to the City, which placed the awarding of the RFQ Services on hold. As discussions reconvened in 2020, they were again put on hold due to the COVID-19 pandemic.

There are several reasons that Purchasing Services is recommending the Board reject all proposals received and authorize a new advertisement (if the recommended hold on spending is rejected). Those reasons are:

- The new recommendation from the TDC that all spending for the Lori Wilson Park project be suspended for 12 months;
- The substantial amount of time that has passed since these responses were submitted (10 months);
- The potential for a significant adjustment of available funds and the timing in which those funds may be available (immediately or delayed);
- The timeline as outlined in the original RFQ was based on achieving substantial completion by September 2021 in preparation of an October 2021 Air Show (which may now be happening in April 2021); and
- The Scope of Work has changed and is no longer applicable and needs to be revised.

If approved, Purchasing Services will work with The Tourism Development Office to revise the Request for Qualifications and re-advertise in accordance with Policy.

Clerk to the Board Instructions:

Please send Board memo to Director, Tourism Development Office.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Rush Construction		2. Amount: 627,633.00
3. Fund/Account #:	4. Department Name: Public Works/Facilities	
5. Contract Description: Lori Wilson Park Beach Crossovers (3)		
6. Contract Monitor: Mary Bowers	8. Contract Type: CONSTRUCTION	
7. Dept/Office Director: Marc Bernath		
9. Type of Procurement: Request for Qualifications (RFQ)		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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Valliere, Christine

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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"/>

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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County Attorney

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Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.10.29 08:22:05 -04'00'

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"/>
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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"/>



July 22, 2020

M E M O R A N D U M

TO: Peter Cranis, Space Coast Office of Tourism Executive Director

RE: Item J.2., Tourism Development Council's (TDC) Recommendation to Place a 12-Month Hold on Indian River Lagoon Grant Program and Lori Wilson Park Project Until End of Fiscal Year 2020-2021

The Board of County Commissioners, in regular session on July 21, 2020, rejected all bids received to RFQ 05-19-12, Redesign of Lori Wilson Park; approved up to \$1.25 million from the Tourist Development Tax (TDT) to perform repairs at Lori Wilson Park and reduced that amount from the \$5 million that was allocated for the Lori Wilson Park Project; approved delaying the Indian River Lagoon Grant Program for future grants for six-months; and directed you to bring this back to the Board within six months.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Deputy Clerk

cc: Parks and Recreation Director
Finance
Budget

AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT made the 27th day of October in the year Two Thousand Twenty between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "Owner"), and **RUSH Construction, Inc.** (hereinafter referred to as "Construction Manager"), 6285 Riverfront Center Boulevard, Titusville, FL, 32780, a company licensed to do business in the State of Florida.

ARTICLE 1

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between him and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the best skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the Owner.

- 1.1 The Construction Team - The Construction Manager, the Owner and the Architect/Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The Architect/Engineer will provide leadership during the Design Phase, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

The specific representatives of the Construction Team are shown in **Attachment "A"** attached.

- 1.2 Scope of Work - A general description of the Work/Project to be built/constructed/installed under this Agreement (**Attachment "B"**).

- 1.3 Definitions:

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design review, permitting, construction (which includes all labor, equipment, material and supervision) and code inspection necessary to build/construct and complete the Scope of Work identified in Attachment "B" (Scope of Work).

Owner - Brevard County Board of County Commissioners, Central Services

Department - Facilities, 2725 Judge Fran Jamieson Way, Building A, 2nd Floor, Viera, Florida 32940, (321) 633-2050; facsimile (321) 633-2101. For the purposes of this agreement, the Owner may also include the County Manager or the Project Director with regard to the performance of designated functions and duties specified for each under the terms and provisions of this agreement.

Contract Documents - Consist of this Agreement with attachments, Scope of Work, the drawings, the specifications, the GMP, any Conditions of the Contract between the Owner and the Construction Manager (General, Special, Supplementary and other conditions), permit conditions, if any, grant specifications, any addenda to the foregoing listed documents and all change orders, amendments or modifications as provided in Article 10, whether or not any of the foregoing listed documents have been attached hereto.

Permitting Authority - All applicable Federal, State, County and local agencies responsible for permitting and code inspections on projects administered by the Owner.

Construction Manager – RUSH Construction, Inc.

Architect/Engineer – Construction Engineering Group, Inc.

Project Director - The person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. Tim Lawry is the designated Project Director, and Mike McGrew is the designated Construction Coordinator.

Owner's Representatives - The Project Director and his/her supervisors and/or designees.

Estimate - The Construction Manager's latest estimate of probable Project construction cost.

Guaranteed Maximum Price (GMP) - The Guaranteed Maximum Price for the construction of the project, which shall be subject to adjustments only as provided herein. GMP includes Cost of the Work and Construction Manager's fee for Construction Phase services. The Guaranteed Maximum Price does include the cost for Owner direct purchases, however, all Owner direct purchases will be deducted in one deductive change order in accordance with **Attachment "C"** (Direct Purchasing Procedure) at the end of the project.

Substantial Completion - the point in the construction where all essential elements of the Project are sufficiently complete in conformance with the Contract, that the OWNER has both the occupancy of the Project, as evidenced by a Certificate of Occupancy issued by the governmental authority with jurisdiction and the beneficial use of the Project for its intended purpose where

only minor punch list items are required for final completion. Substantial Completion shall not be deemed to have occurred where 1) latent defects are revealed subsequent to use and occupation of the project by the OWNER or 2) where the scope of substantial defects in workmanship or materials are not readily observable or discoverable when use and occupancy of the project commenced or 3) the failure to meet grant specifications, if any.

- 1.4 Extent of Agreement - This Agreement for Construction Management between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The drawings, specifications and other descriptive documents defining the work to be included under this construction contract are identified in **Attachment "D"**. The Construction Manager shall obtain from the Owner three (3) sets of signed, sealed and dated drawings, specifications and other documents upon which the GMP is based; shall acknowledge on the face of each document of each set that it is the set upon which he based his GMP; and shall send one (1) set of the documents to the Project Director along with his GMP proposal, while keeping one (1) set for himself and returning one (1) set to the Architect/Engineer.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager shall perform all services described in this Article. The services to be provided under Paragraph 2.1 constitute the Pre-Construction Phase services. The services to be provided under Paragraph 2.2 thru 2.9 constitute the Construction Phase services. The parties acknowledge the Construction Phase shall commence before the Pre-Construction Phase is completed, and to a certain extent both phases shall proceed concurrently.

2.1 PRE-CONSTRUCTION PHASE

- 2.1.1 Preliminary Evaluation - Construction Manager shall provide a preliminary evaluation of Owner's program and Project budget requirements, each in terms of the other.

- 2.1.2 Consultation - Construction Manager will provide Design Disciplines Construction Documents Plans and Specifications review at all design milestones and a final constructability review. The review at each milestone will identify areas of omission, overlapping and identify documents to be modified in order to clarify the construction details. The review will also include the coordination and interface of the contract document's General Conditions, Special Conditions,

trade contractor bid packages and site utilization planning during construction. Reviews shall be completed and comments provided within five (5) business days. As part of the design review, Construction Manager will provide Value Engineering and construction alternatives, identifying to the Owner and Architect options for systems and components that are cost effective, ease of maintainability and efficiency to be considered.

Construction Manager, with Architect, has scheduled and attended, and will continue to jointly schedule and attend, **weekly** progress meetings (*or as determined by the Project Director or Project Manager*) with Owner and Architect. Construction Manager has and will continue to consult with Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. Construction Manager has provided and will continue to provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

The Construction Manager is required to be registered with and utilize the U.S. Department of Homeland Security's E-Verify System, in accordance with the terms governing use of the system, to confirm the employment eligibility of any employee hired during the term of the Agreement. The Construction Manager shall also expressly require any contractor or subcontractor performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the Agreement term.

- 2.1.3 Preliminary Project Schedule - Construction Manager has prepared a Preliminary Construction Schedule, a copy of which is attached as **Attachment "E"**. Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of Owner, Architect and Construction Manager. The Construction Manager shall provide current scheduling information and provide direction and coordination regarding milestones, beginning and finishing dates, responsibilities for performance and the relationships of the Construction Manager's work to the work of his subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Total Project Schedule. The schedule shall include all phases of construction work, material supplies, long lead procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance of testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect/Engineer of their required participation in any meeting or inspection giving each at least one (1) week notice unless such notice is made impossible by conditions beyond the Construction

Manager's control. The Construction Manager shall hold jobsite meetings at least once each week with the Construction Team and at least once each week with the subcontractors and the Architect/Engineer field representatives, and Owner or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors.

- 2.1.4 Subcontractors and Suppliers - Construction Manager shall continue to develop subcontractor interest in the Project and shall furnish to Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Project. Owner will promptly reply in writing to Construction Manager if Owner has an objection to any such subcontractor or supplier. The receipt of such list shall not require Owner to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the rights of Owner to later object to or reject any proposed subcontractor or supplier.
- 2.1.5 Long Lead and Owner Direct Procurement - The Construction Manager shall review the design for the purpose of identifying long lead and Owner direct procurement items (machinery, equipment, materials and supplies). When each item is identified the Construction Manager shall notify the subcontractors, the Project Director, and the Owner of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected subcontracts. As soon as the Architect/Engineer has completed drawings and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall prepare Invitation for Bids. The Construction Manager shall keep informed of the progress of the respective subcontractors and/or suppliers, manufacturing or fabricating such items and notify the Project Director, Owner and Architect/Engineer of any problems or prospective delay in delivery.
- 2.1.6 Extent of Responsibility - The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of Owner and Owner's professional consultants. It is not Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, Construction Manager shall promptly notify Owner and Architect in writing.
- 2.1.7 Equal Employment Opportunity and Affirmative Action - Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.
- 2.1.8 Separate Contracts Planning - The Construction Manager shall review the design

with the Architect/Engineer and make recommendations to the Owner and to the Architect/Engineer with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing, effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.

2.2 CONSTRUCTION PHASE

2.2.1 Interfacing -

- (1) The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate subcontractors.
- (b) Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all Subcontractors for the Owner, and all of its agents and representatives, including the Architect/Engineer. The Construction Manager shall negotiate all change orders, field orders and request for proposals, with all affected Subcontractors and shall review the costs of those proposals and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work is begun on any change order, an executed Authorization to Initiate Work form from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of the Construction Manager by the Subcontractors and shall maintain a suspense control system to promote

timely response. The Construction Manager shall advise the Project Director and Architect/Engineer when timely response is not occurring on any of the above.

2.2.2 Solicitation of Bids

- (1) Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare Invitations for Bids (or Request For Proposals, when applicable) for all procurements of long lead times, materials and services for Subcontractor contracts and for site utilities.
- (2) As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect/Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Project Director and Architect/Engineer in written form.
- (3) For each separate subcontractor or construction trade contract used in this project, the Construction Manager shall, unless waived by the Owner, conduct a pre-bid conference with prospective bidders, the Architect/Engineer and Project Director. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Architect/Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- (4) In accordance with Article 2.4.2 the Construction Manager shall open and review all bids and enter into contract(s) with those low bidders determined to be most qualified by the Construction Manager. The Construction Manager shall make every effort to follow the County's Pre-Qualification Ordinance 98-37 (**Attachment "F"**) for applicable subcontract trades.

2.2.3 Bonds - For those projects where the cost will exceed \$100,000.00, in accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall provide to the Owner, on forms furnished by the Owner (**Attachment "G" and "H"**), certified copies of the recorded 100% Public Construction Performance Bond and 100% Public Construction Payment Bond each in an amount not less than the total construction cost (GMP) as defined in Article 9 and inclusive of the construction fee. *Payment and Performance Bonds shall be recorded (by the Construction Manager) in the official record of the County in which the project is located.* The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under

the bonds.

2.2.4 Quality Control - The Construction Manager shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction (*this may include personnel if approved by the Owner*). The Construction Manager shall have a qualified and competent Superintendent to supervise the work of all Subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and shall continue to exert influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect/Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

2.3 Guaranteed Maximum Price (GMP) and Contract Time



2.3.1 Construction Manager acknowledges and agrees the Drawings and Specifications are sufficiently complete for Construction Manager to propose a Guaranteed Maximum Price (GMP), which is the total not to exceed sum of the Construction Manager's Fee and the Cost of the Project. Accordingly, the Guaranteed Maximum Price (GMP) is hereby established at **\$627,633.00**. *The final approved GMP spread sheet is hereby attached as Attachment "I" to and shall become a part of this Agreement between Owner and Construction Manager.*

2.3.2 The Cost of the Work shall include Construction Manager's contingency, a sum agreed to by all parties for the Manager's use to cover costs arising from unforeseen conditions in the project. Construction Manager's contingency is hereby established as a separate line item of **\$12,000 (\$4,000 per Crossover)** within the Guaranteed Maximum Price.

2.3.3 Basis of Guaranteed Maximum Price (GMP)

The Guaranteed Maximum Price, herein established is based upon the following:

- .1 The list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract, which are identified in the Attachments to this Agreement.
- .2 The list of clarifications and assumptions made by Construction Manager in the preparation of its Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .3 The Preliminary Construction Schedule (**Attachment "E"**).

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- 2.3.4 Included within the Guaranteed Maximum Price is the Construction Manager's fee. The Construction Manager's Fee is hereby established as **\$69,976.00** for services provided in this Agreement. The sum of the Cost of the Project and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price. The Construction Manager's Fee shall constitute Construction Manager's total compensation for profit. All costs in excess of the final approved GMP (as reduced by Owner direct purchases, if any, in accordance with **Attachment "C"**) are the responsibility of the Construction Manager. Any savings between the GMP (as reduced by Owner direct purchases) and the sum of the actual cost of the Project plus the Construction Manager's fee will be returned to the Owner.
- 2.3.5 Prior to issuance of the Construction Phase Notice to Proceed, Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Project, except as Owner may specifically authorize in writing.
- 2.3.6 The Guaranteed Maximum Price and date of Substantial Completion shall be subject to additions and deductions by a Change Order as provided in the Contract Documents.
- 2.3.7 The Guaranteed Maximum Price shall include in the Cost of the Project only those taxes which are enacted and in effect at the time the GMP was determined.

2.4 Construction Phase

2.4.1 General

- 2.4.1.1 The Construction Phase shall commence on the date identified in the Notice to Proceed to be issued by the Owner.
- 2.4.1.2 The Construction Manager shall cause all Work required by the Contract Documents to be properly completed in accordance with the terms of the Contract Documents and within the Contract Time.
- 2.4.1.3 Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full-time staff at the Project site authorized to act on behalf of the Construction Manager and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Construction Manager shall provide no less than those personnel during the respective phases of construction. The Construction Manager shall not change any of those designated persons unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be reasonably withheld.
- 2.4.1.3.1 The Construction Manager shall employ a competent superintendent and

necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager.

2.4.1.3.2 The superintendent shall be in attendance at the Project site not less than eight (8) hours per day, five (5) days per week, and any time work is being performed at the jobsite, unless the job is closed down due to a general strike or conditions beyond the control of the Construction Manager or until completion or termination of the Contract. It is understood that such superintendent shall be acceptable to the Owner and the Architect and shall be the one who will be continued in that capacity for the duration of the project, unless the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Construction Manager or any other entity during the course of the work.

2.4.1.4 Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this description/definition to the Owner and all other affected parties such as the code inspectors of the permitting authorities, the subcontractors, the Architect/Engineer and the Owner's representatives, to provide general direction of the work and progress of the various phases and subcontractors. The Owner and the Architect/Engineer may attend meetings between the Construction Manager and subcontractors, however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractor.

2.4.2 Administration

2.4.2.1 Those portions of the Project that Construction Manager does not customarily perform with Construction Manager's own personnel shall be performed under subcontracts or by other appropriate written agreements with Construction Manager. Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated to a special design for the Project from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect for review and comment. Based upon that review and comment, Construction Manager shall then determine, subject to the reasonable objection of Architect or Owner, which bids will be accepted. Construction Manager shall not be required to contract with anyone to whom Construction Manager has reasonable objection. Notwithstanding anything herein to the contrary, Construction Manager covenants and agrees that it shall competitively bid all subcontracts. Further, with respect to all such subcontracts, Construction Manager covenants and agrees that it shall select and contract with the lowest, responsive and qualified bidder, unless otherwise consented to in writing by Owner.

- 2.4.2.2 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform with payment provisions and shall not be awarded on the basis of cost plus a fee without prior written consent of Owner.
- 2.4.2.3 Construction Manager shall schedule and conduct weekly meetings at which Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Project. Construction Manager shall prepare and promptly distribute meeting minutes within two (2) business days after any such meeting is held.
- 2.4.2.4 Promptly after Owner's issuance of the Notice to Proceed, Construction Manager shall prepare a more detailed Project Schedule, based upon the preliminary Project Construction Schedule attached as **Attachment "E"**, including Owner's occupancy requirements. Construction Manager will submit monthly updates to the Schedule until the project is completed.
- 2.4.2.5 Construction Manager shall provide Monthly Written Reports to Owner on the progress of the entire Work. Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may require. The log shall be available to Owner at all times.
- 2.5 Professional Services - Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project, or unless Construction Manager has specifically agreed in writing to provide such services. In such event, Construction Manager shall cause such services to be performed by appropriately licensed professionals.
- 2.6 Unsafe Materials - If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing. Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Florida Statute 255.40, the Owner will require that the Contractor certify (at project completion) that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

(Florida Statute 255.40 Use of asbestos in new public buildings or

buildings newly constructed for lease to governmental agencies; prohibition - The use of asbestos or asbestos-based fiber materials is prohibited in any building, construction of which is commenced after September 30, 1983, which is financed with public funds or is constructed for the express purpose of being leased to any governmental entity.)

- 2.7 Weather Protection - The Construction Manager will be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Construction Manager.

2.8 Job Site Requirements

- (1) The Construction Manager shall provide for each of the following activities as a part of the Construction Manager's Construction Phase services:
- a. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc. and require the same of subcontractors
 - b. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
 - c. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 - d. Provide labor relations management for a harmonious, productive Project.
 - e. Provide a safety program for the Project to meet OSHA requirements. Monitor for Subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 - f. Provide a quality control program.
 - g. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.

- 2.9 Job Site Administration - The Construction Manager shall provide as part of the Construction Manager's Construction Phase services, administrative functions during construction, including but not limited to, the following:

- (1) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor

allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow-up on any problems, delay items or questions and document and implement the course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- (2) Shop Drawing Submittals/Approvals - Check Shop Drawings and implement procedures for submittal and transmittal to the Architect/Engineer of such drawings for action, and closely monitor their submittal and approval process. Provide copy of all correspondence to Owner. Construction Manager will provide one (1) approved Submittal or Shop Drawing to Owner.
- (3) Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.
- (4) Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.
- (5) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect/Engineer to the Architect/Engineer.
- (6) Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the Owner and the Architect/Engineer including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Architect/Engineer and the Permitting Authority inspectors.
- (7) Substantial Completion - The Construction Manager shall secure the Certificate of Occupancy and notify the Owner and Architect/Engineer, in writing, that the Project will be ready for inspection to determine if it is substantially complete and ready for inspection on or after a specific date, which date shall be stated in the notice. The notice shall be given at least seven (7) calendar days in advance of said date. Inspection and testing shall take place at time(s) mutually agreeable to the Construction Manager, Architect/Engineer and Owner. The inspection will be conducted

jointly between the Architect/Engineer, Owner and Construction Manager's representative. The inspection shall determine if substantial completion has been accomplished and the Architect/Engineer shall produce a Certificate of Substantial Completion (**Attachment "J"**) and a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

At the Owner's option a specific area or segment of the project may be inspected and/or determined substantially complete.

- (8) Final Completion - The Construction Manager shall notify the Architect/Engineer and Owner, in writing, that the Project will be ready for final inspection on or after a specific date, which date shall be stated in the notice. This notice shall be given at least seven (7) calendar days in advance. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "K"**) will be issued by the Architect/Engineer and the Project shall be submitted to the Owner for final acceptance.

The Owner and Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more re-inspections are required, the Construction Manager shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Construction Manager. The Total Project Schedule shall include these notices and inspections as activities.

The Construction Manager shall secure and transmit to the Architect/Engineer all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

- (9) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- (10) Record Drawings - The Construction Manager shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall be submitted to the Architect/Engineer who will prepare the final record drawings.
- (11) Administrative Records - The Construction Manager will maintain at the

job site on a current basis, files and records such as, but not limited to the following:

- Contracts and Purchase Orders
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Cost Proposal Requests
- Meeting Minutes
- Lab Test Reports
- Contract Changes
- Material Purchase Delivery Logs
- "As-Built" Marked Prints
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Punch Lists

The Project records shall be available at all times to the Owner and Architect/Engineer for reference or review.

(12) Owner Occupancy:

The Construction Manager shall provide services during the Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy Owner operational requirements.

The Construction Manager shall conduct the Construction Manager's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability (in triplicate). The Construction Manager shall provide operational training, in equipment use, for building operators to a maximum of eight (8) hours.

The Construction Manager shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

The Construction Manager shall continuously review "As-Built" Drawings

and mark-up progress prints to provide as much accuracy as possible.

- (13) Warranty - Where any work is performed by the Construction Manager's own forces or by Subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one (1) year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. **Also, the Construction Manager shall conduct, jointly with the Owner and the Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy. This warranty inspection will be scheduled by a representative of the Owner.**

ARTICLE 3

OWNER'S RESPONSIBILITIES

- 3.1 Owner's Information - The Owner shall provide full information regarding Owner's requirements for the Project.
- 3.2 Owner's Representative/Project Director - The Owner shall designate a representative who shall be fully acquainted with the Project and shall define the lines of Owner authority to approve Project Construction Budgets, and changes in Project. The Owner's representative shall render decisions promptly and furnish information expeditiously.
- 3.3 Architect and Engineer's Agreement - The Owner shall retain an Architect/Engineer for design and to prepare construction documents for the Project. The Architect/Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect/Engineer, a copy of which will be furnished to the Construction Manager upon request.
- 3.4 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.5 Legal Services - The Owner shall furnish such legal services as may be

necessary for providing the items set forth in Article 3 and such auditing services as the Owner may require.

- 3.6 Drawings and Specifications - The Owner will provide to the Construction Manager a reproducible set of all drawings and specifications reasonably necessary and ready for printing.
- 3.7 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.8 Project Fault or Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the Owner shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.
- 3.9 Funding - The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project.
- 3.10 Lines of Communication - The Owner and Architect/Engineer shall communicate with the Subcontractors or Suppliers only through the Construction Manager while such method of communication is effective in maintaining Project schedules and quality.
- 3.11 Lines of Authority - The Owner shall establish and maintain lines of authority for Owner's personnel and shall provide this definition to the Construction Manager and all other affected parties.
- 3.12 Permitting & Code Inspections - The Owner recognizes and coordinates with the Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4

PERMITTING AND INSPECTION

- 4.1 Permits, Fees and Notices - Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and the Owner shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Any other entity/jurisdiction permits (i.e.: City of Titusville, City of Melbourne, etc.) shall be included in the Guaranteed Maximum Price and secured and paid for by the Construction Manager. County Impact and Solid Waste fees will also be paid by the Owner. Copies of all permits shall be

submitted to the Owner.

- 4.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules and regulations and lawful orders of public authorities bearing on performance of the work required for the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Construction Manager observes that portions of the Contract Documents are at variance therewith, and such variance was not discoverable during the Construction Manager's review of these documents for the purpose of determining the GMP, the Construction Manager shall promptly notify the Architect and Owner, in writing, and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Construction Manager shall assume full responsibility for such Work and shall bear the attributable costs.

ARTICLE 5

SUBCONTRACTS

- 5.1 Definition - A Subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work. Nothing contained in the Contract Document shall create any contractual relation between the Owner or Architect/Engineer and any Subcontractor.
- 5.2 Bids/Proposals - The Construction Manager shall request and make every attempt to receive, at a minimum, three (3) bids/proposals from Subcontractors and Suppliers and will award those contracts to the most qualified and responsive low bidder after the Construction Manager and Owner have reviewed each bid/proposal and agree that the Subcontractor is qualified to perform the work.
- 5.3 Required Subcontractor and Subcontract Conditions.
 - 5.3.1 Subcontractual Relations - By an appropriate written agreement, the Construction Manager shall require each Subcontractor to the extent of the work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager by this Agreement, assumes toward the Owner and the Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the work to be

performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with his Subcontractor's Subcontractor.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor.

- (1) Subcontractors must submit a complete pre-qualification form demonstrating their work experience, financial condition, and adherence to schedule. The Subcontractors financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (2) Workforce - The Subcontractor must agree to perform no less than fifty (50%) percent of the Project construction work utilizing its own forces.
- (3) All subcontracts shall provide:

a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time.

In the event of a change in the work the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual cost for such change, plus, no more than five percent (5%) for profit, and five percent (5%) for overhead.

The subcontract shall require the Subcontractor expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, loss or additional compensation.

b. Each subcontract shall require that any claims by Subcontractor for delays or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

- 5.4 Responsibilities for Acts and Omissions - The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its Subcontractors, agents and employees, and all other persons performing any of the work or supplying materials under this contract to the Construction Manager.

ARTICLE 6

SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master Project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner.

It is specifically agreed by and between the parties that the Owner may deduct a sum in the amount scheduled below from the amount of compensation to be paid the Construction Manager, Sundays and Holidays included, that the Project remains uncompleted. This amount as scheduled and agreed upon as a proper measure of liquidated damages, which the Owner will sustain per day by failure of the Construction Manager to complete the Project by the time stipulated in this Agreement, is not to be construed in any sense as a penalty provision.

Project Substantial Completion	\$500 per day
Project Final Completion	\$250 per day

Liquidated Damages will be assessed for each day beyond the contracted project Substantial Completion date, until actual project Substantial Completion is achieved. From the date of Substantial Completion, the Construction Manager shall be granted thirty (30) days for completion of punch list items, associated inspections and approvals, and submission and approval of required closeout documentation, at which time Final Completion shall be obtained. Final Completion liquidated damages will be assessed for each day beyond the thirty (30) days period from actual Substantial Completion.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.9(7) and Article 1.3, hereinabove. Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 The Construction Manager will establish and submit in writing a Guaranteed Maximum Price to the Owner for its approval, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to increase or deduction for changes in the Project as provided in Article 10 and for Owner direct purchases, if any, in accordance with **Attachment "C"**. All costs in excess of the final approved GMP, as adjusted up or down in accordance with the terms of this agreement, are the responsibility of the Construction Manager. Any savings between the GMP, as adjusted, and the sum of the actual cost of the Project plus the Construction Manager's fees, will be returned to the Owner. The GMP includes all taxes in the Cost of the Project which were legally enacted and in effect at the time the GMP was established.
- 7.2 Owner-Direct Purchases - In the event the Owner opts to make Owner Direct Purchases, as outlined in **Attachment "C"**, the Guaranteed Maximum Price shall be reduced by the cost of the materials plus applicable sales tax so that all sales tax savings accrue to the benefit of the project contingency. The Construction Manager shall diligently process all Owner Direct Purchase invoices for the project in order for the Owner to benefit from applicable vendor discounts. The Construction Manager will be required to submit all invoices to Owner in sufficient amount of time in order for the project to benefit from the vendor discount. All costs associated with missed discounts by the Construction Manager will be deducted from the Construction Manager's contract via deductive change order at project completion. Owner reserves the right to waive the Construction Manager's responsibility for missing discounts.
- 7.3 At the time of execution of the contract, the Construction Manager will verify the time schedule for activities and work which is adopted by the Construction Team and used to determine the Construction Manager's cost of work. Surplus funds from bids received below the applicable line items, including line items within the General Conditions, in the GMP will be set aside for contingency. Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Construction Manager will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency via an approved Authorization to Initiate Work/GMP Realignment form; however, such events shall not be cause to increase the GMP. If bids are not received for a portion of the work at or below

the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

ARTICLE 8

CONSTRUCTION MANAGER'S FEE

- 8.1 In consideration of the performance of the contract, the Owner agrees to pay the Construction Manager as compensation for his services fees as set forth in Subparagraphs 8.1.2 and 8.1.3. subject to the retainage specified in 8.1.1 below.
- 8.1.1 Construction Phase Fee - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into the Construction Phase. The Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Director question the need for the employee or employees. A percentage of the agreed upon Construction Phase Fee shall be paid monthly based on percentage (%) of work completed, less retainage, in accordance with subsection 12.1 below. The Construction Manager's first monthly Certificate for Payment shall be submitted no earlier than thirty (30) days following the issuance of the Notice to Proceed, and the final monthly payment shall be paid only when construction of the Project is finally completed, all original, final release of liens are received, closeout documentation has been submitted and occupancy of the Project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.
- (1) Adjustments in Fee - For changes in the Project as provided in Article 10, the Construction Phase fee shall be adjusted as follows:
- (a) The Construction Manager shall be paid an additional fee subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, subcontractors or others for whose acts the Construction Manager is responsible.
- (2) Costs and Expenses Included in Construction Manager's Construction Phase Fee - The following are included in the Construction Manager's fee for services during the Construction Phase and are included in the GMP (See **Attachment "L"** for Allowable Costs, Overhead associated with the Construction Manager's Construction Phase Fee referenced in Article 8):
- (a) Corporate costs including expenses and overhead and profit related to this project by the Construction Manager's principal and

- branch offices.
- (b) Costs of all data processing, accounting, purchasing and associated staff which is performed at the home office.
- (c) General operating expenses incurred in the management and supervision of the project, except as expressly included in Article 9.
- (d) Salaries or other compensation of the Construction Manager's employees at his principal and branch offices.
- (e) Those services set forth in Paragraph 2.1, 2.2, 2.3 and 2.4; except as expressly included in Article 9.
- (f) Relocation expenses for Construction Manager's personnel.
- (g) Costs of all project estimating, safety, scheduling and accounting staff.

8.1.3 The Construction Manager will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof, based on a review of the contract drawings and specifications. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provide in Article 10. However, the actual price paid for the Work by the Owner shall be (1) the Cost of the Project as defined in Article 9, plus the Construction Manager's fees, or (2) the GMP, whichever is less, when the Work is complete. All costs in excess of the final approved GMP are the responsibility of the Construction Manager.

ARTICLE 9

COST OF THE PROJECT

9.1 Definition - The term Cost of the Project shall mean costs reasonably and necessarily incurred in the Project during the Construction Phase for construction services and paid by the Construction Manager which are included in the Construction Phase Fee, less Owner direct purchases made in accordance with **Attachment "C"** upon completion of the Project. Such costs shall include the items set forth below in this Article, and shall also include, but are not limited to, those set forth in **Attachment "M"** - "Allowable General Conditions".

The Owner agrees to pay the Construction Manager for the Cost of the Project subject to the limits set forth in Articles 9.2 and 9.3 plus the Construction Manager's fees stipulated in Article 8, provided the total does not to exceed the GMP.

9.2 Direct Cost Items (See **Attachment "M"** - "Allowable General Conditions")

- (1) Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project, clerical and

Quality Control personnel (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the Construction Manager in the performance of the Construction Manager's work under this Agreement, acceptable salary or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% for per diem).

- (2) Payments due to Subcontractors from the Construction Manager or made by the Construction Manager to Subcontractors for their work performed pursuant to contract under this Agreement.
- (3) Cost of the premiums for insurance above and beyond the minimum required by Brevard County (\$1 million) and cost of premiums for bonds which the Construction Manager is required to procure by this Agreement specifically for the construction of this project.
- (4) Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by a governmental authority, and for which the Construction Manager is liable. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the Construction Manager.
- (5) If approved by the Owner, the Construction Manager, when qualified, may self-perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work.
- (6) Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - (a) The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - (b) The legal costs were not incurred as result of the Construction Manager's own negligence or default.
- (7) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.

9.3 Allowances

Within the GMP, there may be specific items which the Construction Manager and Owner have agreed to include as allowances in the estimates until such time

as the cost and schedule impact of these items can be more specifically ascertained. At the time that the Costs of the Work of allowance items becomes known (either through a subcontract price or by virtue of either (A) scope of work and cost agreed to by Construction Manager and Owner or (B) an actual buyout of the item), the GMP and Scheduled Completion Date will be adjusted (either increased or decreased) by the actual Costs of the Work and schedule impact of the item. With respect to increases and decreases to the amount of an allowance item, Construction Manager shall be entitled to the Construction Manager's fee, subject to the limits set forth in Article 8, on the adjusted amount of such allowance, and the GMP shall be adjusted by reason thereof, by Change Order. Allowances must be agreed to by both parties. Allowances included within the GMP constitute approval of said allowances at the time the Guaranteed Maximum Price is approved.

9.4 Public Records Law and Audit Requirements

In the performance of this Contract, the Construction Manager shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Construction Manager or provided to Construction Manager by the County in connection with the activities or services provided by Construction Manager under the terms of this agreement, are public records and Construction Manager agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open to inspection by the Owner, Owner's representative, and members of the public during regular business hours.

The Construction Manager shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Florida Statute Chapter 119 or as otherwise provided by law (see also County Administrative Order, AO-47).

The Construction Manager shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part

for the benefit and use of the County, under this Contract shall be subject to copyright by Construction Manager in the United States or any other country.

The Construction Manager shall meet all requirements for retaining public records and shall transfer, at no cost, to the Owner/County all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner/County in a format that is compatible with the information technology systems of the Owner/County.

Failure to comply with the provisions of this Section 9.4, shall result in the Owner taking enforcement action against the Construction Manager including the cost to the Owner for gaining the Construction Manager's compliance which will include, but are not limited to, the gross hourly rate of the Owner's employee(s) contacts to the Construction Manager to obtain compliance with this section, litigation filing fees and attorney's fees.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS FOR THE FACILITIES DIVISION, MARY BOWERS AT (321) 633-2050, mary.bowers@brevardfl.gov, 2725 Judge Fran Jamieson Way, Suite A207, Viera, FL 32940.

ARTICLE 10

CHANGES IN THE PROJECT

- 10.1 Change Orders - The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions which may cause an increase or decrease in the GMP, and/or the Construction Completion Date. All changes in the Project GMP or Construction Completion Date not covered by an authorized contingency, as described in Article 7.3 must be authorized by a written Change Order or Construction Change Directive, and signed by the Owner, Architect and Construction Manager before the change is implemented. It shall be the Owner's discretion as to whether each change order requires the A/E signature. **Maximum allowable mark-up on any change order is 5% Profit, 5% Overhead, and a 2% Bond.**

- 10.1.1 A Construction Change Directive is a change directive signed by the Project Director and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Agreement exists among the Architect/Engineer of record, Brevard County and the Construction Manager on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used (1) when an unsafe, hazardous or other similar condition exists, (2) when failure to achieve prompt resolution of the change will result in a demobilization of the Construction Manager, its subcontractors and/or agents, (3) when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project. A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.
- 10.1.2 A Change Order is a written order to the Construction Manager signed by the Owner, Architect, and Construction Manager, issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the construction authorization, the Construction Manager's fee, or the Construction Completion date. Each adjustment in the GMP resulting from a change order shall be documented clearly to separate the amount attributable to the cost of the change in the Project from the original cost of the Project.
- 10.1.3 The increase or decrease in the Guaranteed Maximum Price resulting from Change Orders in the Project shall be determined by one of the following ways:
- (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect/Engineer and Owner;
 - (2) by unit prices stated in the Agreement or subsequently agreed upon;
 - (3) by cost as defined in Article 9 plus a mutually acceptable fixed or percentage fee; or
 - (4) by the method provided in Subparagraph 10.1.4.
- 10.1.4 If none of the methods set forth in Clause 10.1.3 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the work required by the Construction Change Directive involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the Architect/Engineer

will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.3 above, the Construction Manager shall keep and present, in such forms as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in the Cost of the Project and the Construction Manager's fee subject to the limits set forth in Article 7.

10.1.5 If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.

10.1.6 Should the Construction Manager or his contracted subcontractors encounter:

- (1) concealed conditions in the performance of the Work below the surface of the ground; or
- (2) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information; or
- (3) unknown physical conditions below the surface of the ground; or
- (4) concealed or unknown conditions in an existing structure of an unusual nature;

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2. and Article 11.

Upon discovery of concealed or unknown conditions, the Construction Manager shall notify the Owner and Architect/Engineer within twenty four (24) hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the Owner. The Architect/Engineer will evaluate the alleged unknown or concealed condition and, if warranted, recommend to the Owner that the GMP and schedule be increased or decreased accordingly. No claim under this Article may be made unless notice, as herein provided, is given prior to Work being performed. No equitable adjustment shall be permitted if this

notice provision is not complied with.

Within ten (10) calendar days of submitting its Notice, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from Notice, the Construction Manager shall submit detailed schedule impact and detailed cost analysis indicating quantities, unit prices, etc.

- 10.1.7 The Construction Manager shall review any Owner directed change and shall respond in writing within seven (7) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Construction Manager's Work, including any increase or decrease in the contract time or price. The Construction Manager shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.

The Owner and Architect/Engineer shall review the Construction Manager's proposal and respond to the Construction Manager within seven (7) calendar days of receipt. If a change to the Contract price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or price shall be effective when signed by both parties. It shall be the Owner's discretion as to whether each change order requires the A/E signature.

10.2 **Claims for Additional Cost or Time**

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

- 10.2.1 If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution or disputes, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

- 10.2.2 All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Construction Manager must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must

demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Construction Manager. If no CPM is used the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty five (45) days to give the Construction Manager an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the critical path for the schedule for constructing the Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project (Realignment of Work)

The Owner and/or Architect/Engineer will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Construction Completion Date and not inconsistent with the intent of the Drawings and Specifications. Such changes shall be affected by written order. Documentation of changes shall be determined by the Construction Team, and included in the Project Manual. Changes shall be approved by the Project Director, Architect/Engineer. It shall be the Owner's discretion as to whether a Realignment of Work requires the A/E signature. All changes or realignments of work performed within the Guaranteed Maximum Price will not include overhead, profit or General Condition additional costs, since costs are absorbed within the Guaranteed Maximum Price (GMP).

10.4 In any emergency affecting the safety of persons or property, the Construction Manager shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as

provided in Article 10.

ARTICLE 11

DISCOUNTS

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments.

To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

- 12.1 Monthly Statements - The Construction Manager shall submit to the Owner a sworn statement along with the Certificate for Payment, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the Construction Manager's fees due as provided in Article 8. This data shall be attached to the Certificate for Payment Form shown in **Attachment "N"**, and shall include, but not be limited, to the following:

- Daily Reports;
- Updated Project Schedule;
- Daily Red line As-Builts review;
- Provide a billing report with each payment application that shows a breakdown of costs incurred by line item. This report should correspond with the amounts being charged on the Schedule of Values.
- Provide backup copies of all invoices that the County is being billed for, including vendor invoices, payments to subcontractors, cell phone statements, insurance, petty cash receipts, etc. These invoices should be coded by the line item that they correspond to on the billing report and Schedule of Values.
- Provide backup copies and documentation of all costs incurred under General Conditions.
- Provide backup copies of all payroll that details which labor amounts were paid to whom on a weekly basis.
- Provide copies of all subcontractor agreements.

* The amounts charged on the Payment Application must be accurate and correspond with the total dollar amount of backup provided by the

Construction Manager.

Payment by the Owner to the Construction Manager of the statement amount shall be made in accordance with Florida Statute 218.735.

Ten percent of each payment shall be held by the OWNER as retainage until 50-percent completion of such Project, which shall be deemed to have occurred when 50% of the GMP, as increased or decreased from time to time, has been expended. At that time, the retainage shall be reduced to 5% and the Construction Manager shall be entitled to request payment or release of up to 50% of the previously withheld retainage amounts, provided the retainage is not the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes or otherwise the subject of a claim or demand by the OWNER.

Owner may refuse to certify payment and withhold a Certificate for Payment in whole or in part, in accordance with subsection(s) above, to such extent as may be reasonably necessary to protect the Owner from loss because of:

- (1) defective work not remedied;
- (2) third party claims filed or reasonable evidence indicating probably filing of such claims;
- (3) failure of Construction Manager to make payments properly to subcontractors, consultants, or for labor, materials or equipment;
- (4) evidence that the Project cannot be completed for the unpaid balance of the GMP, as adjusted;
- (5) evidence that the Work will not be completed by the Scheduled Completion Date, as adjusted, and that the unpaid balance would not be adequate to cover the liquidated damages for the anticipated delay;
- (6) failure to carry out the Work of the Project in accordance with the Contract Documents; or

If the Owner is unwilling to certify payment in the amount of the Application for Payment submitted by the Construction Manager, Owner will provide Construction Manager with written reasons for its refusal, within three (3) calendar days. If Construction Manager and Owner cannot agree on a revised amount, Owner will, within one (1) day of the aforesaid notification, promptly issue a Certificate for Payment as to the undisputed amount with respect to which Owner concurs.

- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the Construction Manager's fee, shall be due and payable in accordance with Florida Statutes after an *acceptable* Certificate of Final Completion has been issued **and all contractual closeout obligations have been met by the Construction Manager**. Before issuance of final payment, the

Construction Manager, subcontractors and agents shall submit original, sworn, notarized statements that all payrolls, material bills, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, Final As-Builts in AutoCad format acceptable to the Owner, have been submitted and instruction and documentation for the Owner's operating and maintenance personnel is complete.

- 12.3 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but insured, itemized, delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion.
- 12.4 Withholding Payments to Subcontractors - The Construction Manager shall not withhold payments to Subcontractors if such payments have been made to the Construction Manager. Should this occur for any reason, the Construction Manager shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping, as required.

ARTICLE 13

INSURANCE, INDEMNITY WAIVER OF SUBROGATION

- 13.1 (1) Indemnification - The Construction Manager agrees to indemnify and hold harmless the County and their employees from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Agreement) and (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, any of their employees and/or agents in the performance of this contract. The Construction Manager agrees that it will pay the costs of the County's legal defense, including fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless agreement. The Construction Manager acknowledges specific consideration has been received for this hold harmless/indemnification provision.
- (2) The Owner shall cause any other Construction Manager who may have a contract with the Owner to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify the Owner and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 13.2(3)) that may arise from the

Construction Manager's operations.

Loss Deductible Clause - Brevard County Board of County Commissioners shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Construction Manager and/or Subcontractor providing such insurance.

13.2 Insurance

- (1) The Construction Manager shall not commence any construction work in connection with this Agreement until the Construction Manager has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the Owner and have been approved by the Owner, nor shall the Construction Manager allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.
 - a. Workers' Compensation and Employer's Liability Insurance - Workers Compensation insurance providing statutory benefits as required in the State of Florida. The Contractor shall require any subcontractor to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Contractor and all subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes or proof of exemption. The Contractor shall be responsible for compliance with these requirements by each subcontractor, vendor or supplier.
 - b. Commercial General Liability - Including but not limited to bodily injury, property damage and personal injury with limits of not less than \$1,000,000.00 combined single limit per occurrence, including products and completed operations, to include:
 1. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage.
 2. Broad Form Property Damage Coverage, Products and Completed Operations Coverage - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.

3. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- c. Automobile Liability - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than \$1,000,000.00 combined single limit, per accident.
- d. Performance and Payment Bonds - With limits of not less than 100% of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one (1) year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (U.S.C. 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best Rating of "A-" and financial size V or higher.
- e. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not be lapsed or canceled because of partial occupancy by the Owner prior to final acceptance of the Project.

The Construction Manager shall require each of his Subcontractors to procure and maintain insurance during the life of the respective subcontracts.

- (2) Certificate of Insurance - The Owner shall be furnished proof of coverage of Insurance as follows:

Certificate(s) of Insurance will be furnished to the Owner within five (5) days of Notice to Proceed. These shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

- (1) The name of the insured Construction Manager, the specific job by name and job number, the name of the insurer, the number of the

policy, its effective date, and its termination date.

- (2) The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured to the extent of liability assumed by the Construction Manager under this Agreement, and that these policies may not be canceled or modified without thirty (30) days prior written notice to the County.
- (3) The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Construction Manager under the terms of the Contract.

*Certificates of Insurance shall be submitted to the Owner within five (5) days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the Owner.

13.3 Waiver of Subrogation

- 13.3.1 The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent covered by such insurance except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors and their Sub-subcontractors.
- 13.3.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 13.3.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 13.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

- 14.1 Termination by the Construction Manager - If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of thirty (30) days by the Owner, then the Construction Manager may, upon seven (7) days written notice to the Owner, request undisputed payment for all work executed, the Construction Manager's fee earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager.
- 14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause -
- (1) If the Construction Manager fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to perform such obligations, make good such deficiencies. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner to making good such deficiencies and the Construction Manager's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies.
 - (2) If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and his surety, if any, seven (7) days written notice, during which period Construction Manager fails to cure the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools,

construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable termination expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

14.3 Termination by Owner for Convenience

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.3(2), he shall reimburse the Construction Manager for any unpaid cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner shall reimburse the Construction Manager for obligations and commitments made before notice of termination was received by the Construction Manager.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Construction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the Construction Manager his proportionate fee due in accordance with Article 8.1, plus any costs incurred pursuant to Articles 9 and 10.
- (3) Any termination by Owner, for cause, which is later determined to be invalid shall be considered a termination by Owner for convenience.

14.4 Termination for Prohibition Against Contracting With Scrutinized Companies

- (1) The Construction Manager certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if the Construction Manager or its subcontractors are found to have submitted a false certification; or if the Construction Manager, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, the Construction Manager certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Owner may immediately terminate this Agreement at its sole option if the Construction Manager, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Construction Manager, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Construction Manager agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(2) As required by § 287.135(5), Florida Statutes, prior to entering into an agreement/contract (formal contract or purchase order in excess of \$1 million dollars to provide goods or services to Owner/Brevard County, individual with authority to execute this Agreement for the Construction Manager shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Construction Manager is found to have falsified the affidavit attached as **Attachment "O"**, the County/Owner may terminate the contract.

(3) If subsequent to the submittal of the attached affidavit, the Construction Manager (1) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (3) is engaged in business operations in Cuba or Syria, the County/Owner may terminate the agreement/contract.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the Laws of the State of Florida.

- 15.3 Venue and Attorney's Fees: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.
- 15.4 Severability: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired.

ARTICLE 16

NOTICE OF CLAIM; WAIVER OF REMEDIES; NO DAMAGES FOR DELAY; DISPUTE RESOLUTION

- 16.1 The Owner's liability to Construction Manager for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

- (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
- (b) If the Construction Manager claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract and not discoverable with a review of the plans and specifications, then, except in emergencies endangering life or property, Construction Manager shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than twenty (20) calendar days after the receipt of such instructions.

The Construction Manager must submit a Notice of Claim to the Owner and to the Architect/Engineer within twenty (20) days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim; and

- (c) Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request For Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within thirty (30) days from the Notice of Claim the Construction Manager shall submit a detailed schedule impact

and detailed cost analysis indicating quantities, unit prices, etc. establishing the basis for the amount of the claim.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this section.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim. As to disputed matters subject to the determination by final Owner action (not actions for breach of contract or tort) the Owner's written decision following compliance with the dispute resolution procedure set forth in sections 16.4 through 16.6 below shall be final Owner action.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect/Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work that will modify the GMP, the Construction Manager's claim for adjustment in contract sum are limited exclusively to its actual costs for such changes, including costs involved in claim preparation, plus five percent (5%) overhead, five percent (5%) profit and a two percent (2%) bond in the General Conditions. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and eliminate any other remedies for claim for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.
- 16.4 In the event of any dispute over a proposed change order or any other matter arising out of the implementation or interpretation of this contract the following dispute resolution process shall apply.
- (a) Within three (3) days after denial of a contractor's change order or contract modification request in an amount, individually or in total, less than the authorized purchasing level approved for the County Manager by the County Commission (currently at \$100,000) the contractor may submit to the County Manager or a designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the contractor's position in the dispute or disagreement. The County Manager or designee, within five (5) days after the receipt of the contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable

regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a written change order or contract modification should be approved by the County Manager.

- (b) If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation and the contractor's claim and documentation, to the County Commission for a final determination within thirty (30) days after receiving the contractor's documentation for the claim. The Commission shall make its decision using the standards specified in subparagraph (a) above.

- 16.5 Within thirty (30) days after denial of a request for a change order or contract modification by the project manager or engineer involving (1) an amount in excess of the County Manager's expenditure authority or (2) for the amount the contractor claims to be due at the time the project is ready for beneficial use or occupation, the County may, at the County's option in lieu of the procedure specified in subparagraph 16.4, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties. Upon referral to a mediator, the County and contractor shall each pay half the estimated cost of the mediator, up front. Within fifteen (15) days after the date of submittal, the mediator, applying the standards set forth in subparagraph 16.4, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or a designee with the qualifications specified in subparagraph 16.4. Within fifteen (15) days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in subparagraph 16.4 above, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no change order or contract modification be granted, the contractor shall reimburse the county for any amounts paid by the county to the mediator.
- 16.6 The deadlines for completing the dispute resolution process described in subparagraphs 16.4 and 16.5 may be extended by mutual agreement of the contractor and the county.

ARTICLE 17

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 17.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that a delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided in this Agreement.
- 17.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.
- 17.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Construction Manager under the Conditions of the Contract.
- 17.4 The Construction Manager shall afford the Owner, and separate contractors, reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with the Construction Manager, as required.
- 17.5 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer or Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

- 17.6 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.
- 17.7 The Construction Manager shall promptly remedy damage wrongfully caused by the Construction Manager to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 18

MISCELLANEOUS

- 18.1 Interest - Any monies not paid when due to either party under this contract shall not bear interest except as may be required by Section 218.70 et seq., Florida Statutes, ("The Florida Prompt Payment Act").
- 18.2 Harmony - Construction Manager is advised and hereby agrees to exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and his Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and Construction Managers now or hereafter on the site of the Project.

Construction Manager further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

- 18.3 Apprentices - If the Construction Manager employs apprentices on the project, the behavior of the Construction Manager and the Owner shall be governed by the provision of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 18.4 Minority Participation - The Construction Manager shall *diligently attempt* to award his material contracts, subcontracts and sub-subcontracts to firms having a letter of certification as a minority business from the "Office of Minority Business Assistance, Department of General Services, or any other Federal, Florida County or City certification.
- 18.5 Minority Employment Information - The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers

with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "P"**.

18.6 Public Entity Crime Affidavit attached as **Attachment "P"**.

18.7 Non-Collusion Affidavit of Prime Bidder attached as **Attachment "Q"**.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above:


ATTEST:


Scott Ellis, Clerk

Reviewed for legal form and content:


Christine Valliere
Assistant County Attorney

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Bryan Andrew Lober, Chair
Brevard County Commission

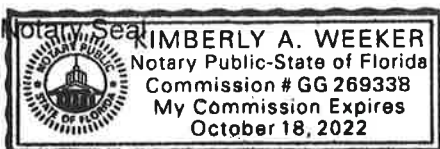
As Approved By the Brevard County Commission
on: 07/21/2020

RUSH Construction, Inc.

 BY:
Construction Manager

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this Nov. 2nd, 2020 by Al Forbes of RUSH CONSTRUCTION a _____ corporation, on behalf of the corporation, he/she is personally known to me or has produced _____ as identification.



Notary Public 
My Commission Expires Oct. 18, 2022

ATTACHMENT "A"

CONSTRUCTION TEAM ASSIGNED REPRESENTATIVES

Owner

Brevard County Facilities Department

Tim Lawry

Mike McGrew

Mary Bowers

Sherry Collett

Project Director

Construction Coordinator

Support Services Manager/Contracts

Special Projects Coordinator II

Architect-Engineer

Construction Engineering Group

Construction Manager

Williams Chivers

Al Forbes

Mike Lapinski

Mike Lapinski

Karyn Baker

Steven Keefer

Conrad Wilson

Justin Grantham

President

Vice President/Principal-In-Charge

Vice President of Operations

Project Manager

Project Administrator

Project Superintendent

Estimator/Cost Control

Schedules

ATTACHMENT "B"

PROJECT SCOPE OF WORK

Scope of Work- Lori Wilson Park Phase I Crossovers #1, #2, & #3.

- Provide Construction Management (GMP at Risk) services to fully replace Lori Wilson Park beach crossovers #1, #2, & #3 with new beach crossovers.
- GMP Pricing is based on field measurements (see attached scope drawings generated by RUSH) utilizing the basis of design from previously completed crossovers.
- Includes demolition and disposal of existing crossover structures.
- Provide and install new beach crossover with MoistureShield Vision 1x6 Composite Decking. Post/Pilings shall be 2.5 CCA, Girders/ Joists shall be .60 CCA, Rails shall be .40 DSS GC ca/acq.
- Includes \$1,500 allowance per crossover for replacement of any vegetation destroyed.
- Includes \$4,000 in GMP project contingency allowance per crossover.
- Includes Permitting allowance of 1.5% per crossover for City of Cocoa Beach Permit.

ATTACHMENT "C"

DIRECT PURCHASING PROCEDURE CONSTRUCTION MANAGEMENT AGREEMENT

INTENT: The Owner of this Project, Brevard County, Florida, intends that these procedures govern the County's direct purchases of selected materials so that the County may take advantage of its tax exempt status. All monies which would have been payable as taxes, if not for Owner direct purchase under these procedures, will inure solely to the benefit of the Owner. The Owner's direct purchase of materials will not minimize or conflict with the Construction Manager's responsibility for the purchase, installation, coordination, storage, protection, warranty, etc. of the materials as described herein and in the plans and specifications of the Contract.

Definitions: For the purpose of these Procedures, the following words have the following definitions.

- a) **Contract:** Construction Management Agreement by and between Construction Manager and Brevard County Board of County Commissioners, Viera, Florida for the replacement of beach access crossovers at Lori Wilson Park, Cocoa Beach, FL.
- b) **County Purchased Materials:** Materials purchased directly by the Owner through execution and delivery of a Purchase Order.
- c) **GMP** - Guaranteed Maximum Price established under the Contract.
- d) **Materials:** Tangible Personal Property necessary for completion of the Project.
- e) **Materials Deduction Summary:** Written document signed by Owner's representative and Construction Manager setting forth the amounts of County Purchased Materials, plus applicable taxes were the purchase not exempt from such taxes, as reflected in the parties' previously executed deductive change order(s) to the Contract showing deduction of such Materials from the GMP.
- f) **Owner:** See Definition in Article I, section 1.3.
- g) **Owner's Representative:** See Definition in Article I, section 1.3.
- h) **Project:** See Definition in Article I, section 1.3.
- i) **Purchase Order:** The Owner's request for Materials from a particular vendor or supplier when fully executed and delivered to the Construction Manager, and the Owner's promise to pay for the Material specified upon delivery and acceptance at the Project Site, and presentation of an invoice by the Construction Manager to the Owner certifying payment of same.
- j) **Material Requisition:** A request by the Construction Manager to the Owner that the Owner directly purchase specific items described in sufficient detail, including

quantity, grade, brand, etc., along with the vendor or material supplier and that vendor or material supplier's quoted price for the Materials.

Overview: The Owner requires the Construction Manager (hereinafter, "Manager") to notify the Owner's Representative of Materials needed for the Project exceeding \$5,000.00 in value, through a Material Requisition form. For the purpose of these Procedures, the Manager will assign to the Owner any rights the Manager may have under quotes, contracts or commitments received from the particular vendor or supplier for the Materials described in the Material Requisition. Any Materials purchased by Owner pursuant to these Procedures shall be referred to as "County Purchased Materials", and the responsibilities of the Owner and Manager relating to such County Purchased Materials shall be governed by the terms and conditions of these Procedures, which shall take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist. The invoiced amount of County Purchased Materials and applicable sales tax had the purchases not been tax exempt, once finalized through the Owner's Purchase Order and after confirmation of completed delivery and acceptance pursuant to this Procedure, will be deducted from the GMP, as defined in the Contract, by deductive change order.

Owner Direct Purchasing Requirements and Procedures: When a Materials purchase for the Project is estimated to be \$5,000 or greater and time will allow for an Owner Direct Purchase, Manager shall prepare a Material Requisition form, *(to be provided by the Owner)*, acceptable to Owner, and which specifically identifies the Materials which Owner may, in its discretion, elect to purchase directly. The Material Requisition form shall be complete when submitted, and all information requested provided. Along with the Material Requisition the Construction Manager must provide:

- a) The name, address, telephone and fax number and contact person for the material supplier;
- b) Manufacturer or brand, model or specification number of the item;
- c) Quantity needed as estimated by Manager;
- d) The price quoted by the supplier for the Materials identified therein;
- e) Any sales tax associated with such quote if it were not purchased by a tax exempt entity;
- f) Shipping and handling cost, including associated insurance;
- g) Delivery dates as established by the Manager;
- h) Subcontractor's written acknowledgment of these Procedures for Owner Direct Purchase of Materials.

After receipt of the Material Requisition, the Owner's Representative will determine whether the Owner will directly purchase the Materials described in the Material Requisition, and communicate consent or decline to purchase the materials to the Manager within twenty four (24) hours. Brevard County's Purchasing Division shall be the Owner's approving authority on Purchase Orders of County Purchased Materials. If the Owner consents to purchase the Materials, the Owner shall issue a Purchase Order for same. The Owner shall issue the original Purchase Order, and the Manager shall deliver the Purchase Order to the subcontractor. The Purchase Order shall require (1) that the supplier provide the required shipping, (2) that the supplier provide the required shipping and handling insurance, and (3) delivery of the County Purchased Materials on the delivery dates provided by the Manager in the Material Requisition.

The Manager shall be fully responsible for all matters relating to the receipt of County

Purchased Materials under these Procedures, including, but not limited to, preparation of shop drawings and submittals, verifying correct quantities, verifying documents of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials due to the negligence of the Manager. The Manager shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Manager for the Materials furnished. The Manager shall provide all services required for the unloading, handling and storage of Materials through installation. The Manager agrees to indemnify and hold the Owner harmless from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of Manager.

The Manager shall insure that County Purchased Materials conform to the Specifications, and determine prior to incorporation into the Work, if such Materials are patently defective, and whether such Materials are identical to the Material ordered and match the description on the bill of lading. As County Purchased Materials are delivered to the job site, the Manager shall inspect all shipments from the suppliers, and, if in conformance with the Purchase Order, approve the vendor's invoice for materials delivered. The Manager shall assure that each delivery of County Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of an itemized delivery ticket, packing slip or invoice from the supplier conforming to the Purchase Order against which the purchase is made, together with such additional information as the Owner may require. The Manager will then forward the documentation to the Owner.

If the Manager discovers defective or non-conformities in County Purchased Material upon inspection, the Manager shall not use such non-conforming or defective Materials in the Work and instead shall promptly notify the Owner of the defective or non-conforming conditions and coordinate the repair or replacement of those Materials without any undue delay or interruption to the Project. All repair, maintenance or damage-repair calls shall be forwarded to the Manager for resolution with the appropriate supplier, vendor, or subcontractor. If the Manager fails to perform such inspection, the condition of which the Manager either knew or should have known by performance of an inspection, Manager shall be responsible for all damages to the County resulting from Manager's incorporation of such Materials into the Project, including liquidated or delay damages.

On a bi-weekly basis, Manager shall be required to review invoices submitted by all suppliers of County Purchased Materials delivered to the Project Site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based on Manager's records of materials delivered to the site. In order to arrange for the prompt payment to the supplier, the Manager shall provide to the Owner a list indicating the acceptance of the goods or materials within fifteen (15) days of receipt of said invoice for goods or materials. The list shall reference the applicable purchase order and include a copy of the invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt of the appropriate documentation in duplicate, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be delivered directly to the supplier. If any discounts are available from the supplier or vendor, they shall accrue to the benefit of the Owner, and the amount quoted by the vendor, plus applicable tax, shall be deducted from the GMP. The Manager agrees to assist the Owner to immediately obtain partial or final releases or waivers as appropriate.

Following performance of the Purchase Orders by the suppliers, and submittal of documentation confirming same to Owner with an invoice for payment by Owner, the Manager shall execute and deliver to the Owner at the end of each month along with the Manager's regular pay requests, a Materials Deduction Summary setting forth the full value of all County Purchased Materials, plus all taxes which would have been payable on the purchase of the Materials had they not been Owner purchased. The Materials Deduction Summary shall show all sums to be deducted by an appropriate deductive change order, and ultimately the GMP, to date. The Board of County Commissioners, or their authorized representative, shall be the approving authority for the Owner on the Materials Deduction Summary for County Purchased Materials.

The Manager shall maintain records of all County Purchased Materials incorporated into the Work. These records shall be available for inspection by the Owner upon request.

Notwithstanding the delivery of County Purchased Materials to the Project Site for the Manager's inspection, custody and incorporation into the Work, the Owner shall retain legal and equitable title to any and all County Purchased Materials. The transfer of possession of County Purchased Materials from the Owner to the Manager shall constitute a bailment for the mutual benefit of the owner and the Manager solely for the purposes set forth herein. The Owner shall be considered the bailer and the Manager the bailee of the County Purchased Materials. County Purchased Materials shall be considered returned to the Owner for purposes of their bailment at such time as they are incorporated into the Project or are returned to the vendor or supplier at the discretion of the Manager prior to payment for the Purchase Order by Owner.

The Owner shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to County Purchased Materials. Such insurance shall cover the full value of any County Purchased Materials not yet incorporated into the Project from the time the Owner first takes title to any of such County Purchased Materials and the time when the last of such County Purchased Materials is incorporated into the Project, or are returned to the vendor at the Manager's discretion prior to Owner's payment for same.

The Owner shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or any extra costs or time resulting from any delay in the delivery of, or defects in, County Purchased Materials.

ATTACHMENT “D”
DRAWINGS AND SPECIFICATIONS

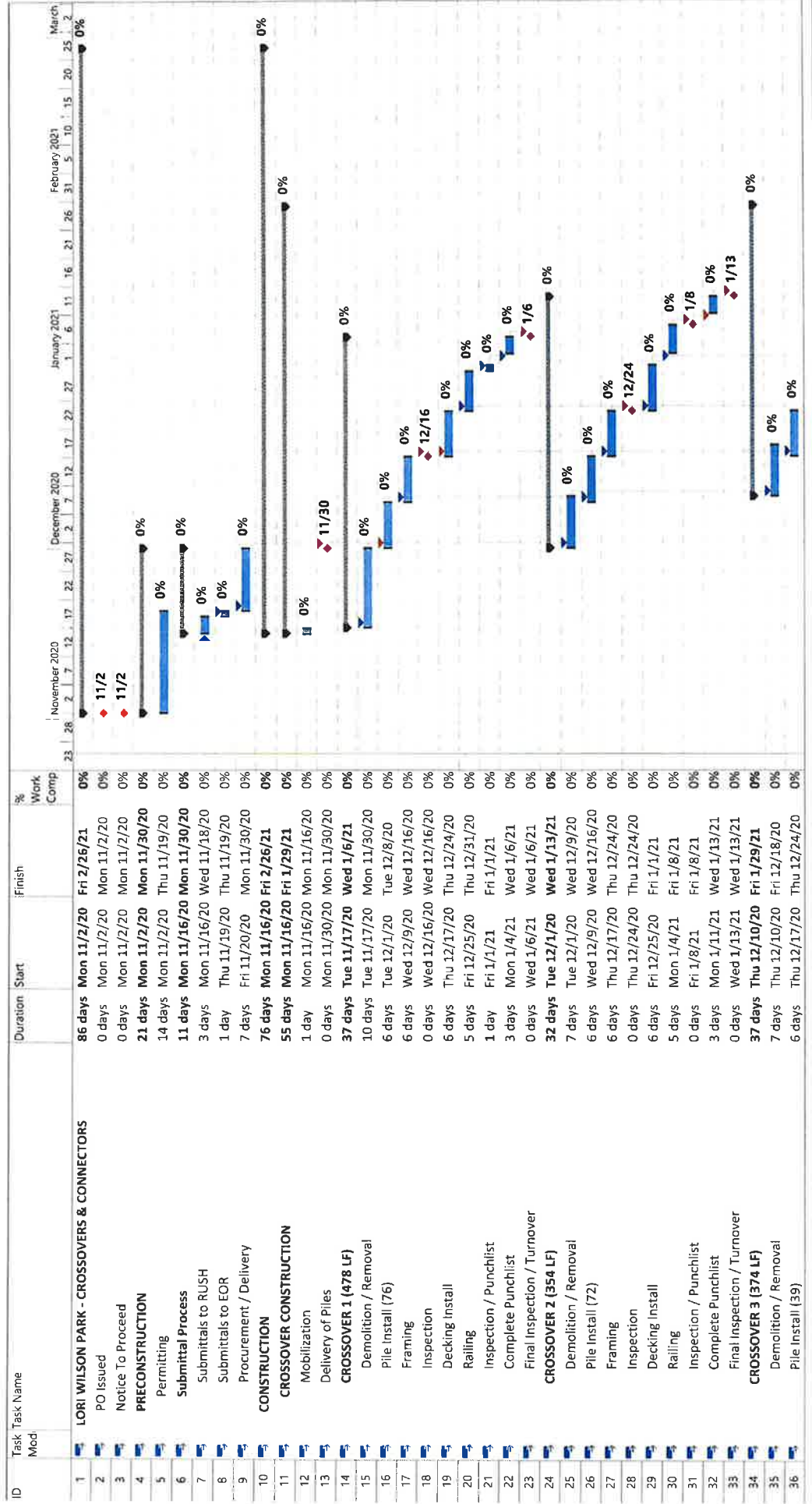
Attached with Guaranteed Maximum Price

ATTACHMENT "E"

CONSTRUCTION MANAGER'S
PRELIMINARY CONSTRUCTION SCHEDULE

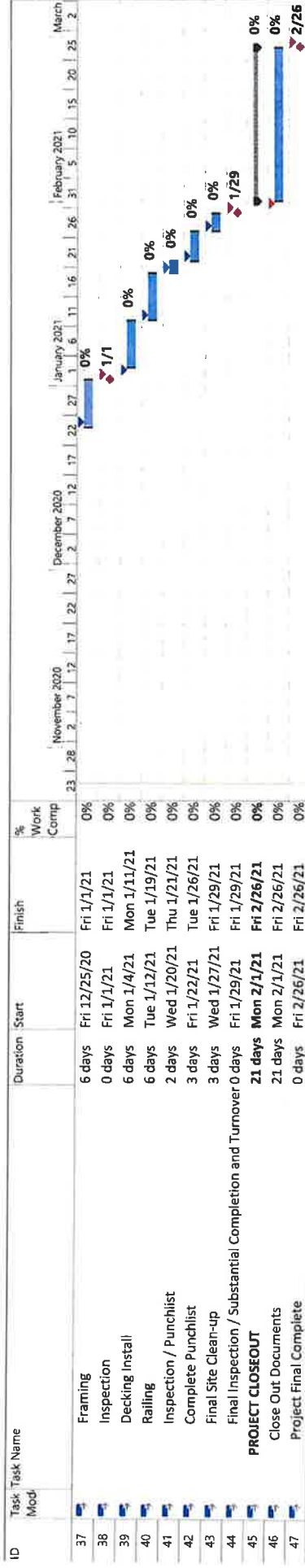


LORI WILSON PARK - CROSSEOVERS & CONNECTORS PRELIMINARY CONSTRUCTION SCHEDULE





LORI WILSON PARK - CROSSEOVERS & CONNECTORS PRELIMINARY CONSTRUCTION SCHEDULE



ATTACHMENT "F"

ORDINANCE 98-37

AN ORDINANCE AMENDING CHAPTER 2 OF THE BREVARD COUNTY CODE TO CREATE ARTICLE VII, A PROCEDURE FOR PREQUALIFYING CONSTRUCTION CONTRACTORS, FOR COMPETITIVE BIDDING CRITERIA AND FOR DEBARMENT OF CONSTRUCTION CONTRACTORS AND SURETIES; PROVIDING FOR ALTERNATIVE CONSTRUCTION DELIVERY METHODS; PROVIDING FOR PREQUALIFICATION AND COMPETITIVE BIDDING CRITERIA, PROCEDURE, AND FOR A STANDARD OF PROOF; PROVIDING FOR EDITING OF THE ORDINANCE FOR INCLUSION WITHIN THE BREVARD COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Fla. Stat. (1997) requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board has determined that it is in the public's best interest to provide such standards and procedures so that the Board may select the most qualified and responsive bidder; and

WHEREAS, the Board has determined that it is in the public's best interest to prevent construction firms and sureties who have defaulted on a previous contract with the County from future bidding on County projects through a debarment procedure;

THEREFORE, be it ordained by the Board of County Commissioners of Brevard County, Florida as follows:

Section 1: Chapter 2 of the Brevard County Code shall be amended to create Article VII as follows:

1. **DEFINITIONS:** The following words shall have these meanings throughout this article:

"AFFECTED PARTY" means an individual or business which has submitted a bid, offer, proposal, quotation, or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a low bidder was found unqualified or nonresponsive.

"BOARD" means the Board of County Commissioners of Brevard County, Florida.

"COMMITTEE" means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the construction project.

"DEBARMENT" means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

"MINOR IRREGULARITY" means a variation from the Invitation to Bid which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the agency.

"QUALIFIED BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgement, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.

"REQUEST FOR QUALIFICATION" ("RFQ") means the process by which the County may prequalify individuals or businesses for a particular project before requesting bids for the project, thereby limiting the pool of bidders to these prequalified.

"RESPONSIVE BIDDER" means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

1. Any County contract for the construction or improvement of a public building, structure, or other public construction work that is estimated in accordance with general accounting principles to have construction costs of more than fifty thousand dollars (\$50,000.00) shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require competitive award of every County construction work, nor to prohibit the Board from rejecting all bids if competitively bid, or to prevent the Board from waiving minor irregularities in any bid.
2. (a) Potential lump sum bidders responding to a request for qualifications are required to submit information required by this article and as identified in the RFQ

package. A committee identified in the RFQ package will determine whether a potential bidder is qualified and responsive as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the apparent low bidder, after the formal bid opening, will be required to submit the following prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the apparent low bidder nonresponsive. If the apparent low bidder cannot provide adequate documents for review, or the submitted documents indicate the apparent low bidder or any subcontractors are not qualified, or if the bidder's package is determined to be nonresponsive, the Committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or non-responsive, the apparent second low bidder will be contacted and afforded the previously mentioned five (5) days to submit pre-qualification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or non-responsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build, or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the pre-qualification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.

(d) At the completion of each competitively awarded County construction project, the County department which administered the construction contract shall

complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

3. Potential bidders, the apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the bid or request for qualification package for any County construction project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following information:
 - A Contractor's Pre-Qualification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Pre-Qualification Statement shall be provided on a form to be established by the County Manager;
 - Most current financial statement, but not more than one (1) year old, indication of bondability, or, if project is under \$100,000, other evidence of financial capability as identified in the bid documents;
 - Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;
 - List of subcontractors and suppliers, and items of work to be performed by the Contractor's own work force;
 - County evaluations of the performance on County projects;
 - References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business;
 - Any other relevant qualifications, data or information identified in the bidding documents to be critical to the success of the project.
4. The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is

discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

An individual or business may be *permanently* debarred for any of the following reasons:

- Conviction or a judgment obtained in a court of competent jurisdiction for:
- Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract
- Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
- Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
- If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to justify debarment action such as:

- Failure to perform in accordance with the specifications or delivery requirements in a contract;
- A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 2: Inclusion in Code: It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code; and that the sections of this ordinance may be renumbered or relettered to accomplish such intentions.

Section 3: Severability: If any provision of this ordinance is held to be illegal or invalid,

the other provisions shall remain in full force and effect.

Section 4: Effective Date: This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment.

ATTACHMENT "G"

PUBLIC CONSTRUCTION PAYMENT BOND

BY THIS BOND, We _____ as
Principal and _____, a
corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard
County, Florida, herein called Owner, in the sum of _____
(\$ _____), for payment of which we bind ourselves, our heirs, personal representatives,
successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Promptly makes payments to all claimants, as defined in Section 255.05(1),
Florida Statutes, supplying Principal with labor, materials, or supplies, used
directly or indirectly by Principal in the prosecution of the work provided for in the
contract dated _____, 20____, between Principal and Owner for
construction of _____, the
contract being attached hereto and made a part of this bond by reference, in
such time and without delay, and in the manner prescribed in the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including
appellate proceedings, that Owner sustains because of a default by Principal
under the contract, then this bond is void; otherwise it remains in full force.
Any changes in or under the contract documents and compliance or
noncompliance with any formalities connected with the contract does not affect
Surety's obligation under this bond:

Signed and sealed this _____ day of _____, 20____.

Witness:

Principal

Seal

Its: _____

Title

Witness:

Surety

Seal

Its: _____

Title

ATTACHMENT "H"

PUBLIC CONSTRUCTION PERFORMANCE BOND

BY THIS BOND, We _____, as Principal and _____, a corporation as Surety, are bound to Brevard County Board of County Commissioners, Brevard County, Florida, herein called Owner, in the sum of _____ (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS BOND are that if Principal:

1. Performs promptly, completely and faithfully the contract dated _____, 2010 between Principal and Owner for construction of _____, the contract being attached hereto and made a part of this bond by reference, in such time and without delay, and in the manner prescribed in the contract including the delivery, execution and performance of any warranty work required by the contract; and
2. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the contract; and
3. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract does not affect Surety's obligation under this bond.

Signed and sealed this _____ day of _____, 20____.

Witness:

Principal Seal

Its: _____
Title

Witness:

Surety Seal

Its: _____
Title

ATTACHMENT "I"

**CONSTRUCTION MANAGER'S
GUARANTEED MAXIMUM PRICE**

ATTACHED



RUSH CONSTRUCTION INC
General Contractors, Design/Build
Construction Managers

6285 VectorSpace Blvd.
Titusville, FL 32780
Voice 321.267.8100
Fax 321.267.9944
www.rushinc.com

October 26th, 2020

Brevard County Facilities
ATTN: Mr. Mike McGrew- Construction Coordinator

Ref: **Lori Wilson Park- Beach Crossover Replacement GMP-R4**
Crossovers #1, #2, & #3

RUSH Construction, Inc. per your request is pleased to present our ROM proposal for Lori Wilson Park- Crossover Replacements for #1, #2, and #3. Pricing is based on field measurements (See attached scope sheets) and utilizing the basis of design from the previously completed Crossovers.

GMP for Each Crossover Location Including Contingency:

Crossover #1- \$207,536

MoistureShield Vision 1x6 Composite Decking- **ADD \$28,881**
TimberTech AZEK Harvest Decking- **ADD \$25,483**

Crossover #2- \$173,043

MoistureShield Vision 1x6 Composite Decking- **ADD \$19,213**
TimberTech AZEK Harvest Decking- **ADD \$16,953**

Crossover #3- \$178,538

MoistureShield Vision 1x6 Composite Decking- **ADD \$20,422**
TimberTech AZEK Harvest Decking- **ADD \$18,019**

Total Cost for Crossovers #1, #2, & #3 Wood Decking Option= \$ 559,117

Total Cost for Crossovers #1, #2, & #3 Moisture Shield Vision Decking Option
\$ 627,633

Total Cost for Crossovers #1, #2, & #3 TimberTech AZEK Harvest Option
\$ 619,572

Please see the attached GMP, broken out per location, on the attachment pages for additional information and qualifications.

If you should have any further questions and/or require additional information, please do not hesitate to contact us.

**Option
Selected
by
Tourism**

Respectfully Submitted,
RUSH Construction, Inc.

Conrad Wilson

Douglas Conrad Wilson
Estimator

Integrity Since 1984

Subject: GMP Proposal

RUSH Construction, Inc. (RUSH) is pleased to offer the following GMP proposal statement of Clarifications and/or Qualifications pertaining to our proposal and are as follows:

SCOPE OF WORK:

- Scope of work is based on the attached Scope Sheets generated by RUSH
- Demo and dispose of existing crossover structure.
- Provide and install new crossover
- Maintain a safe and clean jobsite.

QUALIFICATIONS:

1. Our proposal is based on normal working hours, Monday through Friday.
2. Our proposal is based on each individual crossover done as a single project.
3. This proposal includes an allowance of \$1,500 per each crossover for replacement of any vegetation destroyed.
4. Each crossover includes a fixed \$4,000 contingency.
5. These (3) proposals include a full replacement of the existing crossovers, including 6x6 posts.
6. RUSH Construction takes exception to the use of 2.5 CCA lumber that is not in direct submerged contact with salt water, therefore we shall not warranty the 2.5 CCA lumber for any other application.
7. We have priced the lumber materials as follows: Post/Pilings (2.5 CCA) – Girders/Joists (.60 CCA), Decking/Treads/Rails (.40 DSS GC ca/acq).
8. Full time RUSH supervision is included during all work activities on site.
9. Removal of all debris generated by RUSH construction activity is included.
10. This proposal does not include any added scope generated from EPA and AHJ permit review comments.
11. Builders Risk is included in this proposal.
12. General Liability Insurance is included in this proposal.
13. Performance & Payment Bond is included in this proposal.
14. This bid proposal is valid for (30) thirty days from the date of this proposal.

End of Document

LORI WILSON PARK- CROSSEOVERS #1, #2, & #3

Location: Cocoa Beach, FL

EST. NO. 20-50

CONSTRUCTION GMPs

RUSH Construction, INC

6285 VectorSpace Blvd

Titusville, FL 32780

M.(321) 403-2734 Conrad Wilson- cwilson@rushinc.com

P.(321) 267-8100

www.rushinc.com



BID DATE: 10/15/2020
BID TIME: 3:00 P.M.

LINE ITEM	DIVISION OF WORK	GMP CROSSOVER #1	GMP CROSSOVER #2	GMP CROSSOVER #3	LIST OF SUBCONTRACTORS
1 ALLOWABLE OVERHEAD	01 "L"	\$6,751	\$6,751	\$6,751	RUSH
2 GENERAL CONDITIONS	01 "M"	\$21,181	\$21,181	\$21,181	RUSH
3 SUBCONTRACTOR MOBILIZATION	06	\$10,564	\$10,564	\$10,564	RUSH
4 DEMOLITION/ REMOVAL	06	\$22,700	\$21,940	\$22,890	RUSH
5 CROSSEOVER REPLACEMENT	06	\$108,287	\$80,071	\$83,737	RUSH
6 PAVILLION ALLOWANCE	07	N/A	N/A	N/A	RUSH
7 MISC. SITE RESTORATION	31	\$1,500	\$1,500	\$1,500	RUSH
TOTALS					
Bldg Permit "M"	1.50%	\$170,983	\$142,007	\$146,623	
SUBTOTAL		\$2,565	\$2,130	\$2,199	
Home Office OH & Fee	15.00%	\$173,548	\$144,137	\$148,822	
SUBTOTAL		\$26,032	\$21,621	\$22,323	
G/L INS % "M"	0.50%	\$199,580	\$165,758	\$171,146	
SUBTOTAL		\$998	\$829	\$856	
Builders Risk % "M"	0.47%	\$200,578	\$166,587	\$172,001	
SUBTOTAL		\$943	\$783	\$808	
BOND % "M"	1.00%	\$201,520	\$167,370	\$172,810	
SUBTOTAL		\$2,015	\$1,674	\$1,728	
CONTINGENCY	Fixed	\$203,536	\$169,043	\$174,538	
		\$4,000	\$4,000	\$4,000	
GRAND TOTALS		\$207,536	\$173,043	\$178,538	
		CROSSOVER #1	CROSSOVER #2	CROSSOVER #3	
ADD for MoistureShield Vision 1x6 with Cool Deck Technology		\$28,881	\$19,213	\$20,422	
ADD for TimberTech AZEK Harvest.		\$25,483	\$16,953	\$18,019	

RUSH Construction, Inc
ATTACHMENT "M"
 TITLE: LORI WILSON PARK
 LOCATION: Cocoa Beach, FL

COST ESTIMATE BREAKDOWN NO.

1

PAGE 1 OF 2

B20-50

*Required per Specs

Varies

SF

ALL CROSSOVERS GCs

TRADE : **GENERAL CONDITIONS**

TOTAL : \$ 21,181

(Applied separately to each)

SCHEDULE: **CONTRACT: 8 DAYS**

Not Used for #7 and Connectors

WORK: **1 MOS**

4.3 WKS

LINE NO.	ITEM	UNIT	QTY.	MATER. UNIT	COST TOTAL	LABOR HRS.	COST RATE	TOTAL	OTHER DIR. COST	LINE TOTAL
1	SUPERVISION	WKS	4.3	175.00	753	172	42.00	7,224	-	7,977
2	ASST. SUPERINT.	WKS	-	-	-	-	0.00	-	-	-
3	SPECIAL QC REQ.	LOT	-	-	-	-	0.00	-	-	-
4	SSHO MANAGER	WKS	-	-	-	-	0.00	-	-	-
5	ESCORT	WKS	-	-	-	-	0.00	-	-	-
6	QUALITY & SAFETY CONTROL	WKS	4.3	25.00	108	9	42.00	378	-	486
7	CQC MANAGER	WKS	-	-	-	-	0.00	-	-	-
8	ASST QC REP	WKS	-	-	-	-	0.00	-	-	-
9	CLERK	WKS	-	-	-	-	0.00	-	-	-
10	SCHEDULER	WKS	-	-	-	-	0.00	-	-	-
7	AUTOMOBILES/ TRUCKS	WKS	-	-	-	-	0.00	-	-	-
11	OFFICE/STORAGE UNIT	MOS	-	-	-	-	0.00	-	-	-
12	STOR. TRAILERS	MOS	-	200.00	-	-	35.00	-	-	-
13	FIELD TELEPHONE	MOS	1.0	150.00	150	-	0.00	-	-	150
14	POWER Generator	MOS	1.0	645.00	645	-	0.00	-	-	645
15	TEMP. WATER Hydrant Meter	MOS	1	55.00	55	-	0.00	-	500	555
16	JOB SITE ICE & WATER	WKS	4.3	25.00	108	-	0.00	-	-	108
17	TEMP. TOILETS	MOS	1.0	125.00	125	-	0.00	-	-	125
18	DROP TANK	MOS	-	-	-	-	0.00	-	-	-
19	DUMPSTERS	EA	3.0	550.00	1,650	-	0.00	-	-	1,650
20	TRASH REMOVAL	WKS	4.3	20.00	86	34	35.00	1,190	-	1,276
21	FINAL CLEANUP	SF	-	-	-	-	0.00	-	-	-
22	SURVEYS/C. PNTS.	LOT	1	3,000.00	3,000	-	0.00	-	-	3,000
23	LAYOUT / B. BOARDS	LOT	-	-	-	-	0.00	-	-	-
24	JOB SITE SIGN	EA	1	300.00	300	8	35.00	280	-	580
25	OWNERS TESTING	LOT	-	-	-	-	0.00	-	-	-
26	TESTING	LOT	1	-	-	-	0.00	-	-	-
SUB TOTALS THIS PAGE					\$ 6,980			\$ 9,072	\$ 500	\$ 16,552
VERIFIED TOTAL										\$ 16,552

RUSH Construction, Inc
ATTACHMENT "M"
TITLE: LORI WILSON PARK
LOCATION: Cocoa Beach, FL

COST ESTIMATE BREAKDOWN NO.

1

PAGE 2 OF 2

TRADE : GENERAL CONDITIONS
SCHEDULE: CONTRACT: 8 DAYS

TOTAL : \$ 21,181

LINE NO.	ITEM	UNIT	QTY.	MATER. COST		LABOR COST		TOTAL	OTHER DIR COST	LINE TOTAL
				UNIT	TOTAL	HRS	RATE			
27	TEMP. FENCING	LF	120	4.50	540	-	35.00	-	-	540
28	SITE SECURITY	WKS	-	-	-	-	0.00	-	-	-
29	REPRODUCTION	LOT	-	-	-	-	0.00	-	-	-
30	SITE QUALITY & SAFETY CONTROL MATERIAL	MOS	1.0	150.00	150	-	0.00	-	-	150
31	OFFICE TRAILER FURNITURE	LOT	-	-	-	-	0.00	-	-	-
32	OFFICE TRAILER EQUIPMENT	LOT	-	-	-	-	0.00	-	-	-
33	CONSTRUCTION DRAWING & SPECS AS-BUILT	LOT	1	-	-	4	42.00	168	-	168
34	AS-BUILT DWGS- Elect.	LOT	-	-	-	-	0.00	-	-	-
35	CPM SCHEDULE	MOS	-	-	-	-	0.00	-	-	-
36	P.E. CERT. - PERMITS	LOT	-	-	-	-	0.00	-	-	-
37	MISC SITE RESTORE	LOT	-	-	-	-	0.00	-	-	-
38	GIS SURVEY	LOT	-	-	-	-	0.00	-	-	-
39	(With Surveys/C. Points) HURRICANE PREP	LOT	-	-	-	-	0.00	-	-	-
40	PARTNERING	LOT	-	-	-	-	0.00	-	-	-
41	(Design Review Mtgs) CLOSE OUT EXPENSE	LOT	-	-	-	-	0.00	-	-	-
42	PAINT JOB TRAILER	LOT	-	-	-	-	0.00	-	-	-
43		LOT	-	-	-	-	0.00	-	-	-
44	COLOR BOARDS	LOT	-	-	-	-	0.00	-	-	-
45	I.D. BADGES	LOT	-	-	-	-	0.00	-	-	-
46	EQUIP LAYOUT DWGS	LOT	-	-	-	-	0.00	-	-	-
47	PROGRESS PHOTOS	WK	-	-	-	-	0.00	-	-	-
48	BUILDERS RISK	LOT	IN BID SUMMARY	-	-	-	0.00	-	-	-
49	PERMIT ALLOWANCE	LOT	IN BID SUMMARY	-	-	-	0.00	-	-	-
50	P&P BOND	LOT	IN BID SUMMARY	-	-	-	0.00	-	-	-
51	G/L Insurance	LOT	IN BID SUMMARY	-	-	-	0.00	-	-	-
52	ACCESS ROAD	LOT	-	-	-	-	0.00	-	-	-
SUB TOTALS PAGES 1 & 2					\$ 7,670			\$ 9,240	\$ 500	\$ 17,410
SALES TAX %					7	537	PT&I % 35	3,234		3,771
TOTALS					\$ 8,207			\$ 12,474	\$ 500	\$ 21,181
							VERIFIED TOTAL		\$	21,181

** 4/24/2020

DISTRIBUTION:

WC, AF, ML, TS

RUSH FORM 102 (1/98): EX

ATTACHMENT "L"

B20-50

*Required per Specs

Varies

SF

TITLE: LORI WILSON PARK

ALL CROSSOVERS GCs

TRADE: ALLOWABLE OVERHEAD

TOTAL: \$ 6,751

LOCATION: Cocoa Beach, FL

(Applied separately to each)

SCHEDULE: CONTRACT: 8 DAYS

Not Used for #7 and Connectors

WORK: 1 MOS

4.3 WKS

LINE NO.	ITEM	UNIT	QTY.	MATER.	COST	LABOR COST			OTHER DIR. COST	LINE TOTAL
				UNIT	TOTAL	HRS.	RATE	TOTAL		
1	PROJECT MANAGER	WKS	4.3	70.00	301	69	45.00	3,105	-	3,406
2	ASST PM	WKS	-	-	-	-	40.00	-	-	-
3	EXECUTIVE LABOR COST	WKS	-	-	-	-	42.00	-	-	-
4	ESTIMATOR	WKS	4.3	17.50	75	17	42.00	714	-	789
5	OFFICE SECRETARY	WKS	-	-	-	-	0.00	-	-	-
6	SCHEDULER	WKS	-	-	-	-	0.00	-	-	-
7	AUTOMOBILES/ TRUCKS	WKS	6.5	70.00	455	-	0.00	-	-	455
8	GAS/ OIL/ LUBRICATION	WKS	6.5	40.00	260	-	0.00	-	-	260
9	PM TRAVEL	WKS	-	-	-	-	0.00	-	-	-
10	WARRANTY EXPENSE (incl. equip. I.D. tags)	LOT	1	100.00	100	8	42.00	-	-	100
11	POSTAGE	MOS	-	-	-	-	0.00	-	-	-
12	OFFICE SUPPLIES	LOT	1	200.00	200	-	0.00	-	-	200
13	OFFICE PHONES	MOS	1.0	100.00	100	-	0.00	-	-	100
14	MISC FEES	LOT	-	-	-	-	0.00	-	-	-
SUB TOTALS PAGES 1					\$ 1,491			\$ 3,819	\$ -	\$ 5,310
SALES TAX % 7					104	PT&I % 35		1,337		1,441
TOTALS					\$ 1,595			\$ 5,156	\$ -	\$ 6,751
VERIFIED TOTAL \$										6,751

** 4/24/2020

DISTRIBUTION:

WC, AF, ML, TS

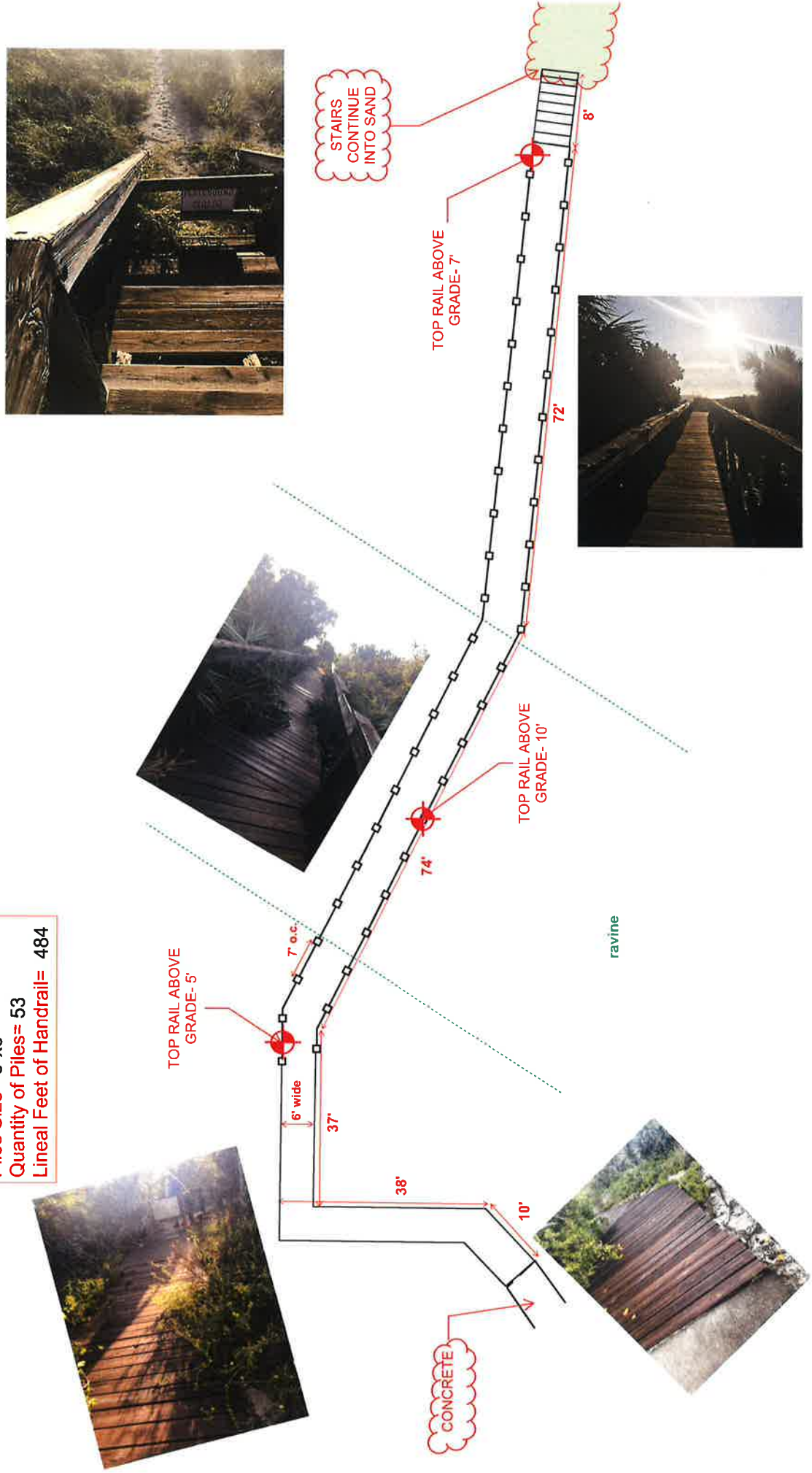
RUSH FORM 102 (1/98): EX

CROSSOVER #1

(Not to Scale)

EXISTING CONDITIONS

Crossover width= 6'
 Overall length= 239'
 Square footage= 1,434
 Piles Size= 6"x6"
 Quantity of Piles= 53
 Lineal Feet of Handrail= 484



EXISTING CONDITIONS

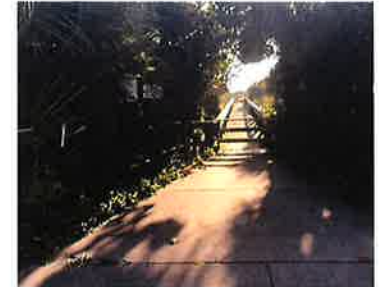
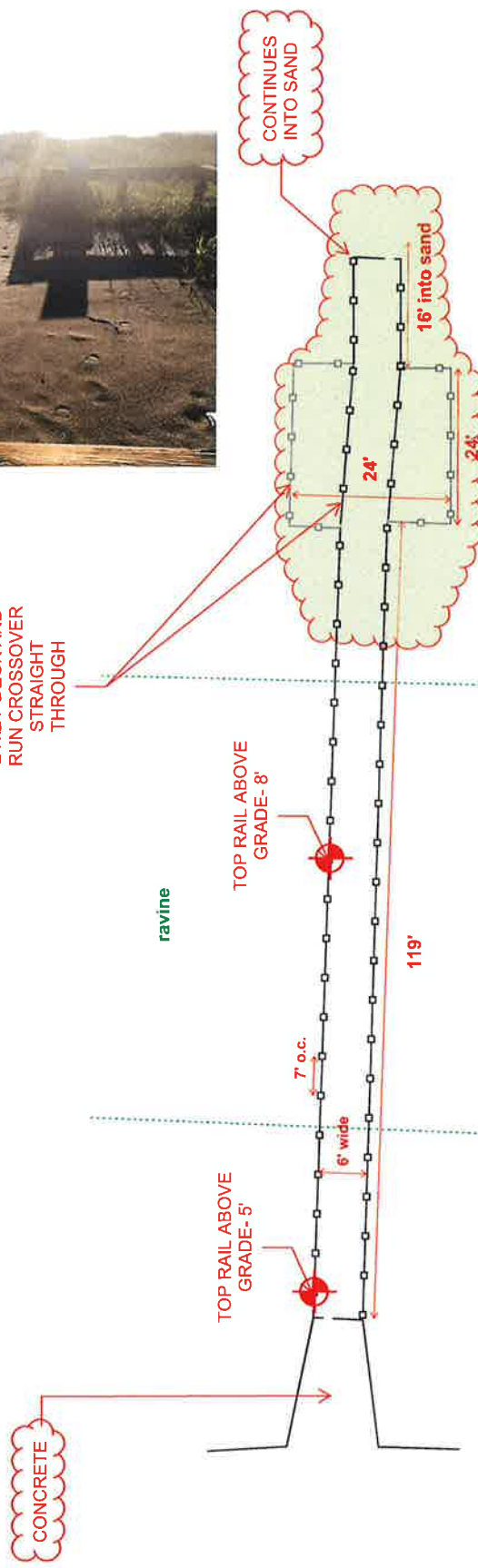
Crossover width= 6'
Overall length= 159'
Square footage= 1,386
Piles Size= 6"x6"
Quantity of Piles= 56
Lineal Feet of Handrail= 354

CROSSOVER #2

(Not to Scale)



DEMO EXISTING
24'x24' DECK AND
RUN CROSSOVER
STRAIGHT
THROUGH

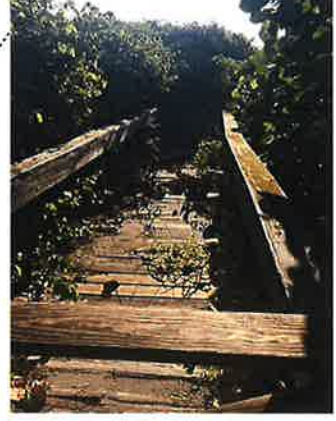
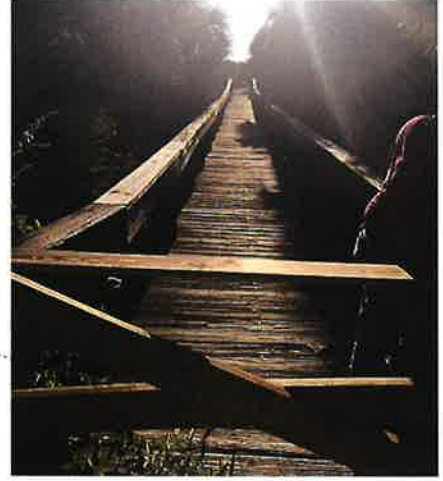
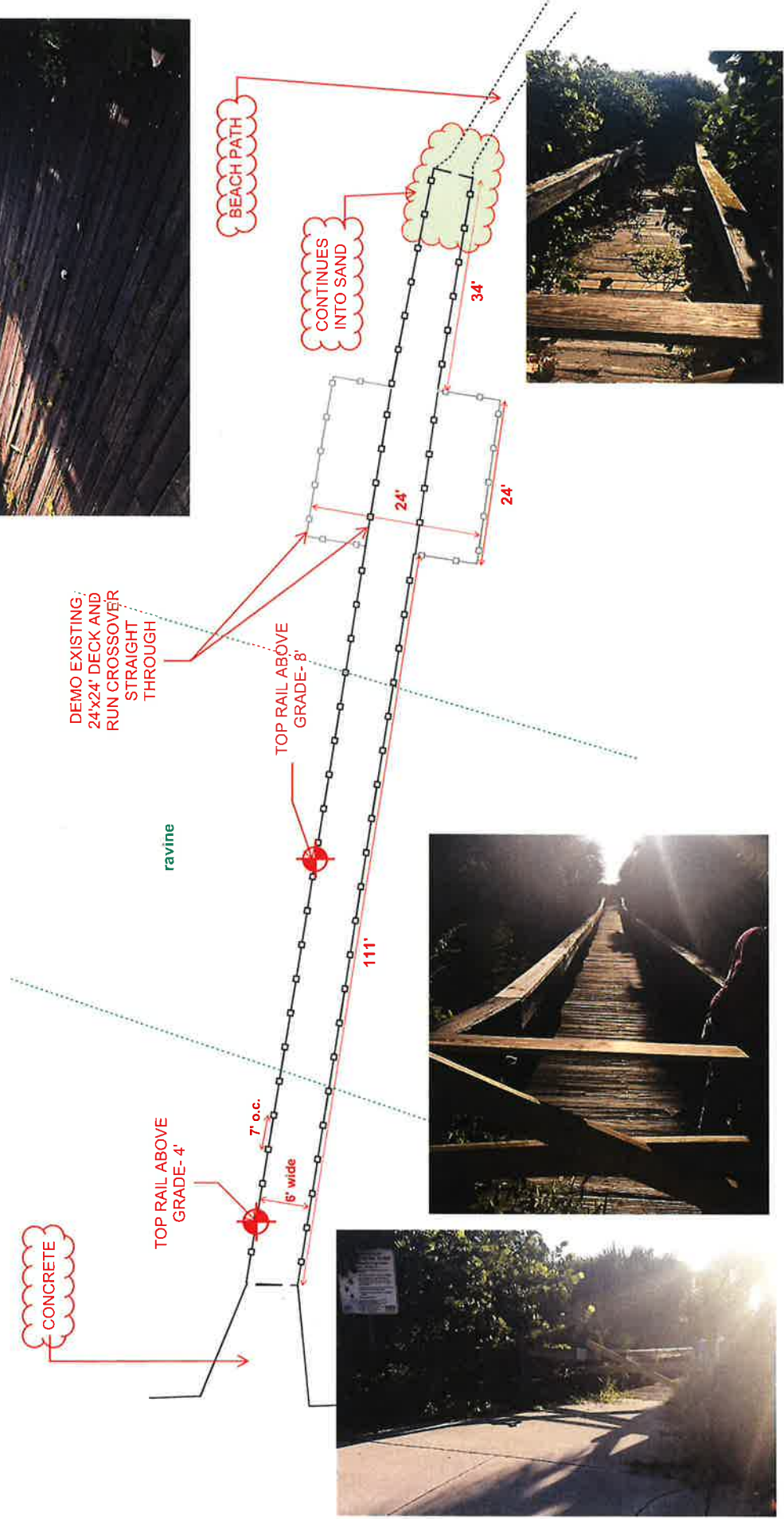


EXISTING CONDITIONS

Crossover width= 6'
Overall length= 169'
Square footage= 1,446
Piles Size= 6"x6"
Quantity of Piles= 52
Lineal Feet of Handrail= 374

CROSSOVER #3

(Not to Scale)



ATTACHMENT “J”

CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

AIA DOCUMENT G704

Owner ☐
Architect ☐
Contractor ☐
Field ☐
Other ☐

PROJECT:

PROJECT NO:

CONTRACT FOR:
CONTRACT DATE:

TO OWNER:

Brevard County Board of County Commissioners
Facilities Department/Facilities Engineering & Construction
2725 Judge Fran Jamieson Way, Building "A"
Viera, Florida 32940

TO CONTRACTOR:

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The work performed under this contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

In accordance with Florida Statute 255.40, the Owner requires that the Contractor certify that to the best of his/her knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project. By signing below, the Contractor acknowledges this.

The date of Substantial Completion of the Project or portion thereof designated above is hereby established as _____.

which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Engineer

By _____

Date

The Contractor will complete or correct the Work on the list of items attached hereto within _____

days from the above date of Substantial Completion.

Contractor

By _____

Date

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at _____ (time) on _____ (date).

Brevard County B.O.C.C.
Facilities Engineering & Construction
Owner

By: _____

Date

The responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note to Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

ATTACHMENT "K"

CERTIFICATE OF FINAL COMPLETION

PROJECT NO. & TITLE:

ARCHITECT:

CONTRACT DATE:

CONTRACTOR:

DATE OF FINAL COMPLETION:

CERTIFICATE OF ARCHITECT/ENGINEER

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

A/E Firm Name: _____

By: _____

TO BE COMPLETED BY ARCHITECT/ENGINEER:

DATE:

DAYS:

THROUGH THE SUBSTANTIAL COMPLETION PHASE

1. Notice to Proceed (N.T.P.)
2. Time Specified in Original Contract for Substantial Completion (S.C.)
3. Extension Granted By Change Orders (Days Between Original Contract S.C. and Final Contract S.C.)
4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3)
5. Project Substantially Completed as Certified by A/E (Total Days from NTP through Date Certified by A/E)
6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun)

THROUGH THE FINAL COMPLETION PHASE

1. Time Specified in Contract, Between Substantial and Final Completion
2. Extensions Granted by Change Orders (Days Between S.C. and Final Completion)
3. Total Days Allowable Between Substantial Completion and Final Completion (Add Lines 1 and 2)
4. Date Actually Completed and Total Days Between and Date Certified by A/E as Actually being Finally Completed).
5. Final Completion Overrun (Subtract Line)

Architect: _____ Date: _____

Project Manager: _____ Date: _____

Facilities Construction Manager: _____ Date: _____

ATTACHMENT "L"

ALLOWABLE COSTS, OVERHEAD

DESCRIPTION	EST QUANTITY	UNITS	UNIT COST	BUDGET VALUE	QUANTITY TO DATE	QUANTITY TO COMP
OFFICE PHONES						
OFFICE SUPPLIES						
POSTAGE						
GAS/OIL/LUBRICATION						
AUTOMOBILES/TRUCKS						
PROJECT MANAGER						
ESTIMATING COSTS						
EXECUTIVE LABOR COST						
ASST PROJECT MANAGER						
IN HOUSE SECRETARY						
TRAVEL						
EXPENDITURES						
WARRANTY EXPENSE						

ATTACHMENT "M"
(Direct Cost Items)
GENERAL CONDITIONS

SUPERINTENDENT

JOB SITE SECRETARY/CLERK

QUALITY CONTROL

SURVEY

PERMITS

IMPACT/CONNECTION FEES

CONSTRUCTION DRAWINGS/SPECS

PROGRESS PHOTOGRAPHS *(IF REQUESTED BY THE OWNER)*

JOB SITE SIGN *(IF REQUESTED BY THE OWNER)*

SPECIAL SECURITY *(IF REQUESTED BY THE OWNER)*

PAYMENT & PERFORMANCE BONDS

BUILDERS RISK INSURANCE

JOBSITE TRAILER AND SUPPORT *(IF REQUESTED BY THE OWNER)*

TEMPORARY UTILITIES *(AS APPROVED BY THE OWNER)*

TEMPORARY JOBSITE FENCING *(INITIAL INSTALLATION ONLY)*

TRASH REMOVAL/DUMP FEES, AND RECYCLING *(AS APPROVED BY THE OWNER)*

ATTACHMENT "N"
CERTIFICATE FOR PAYMENT

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

(Instructions on reverse side)

PAGE ONE OF PAGES

TO (OWNER):

PROJECT:

APPLICATION NO:

Distribution to:

☐ OWNER

☐ ARCHITECT

☐ CONTRACTOR

FROM (CONTRACTOR):

VIA (ARCHITECT):

PERIOD TO:

ARCHITECT'S

PROJECT NO:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			DEDUCTIONS
Change Orders approved in previous months by Owner		ADDITIONS	
TOTAL			
Approved this Month			
Number	Date	Approved	
TOTALS			
Net change by Change Orders			

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of:

County of:

Subscribed and sworn to before me this _____ day of _____, 19____

Notary Public:

My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for.)

ARCHITECT:

By: _____

Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G703 (Instructions on reverse side) PAGE OF PAGES

APPLICATION NUMBER:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO.:

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

[illegible]

ATTACHMENT "O"

VENDOR AFFIDAVIT REGARDING SCRUTINIZED COMPANY LIST

Pursuant to § 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or (3) is engaged in business operations in Cuba or Syria.

If the bidder or contractor is found to have falsified the attached affidavit, the Board of County Commissioners of Brevard County may terminate the contract or reject the bid.

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me first duly sworn, made the following statement:

1. The Business address of _____ (name of bidder or contractor) is _____.
2. My relationship to _____ (name of bidder or contractor) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that "Boycott of Israel" has the same meaning as defined in §215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.
4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing,

leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

5. _____ (name of the bidder or contractor) is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
6. _____ (name of the bidder or contractor) is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes.
7. _____ (name of the bidder or contractor) is not engaged in business operations in Cuba or Syria.

Signature

Sworn to and subscribed before me in the state and county first mentioned above
on the _____ day of _____, 20____.

Notary Public

(affix seal)

My commission expires:

ATTACHMENT "P"

MINORITY EMPLOYMENT INFORMATION

The Board of County Commissioners requires construction contracts, who would otherwise be required to file and EEO Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgment and/or EEO Form 1 Report with your GMP will be reason to declare your proposal "non-responsive" to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

Company Name: _____

Signature: _____ Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

Company Name: _____

Signature: _____ Date: _____

PUBLIC ENTITY CRIME ACKNOWLEDGMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two (\$15,000) for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

Company Name: _____

Printed Name _____ Signature _____

ATTACHMENT "Q"

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

- (1) Affiant is _____ of _____, the Bidder that has submitted a bid/quote/proposal;
- (2) Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;
- (3) Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the Contract; and
- (5) The price or prices negotiated for the bid/quote/proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

Signature

Title

Subscribed and sworn to before me this ____ day of _____, 20____.

_____, Notary Public

My Commission expires: _____

July 2020 Version 1 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - o 25% of revised FY 19-20 TOT forecast of \$11.5M (versus previous projections)
 - o 25% of \$11M FY 20-21 TOT budget of \$11M
 - o 20% (versus previous projections) in 21-22
 - o 10% (versus previous projections) in 22-23
 - o Resume 4% growth from FY 23-24 onward
- o IRL grants \$1M plus \$200K extension of FY 19-20 grants totalling \$1.2M FY 20-21. \$1M each subsequent year.
- o IRL grant KBB beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- o Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$5M for FY 20/21.
- o Paying Parks & Rec \$196K a Year to maintain Lori Wilson Park remains through FY 21-22.
- o Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- o South Beaches project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- o Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- o Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- o Interest is calculated Balance Forward x 2%.
- o Transfers from Emergency Reserves made to keep cash balances positive in future years.
- o 10% of beach TOT revenue transferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 1: Updated July 10, 2020

TDC Beach Improvement Fund: 50 Year Plan																		
Constructed Project: Mid (MR), South (SB), North (NR) Beaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TOT Revenue Forecast)	Interest Revenue ³	Statutory Reduction 5%	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRMO ADMIN EXPENSES: NRMO Staffing and Memberships ²	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL				
								Balance Forward x 2%				2% Escalation per Year	2% Escalation per Year					
MR-SR-NR-LWP	17-18	\$	10,476,341	\$	7,004,423	\$	17,050,384	\$	3,895,736	\$	69,166	\$	3,039,570	\$	271,134	\$	430,380	\$
LWP	18-19	\$	7,991,822	\$	8,325,788	\$	16,317,610	\$	4,005,980	\$	193,434	\$	4,176,374	\$	212,612	\$	127,105	\$
LWP-MR-SR-SB	19-20	\$	7,912,436	\$	7,912,436	\$	17,437,237	\$	2,875,000	\$	153,549	\$	0	\$	270,977	\$	551,950	\$
NR	20-21	\$	8,065,558	\$	2,765,746	\$	10,831,304	\$	2,750,000	\$	161,311	\$	3,500,000	\$	212,972	\$	447,150	\$
	21-22	\$	692,240	\$	7,008,726	\$	7,700,966	\$	3,679,551	\$	13,845	\$	0	\$	212,972	\$	456,093	\$
MR	22-23	\$	4,774,304	\$	4,239,521	\$	9,013,825	\$	4,367,167	\$	95,486	\$	0	\$	221,576	\$	465,215	\$
SB	23-24	\$	743,288	\$	4,325,884	\$	5,072,172	\$	4,541,854	\$	223,133	\$	0	\$	226,008	\$	474,519	\$
	24-25	\$	784,576	\$	8,002,259	\$	8,786,835	\$	4,723,528	\$	14,866	\$	3,500,000	\$	230,528	\$	484,010	\$
SR-MR	25-26	\$	5,693,535	\$	4,778,823	\$	10,672,358	\$	4,912,469	\$	117,871	\$	0	\$	235,138	\$	493,690	\$
NR	26-27	\$	1,156,187	\$	4,850,552	\$	4,694,365	\$	5,108,968	\$	251,517	\$	0	\$	239,841	\$	503,564	\$
SB	27-28	\$	1,466,745	\$	5,075,519	\$	6,541,764	\$	5,313,327	\$	29,325	\$	0	\$	244,638	\$	513,635	\$
MR	28-29	\$	60,935	\$	5,250,724	\$	5,311,657	\$	5,525,860	\$	1,219	\$	0	\$	246,531	\$	523,907	\$
	29-30	\$	3,391,048	\$	1,785,736	\$	4,875,785	\$	5,746,894	\$	172,106	\$	0	\$	254,521	\$	534,386	\$
	30-31	\$	1,787,610	\$	5,662,967	\$	4,875,357	\$	5,976,770	\$	15,752	\$	0	\$	259,612	\$	545,073	\$
SR-MR-SB	31-32	\$	2,274,721	\$	5,948,269	\$	8,223,041	\$	6,215,841	\$	45,495	\$	0	\$	264,804	\$	555,975	\$
NR	32-33	\$	11,902,288	\$	5,915,107	\$	15,987,181	\$	6,464,474	\$	338,046	\$	0	\$	270,100	\$	567,094	\$
SB	33-34	\$	8,951,186	\$	6,216,878	\$	12,734,358	\$	6,723,053	\$	311,321	\$	0	\$	275,502	\$	578,436	\$
MR	34-35	\$	5,437,337	\$	6,539,067	\$	1,101,730	\$	6,991,975	\$	1,087,747	\$	0	\$	281,012	\$	590,005	\$
SR	35-36	\$	9,327,695	\$	6,730,845	\$	2,586,850	\$	7,271,654	\$	1,866,552	\$	0	\$	286,632	\$	601,805	\$
SB	36-37	\$	11,145,634	\$	6,972,628	\$	4,173,007	\$	7,562,521	\$	322,913	\$	0	\$	292,365	\$	613,841	\$
SR-MR	37-38	\$	7,339,031	\$	7,339,031	\$	352,741	\$	7,855,021	\$	1,339,726	\$	0	\$	298,212	\$	626,118	\$
NR	38-39	\$	7,439,759	\$	9,975,070	\$	13,606,519	\$	8,179,622	\$	348,297	\$	0	\$	304,176	\$	638,640	\$
SB	39-40	\$	13,214,953	\$	7,830,384	\$	5,384,570	\$	8,506,802	\$	391,566	\$	0	\$	310,260	\$	651,413	\$
MR	40-41	\$	14,836,971	\$	8,121,824	\$	6,714,093	\$	8,847,079	\$	426,738	\$	0	\$	316,465	\$	664,441	\$
	41-42	\$	18,945,958	\$	8,380,942	\$	10,564,956	\$	9,200,963	\$	441,102	\$	0	\$	322,794	\$	677,730	\$
SR-MR-SB	42-43	\$	13,576,677	\$	8,832,594	\$	4,744,083	\$	9,569,001	\$	1,355,789	\$	0	\$	329,250	\$	691,285	\$
NR	43-44	\$	17,893,436	\$	9,302,174	\$	1,516,738	\$	9,951,761	\$	1,490,799	\$	0	\$	335,835	\$	705,111	\$
SB	44-45	\$	26,908,034	\$	9,321,087	\$	11,586,947	\$	10,349,832	\$	1,423,103	\$	0	\$	342,552	\$	719,213	\$
	45-46	\$	11,551,462	\$	9,823,686	\$	4,445,578	\$	10,763,825	\$	1,517,036	\$	0	\$	349,403	\$	733,597	\$
MR	46-47	\$	14,514,462	\$	10,358,894	\$	4,155,578	\$	11,194,378	\$	1,545,204	\$	0	\$	356,391	\$	748,269	\$
SB	47-48	\$	18,531,151	\$	10,107,953	\$	7,823,197	\$	11,642,153	\$	1,585,975	\$	0	\$	363,519	\$	763,234	\$
MR	48-49	\$	19,417,270	\$	11,132,520	\$	8,283,707	\$	12,107,839	\$	1,618,013	\$	0	\$	370,789	\$	778,499	\$
SB	49-50	\$	11,595,097	\$	11,472,238	\$	147,146	\$	12,592,153	\$	1,631,902	\$	0	\$	378,205	\$	794,069	\$
MR	50-51	\$	12,861,915	\$	11,969,670	\$	12,883,242	\$	13,095,839	\$	1,659,238	\$	0	\$	385,769	\$	809,950	\$
SB	51-52	\$	16,816,803	\$	12,619,169	\$	4,197,636	\$	13,619,672	\$	1,664,167	\$	0	\$	393,445	\$	826,149	\$
MR	52-53	\$	17,063,613	\$	13,132,028	\$	3,931,585	\$	14,164,459	\$	1,691,159	\$	0	\$	401,354	\$	842,677	\$
	53-54	\$	20,824,093	\$	13,597,878	\$	7,276,215	\$	14,731,038	\$	1,715,678	\$	0	\$	409,381	\$	859,526	\$
SB	54-55	\$	10,832,117	\$	14,348,436	\$	3,515,319	\$	15,320,279	\$	1,755,181	\$	0	\$	417,569	\$	876,716	\$
	55-56	\$	15,134,723	\$	15,044,572	\$	1,944,572	\$	15,933,090	\$	1,803	\$	0	\$	425,920	\$	894,251	\$
SR-MR-SB	56-57	\$	126,315,567	\$	15,760,897	\$	10,054,570	\$	16,570,414	\$	1,803,221	\$	0	\$	434,439	\$	912,136	\$

July 2020 Version 2 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - o 25% of revised FY 19-20 TDT forecast of \$11.5M (versus previous projections)
 - o 25% of \$11M FY 20-21 TDT budget of \$11M
 - o 20% (versus previous projections) in 21-22
 - o 10% (versus previous projections) in 22-23
 - o Resume 4% growth from FY 23-24 onward
- IRL grants \$500K plus \$200K extension of FY 19-20 grants totalling \$700K FY 20-21, \$500K each subsequent year.
- IRL grant KBB beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$3M for FY 20/21.
- Paying Parks & Rec \$196K a Year to maintain Lori Wilson Park remains through FY 21-22.
- Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- South Beaches project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- Interest is calculated Balance Forward x 2%.
- Transfers from Emergency Reserves made to keep cash balances positive in future years.
- 10% of beach TDT revenue transferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 2: Updated July 10, 2020

TDC Beach Improvement Fund: 50 Year Plan

Constructed Project: Mid (MR), South (SR), North (NR) Beaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TDT Revenue Forecast)	Interest Revenue ³	Statutory Reduction 5%	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRMO ADMIN EXPENSES: NRMOS Staffing and Memberships ²	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL
MR, SR-MR, LWP	17-18	\$ 10,476,341	\$ 7,004,423	\$ 17,050,384	\$ 9,058,562	\$ 7,991,822	\$ 3,895,736	\$ 69,166		\$	\$ 3,039,520	\$ 221,134	\$ 430,380	\$
LWP	18-19	7,991,822	8,225,788	16,317,610	10,293,972	6,023,638	4,005,980	193,434		0	4,126,374	212,612	527,105	
LWP-MR,SR-SB	19-20	14,514,801	2,917,436	17,432,237	19,720,228	7,712,009	2,825,000	195,985	(153,549)	0	0	270,927	551,950	
NR	20-21	7,865,558	2,761,946	10,627,504	18,064,629	12,427,875	2,750,000	157,311	(145,366)	153,549	0	212,972	447,150	
	21-22	7,688,240	7,046,650	9,734,890	17,121,332	7,123,558	3,679,551	53,765	(186,666)	145,366	3,500,000	217,231	456,093	
MR	22-23	7,310,274	4,287,703	11,597,977	18,013,669	3,584,758	4,367,167	146,204	(223,669)	186,666	0	221,576	465,215	
SB	23-24	3,809,976	4,387,150	8,197,076	16,765,617	1,431,459	4,541,854	76,199	(230,903)	275,669	0	226,008	474,519	
	24-25	1,662,362	8,018,937	9,681,299	12,832,141	6,849,158	4,723,528	33,247	(237,839)	230,903	3,500,000	230,528	484,010	
SR-MR	25-26	7,086,997	4,801,499	11,888,496	11,411,941	476,554	4,912,468	141,740	(252,710)	237,839	0	235,138	493,690	
NR	26-27	779,264	4,867,376	5,596,640	13,185,233	2,411,447	5,108,968	14,585	(256,178)	252,710	0	239,841	503,564	
SB	27-28	2,667,575	5,098,343	7,765,868	17,523,174	242,694	5,813,377	53,350	(268,334)	256,178	0	244,638	513,635	
MR	28-29	5,117,077	5,259,276	5,770,304	15,245,706	525,098	5,525,860	10,721	(276,804)	268,334	0	249,531	523,907	
	29-30	801,902	5,474,786	6,276,687	13,139,711	3,136,976	5,746,894	16,038	(288,147)	276,804	0	254,521	534,386	
	30-31	3,425,123	5,743,009	9,168,131	13,204,249	5,963,883	5,976,770	68,502	(302,764)	288,147	0	302,764	545,073	
SR-MR-SB	31-32	6,266,146	6,024,105	12,290,252	18,346,332	(6,956,080)	6,215,841	125,328	(317,058)	302,764	0	264,804	555,975	
NR	32-33	(5,739,021)	6,032,209	293,187	12,983,263	(2,890,076)	6,464,474	(114,780)	(317,485)	317,058	0	270,100	567,094	
	33-34	(2,372,531)	6,341,821	3,969,231	13,410,423	558,809	6,723,053	(47,452)	(333,780)	317,485	0	281,012	580,005	
MR	34-35	897,589	6,659,356	7,551,925	10,487,761	(2,335,836)	6,991,975	17,852	(350,491)	333,780	0	286,637	601,805	
SB	35-36	(2,585,345)	6,838,950	4,273,605	18,617,138	(4,243,608)	7,271,654	(51,707)	(360,997)	350,491	0	292,365	613,841	
	36-37	(3,987,611)	7,108,775	3,126,114	(2,894,438)	231,677	7,855,021	12,116	(393,857)	360,997	0	298,121	626,118	
SR-MR	37-38	605,826	7,483,281	8,089,101	(7,195,009)	(9,105,908)	8,179,622	(174,241)	(400,269)	393,857	0	304,176	638,640	
NR	38-39	(8,712,051)	7,605,112	(1,106,939)	(3,345,623)	(4,452,562)	8,506,807	(81,046)	(421,288)	400,269	0	310,260	651,413	
SB	39-40	(4,052,293)	8,004,473	3,952,180	(9,585,071)	(5,632,891)	8,847,079	(104,232)	(437,142)	421,288	0	316,465	664,441	
MR	40-41	(5,211,603)	8,305,705	3,094,102	(12,379,922)	(9,285,820)	9,200,963	(176,974)	(451,199)	437,142	0	320,789	677,730	
	41-42	(8,848,677)	8,572,790	(275,889)	(3,173,423)	(3,493,310)	9,569,001	(159,962)	(475,452)	451,199	0	329,250	691,285	
	42-43	(2,938,111)	9,033,587	6,035,476	(3,230,825)	2,804,651	9,951,761	(65,602)	(500,868)	475,452	0	335,835	705,111	
SR-MR-SB	43-44	(3,280,103)	9,516,495	17,796,598	(28,635,170)	(115,838,572)	10,349,832	(306,754)	(502,154)	500,868	0	340,403	719,213	
NR	44-45	(15,337,704)	9,540,924	(5,796,780)	(3,785,995)	(9,587,775)	10,763,825	(181,612)	(529,111)	502,154	0	350,591	732,597	
	45-46	(9,080,621)	10,053,102	977,481	(3,427,260)	(2,454,779)	11,194,378	(38,513)	(557,793)	529,111	0	356,391	748,269	
MR	46-47	(1,825,668)	10,598,071	8,672,403	(14,647,994)	(5,975,591)	11,642,153	(108,356)	(576,600)	557,793	0	363,519	763,234	
SB	47-48	(5,417,798)	10,957,107	5,539,309	(11,884,816)	(6,345,507)	12,107,839	(115,376)	(599,623)	576,600	0	370,789	778,459	
	48-49	(5,768,817)	11,392,840	5,624,022	(13,244,584)	1,999,488	12,592,153	(51,981)	(632,201)	599,623	0	378,209	794,069	
SR-MR	49-50	(2,599,061)	12,011,927	14,610,989	(25,361,107)	(10,750,118)	13,093,839	(202,358)	(644,674)	632,201	0	385,769	809,950	
NR	50-51	(16,117,911)	12,748,807	(3,369,104)	(4,282,525)	(2,130,830)	13,619,672	(30,239)	(679,872)	644,674	0	393,485	826,149	
SB	51-52	(1,511,956)	17,909,962	11,598,095	(13,264,178)	(1,866,172)	14,164,459	(23,734)	(707,036)	679,872	0	401,354	842,672	
MR	52-53	(1,186,701)	13,433,689	12,246,988	(17,367,701)	(5,120,713)	14,731,038	(88,274)	(732,138)	707,036	0	409,381	859,526	
	53-54	(4,413,671)	13,910,626	9,496,949	(15,479,717)	(4,017,232)	15,320,279	(94,987)	(770,763)	732,138	0	417,569	876,216	
	54-55	(4,749,370)	14,644,503	19,393,873	(15,633,734)	(13,760,139)	15,933,090	(81,185)	(811,855)	770,763	0	425,920	894,251	
SR-MR-SB	55-56	(14,530,903)	15,412,523	29,943,425	(37,897,758)	(7,954,333)	16,570,414	(142,863)	(821,378)	811,855	0	434,439	912,136	
NR	56-57	(7,143,148)	15,606,123	8,463,026	(16,038,554)	(7,574,527)	17,722,724	(54,077)	(864,410)	821,378	0	442,138	930,378	
	57-58	(4,766,024)	16,833,740	12,067,716	(16,038,554)	(4,017,838)	17,950,560				0			

July 2020 Version 3 Primary actions taken relative to previous 50 year:

- Revenue reduced
 - o 25% of revised FY 19-20 TDT forecast of \$11.5M (versus previous projections)
 - o 25% of \$11M FY 20-21 TDT budget of \$11M
 - o 20% (versus previous projections) in 21-22
 - o 10% (versus previous projections) in 22-23
 - o Resume 4% growth from FY 23-24 onward
- FY 20-21 IRL grants \$500K plus \$200K extension of FY 19-20 grants totalling \$700K
- IRL grant K8B beach and causeway litter contracts remain in place and escalated 3% every 5 years.
- Lori Wilson Park boardwalk construction \$500K for this FY 19/20 and \$2M for FY 20/21.
- Paying Parks & Rec \$196K a year to maintain Lori Wilson Park remains for all 50 years.
- Army Corps project expenses, including required permitting and monitoring kept unchanged, realistic but slightly conservative.
- South Beaches: project funding left in to avoid creating disqualification trigger for FEMA reimbursement of 19-20 project as well as future emergency events.
- Hurricane Irma \$3.5M FEMA reimbursement presumed no sooner than 21-22 (now listed as eligible by FEMA) and put in reserves.
- Hurricane Dorian \$3.5M FEMA reimbursement presumed no sooner than 24-25 (not listed as eligible by FEMA yet) and put in reserves.
- Interest is calculated Balance Forward x 2%.
- Transfers from Emergency Reserves made to keep cash balances positive in future years.
- 10% of beach TDT revenue transferred to reserves in years with positive cash balance. Some prior years reserve transfer zeroed out to keep subsequent year cash balance positive.

Tourism Version 3: Updated July 10, 2020

Constructed Project: Mid (MR), South (SR), North (NR) Beaches or South Beaches (SB)	FY	Balance Forward	Program Revenue	TOTAL REVENUE	TOTAL EXPENSE	CASH BALANCE	REVENUE: Fund 1442 (25% of Gross TDT Revenue Forecast)	Statutory Reduction %	Cash Balance Forward (from Statutory Reduction)	Anticipated FEMA Reimbursements	NRM ADMIN EXPENSES: NRM Staffing and Memberships?	EXPENSES: TDC Admin + Tax Collector Fee Starting 2021	TOTAL
MR, SR, NR, LWP	17-18	\$ 10,476,341	\$ 7,004,423	\$ 17,050,384	\$ (9,058,552)	\$ 7,991,822	\$ 3,895,736	69.166	\$ 69,166	\$ 3,039,520	\$ 221,612	\$ 430,380	\$
LWP	18-19	\$ 7,991,822	\$ 8,326,788	\$ 16,317,610	\$ (10,293,972)	\$ 6,023,638	\$ 4,005,980	193.434	\$ 193,434	\$ 4,126,374	\$ 212,612	\$ 127,105	\$
LWP, MR, SR, SB	19-20	\$ 14,514,801	\$ 2,917,436	\$ 17,432,237	\$ (9,720,228)	\$ 7,712,009	\$ 2,875,000	195.985	\$ 195,985	\$ 0	\$ 0	\$ 220,927	\$ 551,950
NR	20-21	\$ 7,865,558	\$ 2,761,946	\$ 10,627,504	\$ (7,004,629)	\$ 3,542,875	\$ 2,750,000	157.311	\$ 157,311	\$ 0	\$ 0	\$ 212,972	\$ 447,150
NR	21-22	\$ 3,658,240	\$ 7,065,650	\$ 10,753,890	\$ (2,111,332)	\$ 8,642,558	\$ 3,679,551	73.765	\$ 73,765	\$ 0	\$ 0	\$ 217,231	\$ 456,093
MR	22-23	\$ 8,330,274	\$ 4,316,583	\$ 13,146,807	\$ (7,513,659)	\$ 5,633,138	\$ 4,367,167	176.604	\$ 176,604	\$ 3,500,000	\$ 221,576	\$ 187,666	\$ 465,215
SB	23-24	\$ 5,850,326	\$ 4,426,107	\$ 10,286,434	\$ (6,265,617)	\$ 4,020,817	\$ 4,541,854	117.207	\$ 117,207	\$ 0	\$ 0	\$ 226,008	\$ 474,519
NR	24-25	\$ 4,253,770	\$ 8,068,173	\$ 12,321,943	\$ (2,332,141)	\$ 9,989,803	\$ 4,723,528	85.075	\$ 85,075	\$ 3,500,000	\$ 230,528	\$ 484,010	\$
SR, MR	25-26	\$ 4,861,230	\$ 8,651,270	\$ 15,991,453	\$ (12,673,188)	\$ 2,418,264	\$ 4,912,459	204.605	\$ 204,605	\$ 0	\$ 235,138	\$ 493,690	\$
NR	26-27	\$ 2,674,118	\$ 4,904,328	\$ 7,578,446	\$ (2,685,293)	\$ 4,893,153	\$ 5,108,968	53.482	\$ 53,482	\$ 0	\$ 239,841	\$ 503,564	\$
SB	27-28	\$ 5,151,776	\$ 5,145,535	\$ 10,296,810	\$ (7,023,174)	\$ 3,273,636	\$ 5,313,327	103.026	\$ 103,026	\$ 0	\$ 244,638	\$ 513,635	\$
MR	28-29	\$ 3,540,453	\$ 5,316,911	\$ 8,861,365	\$ (8,295,206)	\$ 666,159	\$ 5,525,860	70.889	\$ 70,889	\$ 0	\$ 249,531	\$ 523,907	\$
NR	29-30	\$ 4,415,996	\$ 5,475,623	\$ 9,891,619	\$ (2,639,711)	\$ 3,681,909	\$ 5,746,894	16.920	\$ 16,920	\$ 0	\$ 254,571	\$ 534,386	\$
SB	30-31	\$ 3,970,099	\$ 9,723,462	\$ 13,693,561	\$ (2,704,249)	\$ 7,019,214	\$ 5,976,770	79.402	\$ 79,402	\$ 0	\$ 302,809	\$ 259,672	\$ 545,073
SR, MR, SB	31-32	\$ 7,322,022	\$ 6,044,167	\$ 13,366,189	\$ (3,346,332)	\$ 19,857	\$ 6,215,841	146.440	\$ 146,440	\$ 0	\$ 318,114	\$ 302,809	\$ 555,975
NR	32-33	\$ 337,971	\$ 6,447,672	\$ 6,485,643	\$ (3,129,710)	\$ 3,355,933	\$ 6,464,474	6.759	\$ 6,759	\$ 0	\$ 264,804	\$ 567,094	\$
SB	33-34	\$ 3,679,495	\$ 6,456,811	\$ 10,136,306	\$ (2,910,422)	\$ 7,225,885	\$ 6,723,053	73.590	\$ 73,590	\$ 0	\$ 339,832	\$ 373,436	\$
MR	34-35	\$ 7,565,717	\$ 6,786,125	\$ 14,351,842	\$ (10,886,959)	\$ 3,664,883	\$ 6,991,975	151.314	\$ 151,314	\$ 0	\$ 357,164	\$ 281,012	\$ 590,005
SB	35-36	\$ 6,984,491	\$ 6,984,491	\$ 11,006,538	\$ (8,844,379)	\$ 2,162,160	\$ 7,271,654	80.441	\$ 80,441	\$ 0	\$ 367,605	\$ 357,164	\$ 601,805
SR, MR	37-38	\$ 2,529,764	\$ 7,731,460	\$ 10,261,224	\$ (3,150,909)	\$ 6,611,535	\$ 7,562,571	50.595	\$ 50,595	\$ 0	\$ 380,656	\$ 367,605	\$ 634,841
NR	38-39	\$ 404,047	\$ 7,604,672	\$ 14,596,813	\$ (4,593,099)	\$ 3,803	\$ 7,865,071	139.844	\$ 139,844	\$ 0	\$ 400,243	\$ 380,656	\$ 676,118
SB	39-40	\$ 4,928,165	\$ 7,778,318	\$ 8,187,365	\$ (3,683,585)	\$ 4,518,780	\$ 8,179,622	8.081	\$ 8,081	\$ 0	\$ 409,385	\$ 409,385	\$ 634,840
MR	40-41	\$ 3,597,783	\$ 8,175,102	\$ 13,103,267	\$ (9,385,752)	\$ 3,167,515	\$ 8,506,807	98.563	\$ 98,563	\$ 0	\$ 430,269	\$ 409,385	\$ 651,413
NR	41-42	\$ 446,014	\$ 8,473,083	\$ 12,070,867	\$ (3,070,804)	\$ 63	\$ 8,847,079	71.956	\$ 71,956	\$ 0	\$ 445,952	\$ 445,952	\$ 664,441
SB	42-43	\$ 6,083,379	\$ 9,195,403	\$ 15,278,782	\$ (3,593,519)	\$ 5,601,885	\$ 9,200,963	8.920	\$ 8,920	\$ 0	\$ 460,494	\$ 445,952	\$ 677,730
MR	43-44	\$ 12,064,902	\$ 9,705,716	\$ 21,740,308	\$ (3,687,725)	\$ 11,580,380	\$ 9,569,001	121.248	\$ 121,248	\$ 0	\$ 484,512	\$ 329,250	\$ 691,285
NR	44-45	\$ 1,603,708	\$ 9,820,879	\$ 9,217,671	\$ (2,861,170)	\$ (1,111,851)	\$ 9,951,761	241.298	\$ 241,298	\$ 0	\$ 509,653	\$ 335,835	\$ 705,111
SB	45-46	\$ 5,413,581	\$ 10,328,492	\$ 15,742,073	\$ (4,003,642)	\$ 11,738,430	\$ 10,763,875	108.272	\$ 108,272	\$ 0	\$ 516,888	\$ 342,552	\$ 719,213
MR	46-47	\$ 12,287,035	\$ 10,868,018	\$ 23,155,053	\$ (15,267,432)	\$ 7,887,621	\$ 11,194,378	154.641	\$ 154,641	\$ 0	\$ 572,001	\$ 356,391	\$ 748,269
SB	47-48	\$ 8,554,622	\$ 11,270,683	\$ 19,675,305	\$ (12,549,031)	\$ 7,126,273	\$ 11,642,153	169.092	\$ 169,092	\$ 0	\$ 590,562	\$ 363,519	\$ 772,234
MR	48-49	\$ 7,716,836	\$ 16,645,967	\$ 24,362,803	\$ (4,335,368)	\$ 15,030,535	\$ 15,437	312.873	\$ 312,873	\$ 0	\$ 613,109	\$ 370,789	\$ 778,459
SR, MR	49-50	\$ 15,643,643	\$ 12,259,774	\$ 27,903,418	\$ (26,120,322)	\$ 1,783,096	\$ 12,592,153	318.725	\$ 318,725	\$ 0	\$ 645,251	\$ 378,205	\$ 794,069
NR	50-51	\$ 2,718,347	\$ 17,487,185	\$ 14,915,532	\$ (5,097,100)	\$ 9,818,431	\$ 13,095,839	48.567	\$ 48,567	\$ 0	\$ 657,220	\$ 385,769	\$ 809,950
SB	51-52	\$ 10,475,644	\$ 13,137,776	\$ 23,613,420	\$ (14,116,145)	\$ 9,497,274	\$ 13,619,672	209.513	\$ 209,513	\$ 0	\$ 691,459	\$ 393,485	\$ 826,149
MR	52-53	\$ 10,178,684	\$ 13,649,631	\$ 23,828,315	\$ (18,284,147)	\$ 15,544,168	\$ 14,164,459	203.574	\$ 203,574	\$ 0	\$ 718,402	\$ 409,381	\$ 842,672
SB	53-54	\$ 6,262,570	\$ 14,113,475	\$ 20,376,044	\$ (4,979,717)	\$ 15,396,327	\$ 14,731,038	125.251	\$ 125,251	\$ 0	\$ 742,814	\$ 417,569	\$ 876,716
MR	54-55	\$ 16,139,141	\$ 14,860,909	\$ 31,000,050	\$ (15,133,734)	\$ 25,866,316	\$ 15,320,279	322.783	\$ 322,783	\$ 0	\$ 782,153	\$ 425,920	\$ 894,251
SB	55-56	\$ 26,648,469	\$ 15,642,757	\$ 42,291,226	\$ (41,991,067)	\$ 300,158	\$ 15,933,090	532.969	\$ 532,969	\$ 0	\$ 823,303	\$ 434,339	\$ 912,136
SR, MR, SB	56-57	\$ 1,135,451	\$ 15,763,239	\$ 16,898,700	\$ (6,035,554)	\$ 10,863,146	\$ 16,570,414	22.469	\$ 22,469	\$ 0	\$ 879,641	\$ 434,339	\$ 912,136
NR	57-58	\$ 1,630,761	\$ 16,774,764	\$ 18,405,525	\$ (16,035,554)	\$ 2,369,971	\$ 17,233,254	233.616	\$ 233,616	\$ 0	\$ 879,641	\$ 434,339	\$ 912,136

TDC Beach Improvement Fund: 50 Year Plan



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

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Tammy.Rowe@brevardclerk.us

July 13, 2016

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item VI.A.1., Project Agreements with Department of the Army for Construction of the Brevard County Shore Protection Project North and South Reaches, and Mid Reach

The Board of Commissioners, in regular session on July 12, 2016, authorized the Chairman to execute Project Partnership Agreement with Department of the Army for construction of the Brevard County Shore Protection Project Mid Reach Segment, substantially in form of Attachment A, with County Attorney and Risk Management approval; authorized the Chairman to execute Amendment No. 2 to the Project Cooperation Agreement with Department of the Army for construction of the Brevard County Shore Protection Project, substantially in the form of Attachment B, with County Attorney and Risk Management approval; authorized the County Manager, or his designee, to approve payment of non-federal cost share as required; and approved any necessary budget change requests.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tammy Rowe".

Tammy Rowe, Deputy Clerk

cc: Finance
Budget

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR
CONSTRUCTION
OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT
MID-REACH SEGMENT

THIS AGREEMENT is entered into this 31st day of August, 2016, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard County Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the North Reach Segment and South Reach Segment of the Brevard County, Florida Shore Protection Project (hereinafter the "Original Project") was authorized by Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, Section 3045(a) of the Water Resources Development Act of 2007, Public Law 110-114, authorized the Secretary to modify the Original Project (hereinafter the "Modified Project") to include the Mid-Reach Segment (hereinafter the "Project", as defined in Article I.A. of this Agreement) upon a determination by the Secretary, following completion of the general reevaluation report, that such shoreline protection is feasible;

WHEREAS, Section 3045(b) of the Water Resources Development Act of 2007 authorized the Secretary to credit the Non-Federal Sponsor for costs it incurred to respond to damages to the Original Project resulting from the Canaveral Harbor Federal Navigation Project;

WHEREAS, the Assistant Secretary of the Army on September 8, 2014 approved the general reevaluation report and determined that the Project, which is the locally preferred plan, is feasible, and with such approval, the credit pursuant to Section 3045(b) of Water Resources Development Act of 2007 is available for crediting towards the non-Federal share of the Project;

WHEREAS, as the costs of the locally preferred plan do not exceed the costs of the National Economic Development Plan, the cost sharing specified in Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), will be applied; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the construction of the locally preferred plan, which includes initial construction and periodic nourishment of the Mid-Reach Segment of the Modified Project, extending approximately 7.8 miles from the Florida Department of Environmental Protection monuments R-75.4 to R-119, and further divided into six reaches, with dune fill and 10-foot extension of the mean high water line (+2.0 feet NGVD 29) plus advance nourishment to maintain the design fill volume in Reaches 1, 4, and 5; dune fill and 20-foot extension of the mean high water line plus advance nourishment to maintain the design fill volume in Reaches 2 and 3; a dune fill consisting of advance nourishment in Reach 6; rehabilitation of the Poseidon Dredged Material Management Area at Port Canaveral to facilitate stockpiling of sand; dredging material at 6-year intervals from Canaveral Shoals with placement and storage in the Poseidon Dredged Material Management Area; construction of nearshore reefs for environmental mitigation and associated monitoring; and periodic nourishment estimated to occur every 3 years, as generally described in the Brevard County, Florida, Hurricane and Storm Damage Reduction Project, Mid-Reach Segment, Final Integrated General Reevaluation Report and Supplemental Environmental Impact Statement, dated August 2010, revised April 2011, with an Addendum dated April 2014, and the Report of the Director of Civil Works, dated May 16, 2014, and approved by the Assistant Secretary of the Army (Civil Works) on September 8, 2014 (hereinafter the "Decision Document").

B. The term "periodic nourishment" means the placement of suitable beach berm material after the initial construction of the Project at appropriate intervals during the 50 year period of Federal participation that begins on the date of initiation of construction of the Project, as generally described in the Decision Document.

C. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government's costs and the Non-Federal Sponsor's creditable contributions pursuant to the terms of the Design Agreement executed on October 16, 2014; the costs of historic preservation activities except for data recovery for historic properties; the Government's costs of engineering, design, and construction; the Government's supervision and administration costs; the Government's costs of monitoring; the Non-Federal Sponsor's creditable costs for providing real property

interests, disposal area improvements, and relocations and for providing in-kind contributions. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; for dispute resolution; for participation in the Project Coordination Team; for audits; for betterments; or the Non-Federal Sponsor's cost of negotiating this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material disposal areas. Acquisition of real property interests may require the performance of relocations.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "disposal area improvements" means the improvements required on real property interests to enable the ancillary disposal of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

G. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer"), although the remainder of the Project is not yet complete.

H. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Engineer for South Atlantic Division. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

I. The term "betterment" means a difference in the construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element.

J. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

K. The term "Section 3045(b) credit" means the credit, authorized by Section 3045(b) of the Water Resources Development Act of 2007, in the amount of \$8,576,176,

that will be applied towards the non-Federal cost share for initial construction of the Project.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute, in accordance with the provisions of this paragraph, 35 percent of the construction costs for initial construction of the Project, and 50 percent of the construction costs for periodic nourishment, allocated by the Government to coastal storm risk management and 100 percent of the construction costs allocated by the Government to beach improvements with exclusively private benefits.

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, disposal area improvements, and relocations required for construction, operation, and maintenance of the Project.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

3. For initial construction, and for each cycle of periodic nourishment, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2. of this Article and the Section 3045(b) credit, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year. No later than 30 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.

4. No later than August 1st prior to each subsequent fiscal year during initial construction, or a cycle of periodic nourishment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications,

including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1-percent limitation under 54 U.S.C. 312507.

E. When the District Engineer determines that the initial construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work. The Government's undertaking of a cycle of periodic nourishment has no effect on the Non-Federal Sponsor's continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project. If a cycle of periodic nourishment changes those responsibilities, the Non-Federal Sponsor, at no cost to the Government, shall commence any additional responsibilities upon notification from the Government. Nothing in this paragraph is intended to affect the eligibility under Public Law 84-99 (33 U.S.C. 701n).

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to

the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

G. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of initial construction of the Project. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and storm damage risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of protection the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. For shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

M. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.

N. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

O. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

P. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in the construction costs that are cost shared but shall be included in calculating the overall Federal cost of the Project. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in the construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

Q. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and approval by the Division Engineer for the South Atlantic Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

ARTICLE III - REAL PROPERTY INTERESTS, DISPOSAL AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91- 646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire

the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the disposal area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests, disposal area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct disposal area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, disposal area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the disposal area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests, disposal area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any clean up and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation

payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, DISPOSAL AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement), disposal area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a biannual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement), an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. For crediting purposes, appraisals of interests in lands subject to shore erosion acquired from private parties after the effective date of this Agreement must consider special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (2000).

(1) Date of Valuation. Except for interests in lands subject to shore erosion, the fair market value of real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent

to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

(1) If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. Except as provided in paragraph C.1.b.(2) below, the fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

(2) For interests in lands subject to shore erosion, the Government will credit the amount of the court award or stipulated settlement only to the extent that the court award or stipulated settlement considered special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (2000). If the court award or stipulated settlement did not consider special benefits, fair market value for crediting purposes shall be limited to the amount determined by an appraisal that considers special benefits.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for construction, operation, and maintenance of the Project within a five year period preceding the effective date of this Agreement, or at any time after the

effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Disposal Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of disposal area improvements required for construction, operation, and maintenance of the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any disposal area improvements required for construction, operation, and maintenance of the Project. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-

kind contributions that are integral to construction, operation, and maintenance of the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or another segment of the Modified Project; or for costs associated with betterments or beach improvements with exclusively private benefits.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs allocated to coastal storm risk management for initial construction are projected to be \$49,613,121, with the Government's share of such costs projected to be \$32,248,529 and the Non-Federal Sponsor's share of such costs projected to be \$17,364,592. For initial construction, the estimated credit for real property interests is \$3,980,000, and the estimated credit for in-kind contributions is \$0. For initial construction, Section 3045(b) credit in the amount of \$8,576,176 will reduce the estimated funds to be provided by the

Non-Sponsor to \$4,808,416, which will increase the estimated Federal funds required for initial construction to \$40,824,705. The construction costs allocated to coastal storm risk management for periodic nourishment are projected to be \$437,326,292, with the Government's share of such costs projected to be \$218,663,146, and the Non-Federal Sponsor's share of such costs projected to be \$ 218,663,146. Construction costs of beach improvements with exclusively private benefits are projected to be \$6,573,879 for initial construction and \$57,386,708 for periodic nourishment; and the costs for betterments are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. While undertaking initial construction and periodic nourishment, the Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, disposal area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs allocated to coastal storm risk management by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs allocated to coastal storm risk management as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon conclusion of initial construction and each cycle of periodic nourishment, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's

responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If such final accounting determines that the Non-Federal Sponsor's credit for real property interests, disposal area improvements, and relocations combined with credit for in-kind contributions exceed its share of the construction costs for the Project, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

F. If there are beach improvements with exclusively private benefits; or real property interests, disposal area improvements, relocations, or betterments provided on behalf of the Non-Federal Sponsor; the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the overall Federal cost of the Project.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or

independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Director
Brevard County Natural Resources Management Department
2725 Judge Fran Jamieson Way; A-219
Viera, Florida 32940

If to the Government:

District Engineer
Jacksonville District
U.S. Army Corps of Engineers

Physical Address:

701 San Marco Blvd.
Jacksonville, Florida 32207-8175

Mailing Address:

P.O. Box 4970
Jacksonville, Florida 32232-0019

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

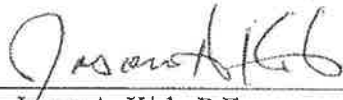
ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES


Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY


BREVARD COUNTY, FLORIDA

BY: 
Jason A. Kirk, P.E.
Colonel, U.S. Army
District Engineer

BY: 
Jim Barfield
Chairman
Board of County Commissioners
As approved by the Board on July 12, 2016

DATE: 31 AUG 2016

DATE: 8/30/16

ATTEST: 
Scott Ellis, Clerk

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, Mid-Reach Segment, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

30th day of August 2016



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Jim Barfield
Chairman

Brevard County Board of County
Commissioners

DATE: 8/30/16

AMENDMENT NO. 2
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR CONSTRUCTION OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT

This Amendment No. 2 is entered into this 31st day of August, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard County Board of County Commissioners.

WITNESSETH THAT:

WHEREAS, on April 20, 2000, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the Phase I (north reach) and Phase II (south reach) segments of the Brevard County, Florida Shore Protection Project (hereinafter the "Project");

WHEREAS, on August 8, 2013, the Agreement was amended to afford a credit towards the non-Federal share of the Project in the amount of \$8,576,176 for costs incurred by the Non-Federal Sponsor to respond to damages to the Project resulting from the Canaveral Harbor Federal Navigation Project; and

WHEREAS, in lieu of affording the credit toward the South Reach segment of the Project, the parties acknowledge and agree that the full amount of the aforementioned credit will be applied to the Mid-Reach Segment of the Brevard County, Florida Shore Protection Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to further amend the Agreement as follows:

1. Replace the fourth through the eighth WHEREAS clauses with the following:

"WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the Project;"

2. Revise Article II.G.1.b. by deleting "(b) the credit to be afforded in accordance with paragraph G.2. of this Article; and (c)" and inserting "and (b)".

3. Revise Article II.G.1.c. by deleting "the credit afforded in accordance with paragraph G.2 of this Article; (c)" and by deleting "(d)" and inserting "(c)".
4. In Article II.G., delete paragraph 2. in its entirety and renumber paragraph 3. as paragraph 2.
5. In Article VI.F.2., delete "subject to the availability of funds and as limited by Article II.G.2. of this Agreement, shall refund" and insert "subject to the availability of funds, shall refund".
6. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BREVARD COUNTY, FLORIDA

BY: Jason A. Kirk

Jason A. Kirk, P.E.
Colonel, U.S. Army
District Engineer

BY: Jim Barfield

Jim Barfield
Chairman
Board of County Commissioners
As approved by the Board on July 12, 2016

DATE: 31 AUG 2016

DATE: 8/30/16

ATTEST: Scott Ellis


Scott Ellis, Clerk

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 2 to the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 2, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Amendment No. 2 on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

30th day of August 2016.



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING


The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Jim Barfield
Chairman
Brevard County Board of County
Commissioners

DATE: 8/30/16

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BREVARD COUNTY, FLORIDA
FOR CONSTRUCTION OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this 20th day of April, 2000, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and Brevard County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Brevard Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the Brevard County, Florida Shore Protection Project at Brevard County, Florida was authorized by Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, as required by Section 101(b) of the Water Resources Development Act of 1996, Public Law 104-303, the final report for this project was completed before 31 December 1996;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Brevard County, Florida Shore Protection Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Brevard County, Florida Shore Protection Project and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of two separable elements of shore protection along the coast of Brevard County, Florida consisting of a Phase I (north reach) and a Phase II (south reach) more particularly described as follows:

Phase I (north reach)--The Phase I (north reach) extends from the south jetty at Canaveral Harbor south to Patrick Air Force Base (approximately 9.4 miles) and consists of constructing a design berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to a berm break, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor. The berm break is defined as the Government's January 1995 (pre-sand bypass) mean high water survey from the south jetty at Port Canaveral south to reference monument R14 and south of reference monument R14 as the erosion control line. The initial construction will consist of placement of an estimated 2.5 million cubic yards of fill with 1.98 million cubic yards of material being for initial restoration and a 0.516 million cubic yards of fill as advance nourishment. Periodic nourishment is anticipated as needed every six years. The project life is 50 years from the date of completion of initial construction.

Phase II (south reach)--The Phase II (south reach) extends from the Florida Department of Environmental Protection Monument R-119 south to Spessard Holland Park (approximately 3.4 miles) and consists of constructing a design berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to the berm break, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor. The berm break is defined as the erosion control line. The initial construction will consist of placement of an estimated 1.7 million cubic yards of fill with 1.04 million cubic yards of material being for initial restoration and a 0.6 million cubic yards of fill as advance nourishment. Periodic nourishment is anticipated as needed every six years. The project life is 50 years from the date of completion of initial construction.

The Project is as generally described in the "Brevard County, Florida Shore Protection Project Review Study, Feasibility Report with Final Environmental Impact Statement",

dated September 1996 and approved by the Chief of Engineers on December 23, 1996 as modified by the Limited Reevaluation Report dated October 1999 and approved by the Chief, Planning and Environmental Division, Directorate of Engineering and Technical Services, South Atlantic Division on January 26, 2000 (hereinafter the "Report").

B. The term "initial construction" shall mean the restoration of a beach with a protective berm beginning at contour elevation +10.0 above mean low water and extending seaward at elevation at +10.0 feet above mean low water to the erosion control line, then extending seaward with a slope of 1 vertical to 15 horizontal to mean low water, thence extending with a slope of 1 vertical to 50 horizontal to the existing ocean floor as generally described in the Report referenced in paragraph A of this Article.

C. The term "periodic nourishment" shall mean the placement of suitable beach material within the areas of initial construction, or any functional portion of the initial construction, as generally described in the Report referenced in paragraph A. of this Article.

D. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; costs of audit in accordance with Article X of this Agreement and those dikes and other construction works necessary to promote placement of the beachfill material. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

E. The term "total costs of initial construction" shall mean that portion of total project costs allocated by the Government to initial construction.

F. The term "total costs of periodic nourishment" shall mean that portion of total project costs allocated by the Government to periodic nourishment.

G. The term "financial obligation for initial construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated

material disposal areas, that results or would result in a cost that is or would be included in total costs of initial construction.

H. The term "financial obligation for periodic nourishment" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total costs of periodic nourishment.

I. The term "non-Federal proportionate share" with respect to initial construction, shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.D. of this Agreement to total financial obligations for initial construction, as projected by the Government. The term shall mean, with respect to periodic nourishment, the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.G. of this Agreement to total financial obligations for periodic nourishment, as projected by the Government.

J. The term "period of initial construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Jacksonville District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

K. The term "authorized periodic nourishment period" shall mean 50 years from the completion of the period of initial construction, the authorized duration for Federal participation in periodic nourishment for the Project. The Phase I (north reach) and Phase II (south reach) may have different commencement of initial construction dates.

L. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

M. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

N. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

O. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in

advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

P. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including periodic nourishment at such times during the authorized periodic nourishment period as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, in the event any award of any contract for construction of the Project would exceed 125 percent of the Government estimate prepared for that construction contract solicitation, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

4. As of the effective date of this Agreement, \$5,000,000 of Federal funds have been appropriated for the Project. The Government makes no commitment to seek additional Federal funds for the Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project shall not exceed the total amount of Federal funds that heretofore have been appropriated and hereafter may be appropriated or otherwise made available for the Project. In the event that funds sufficient to meet the Federal share of funds required to continue construction of the Project in the then-current or upcoming fiscal year are not made available for the Project, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of the total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor pursuant to paragraph D. or paragraph G. of this Article as a contingency to pay the costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsor may request the Government to accomplish betterments during the period of initial construction. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the

functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 35 percent of the total costs of initial construction assigned by the Government to hurricane and storm damage reduction, plus 50 percent of total costs of initial construction assigned by the Government to recreation, plus 100 percent of the total costs of initial construction assigned by the Government to privately owned shores (where the use of such shores is limited to private interests) (hereinafter the "non-Federal share of total costs of initial construction") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the initial construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the initial construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1. of this Article and Articles V, X, and XV.A. of this Agreement will be less than the non-Federal share of initial construction, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to non-Federal share of total costs of initial construction.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.1. and D.2. of this Article and of the Non-Federal Sponsor's contributions attributable to initial construction under Articles V, X, and XV.A. of this Agreement has exceeded the non-Federal share of total costs of initial construction, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of total costs of initial construction. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the period of initial construction. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be

consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. Upon completion of the period of initial construction, the Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. For each iteration of periodic nourishment, the Non-Federal Sponsor shall contribute 35 percent of the total costs of periodic nourishment assigned by the Government to hurricane and storm damage reduction, plus 50 percent of total costs of periodic nourishment assigned by the Government to recreation, plus 100 percent of the total costs of periodic nourishment assigned by the Government to privately owned shores (where the use of such shores is limited to private interests) (hereinafter the "non-Federal share of total costs of periodic nourishment") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the iteration of periodic nourishment and shall perform or ensure performance of all relocations that the Government determines to be necessary for the iteration of periodic nourishment.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph G.1. of this Article and of the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X, and XV.A. of this Agreement will be less than the non-Federal share of total costs of periodic nourishment, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.E. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to non-Federal share of total costs of periodic nourishment.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs G.1. and G.2. of this Article and of the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X, and XV.A. of this Agreement has exceeded the non-Federal share of total

costs of periodic nourishment, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of total costs of periodic nourishment. After such a determination, the Government, in its sole discretion, may provide any remaining periodic nourishment lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining periodic nourishment relocations on behalf of the Non-Federal Sponsor.

H. The Government shall assign all costs included or to be included in total project costs and all contributions provided by the Non-Federal Sponsor to hurricane and storm damage reduction, to recreation, or to protecting undeveloped private lands and other privately owned shores which do not provide public benefits.

I. The Non-Federal Sponsor may request the Government to accomplish betterments during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

J. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

K. For each iteration of periodic nourishment, the Government shall perform a final accounting in accordance with Article VI.F. of this Agreement to determine the contributions provided by the Non-Federal Sponsor toward the total costs of periodic nourishment and costs due to betterments in accordance with paragraphs G., I., and J. of this Article and Articles X and XV.A. of this Agreement and to determine whether the

Non-Federal Sponsor has met its obligations under paragraphs G., I., and J. of this Article.

L. In the event the completed initial construction, or any functional portion of the initial construction, is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds and Article II.A. of this Agreement, shall place suitable beach fill material within the area of the completed initial construction, or functional portion of the initial construction, as periodic nourishment. The costs of such placement shall be included in the total costs of periodic nourishment and cost shared in accordance with Article II.G. of this Agreement. In the event an uncompleted portion of the initial construction is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds, shall place suitable beach fill material with the area of uncompleted initial construction as initial construction. The costs of such placement shall be included in the total costs of initial construction and cost shared in accordance with Article II.D. of this Agreement. Nothing in this paragraph shall preclude the Government from using Public Law 84-99 to accomplish any emergency repair and restoration of work of the completed initial construction or a functional portion of the initial construction.

M. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total costs of initial construction or the non-Federal share of total costs of periodic nourishment under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

N. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

O. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

P. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

Q. The Non-Federal Sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation and maintenance of the project.

R. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure conditions of public ownership and use of the shore upon which the amount of Federal participation is based.

S. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW
91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the initial construction, operation or maintenance of the Project set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the periodic nourishment, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each contract for initial construction or periodic nourishment, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the initial construction, periodic nourishment, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall provide all improvements required for initial construction set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall provide all improvements required for the periodic nourishment as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction or

periodic nourishment, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations required for the initial construction as set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall perform or ensure performance of all relocations required for the periodic nourishment as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the non-Federal share of total costs of initial construction or the non-Federal share of total costs of periodic nourishment.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total costs of initial construction for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for initial construction, operation, and maintenance of the Project pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for initial construction, operation, and maintenance of the Project pursuant to Article III of this Agreement. The Non-Federal Sponsor shall receive credit toward the non-Federal share of total costs of periodic nourishment for the value of additional lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for periodic nourishment of the Project pursuant to Article III of this Agreement, and for the value of the additional relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for periodic nourishment of the Project pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of

disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of

this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of initial construction or during the authorized periodic nourishment period, as appropriate. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of initial construction or the authorized periodic nourishment period, as appropriate, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the initial construction or functional portions of the initial construction; final inspection of each iteration of periodic nourishment or functional portion of each iteration of periodic nourishment; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project

Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total costs of initial construction, total costs of periodic nourishment and costs due to betterments. By October 1st of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs of initial construction, of total costs of periodic nourishment, of total costs due to betterments during the period of initial construction or during the authorized periodic nourishment period, as appropriate, of the maximum amount of total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of the non-Federal share of total costs of initial construction, of the non-Federal share of total costs of periodic nourishment, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., II.E., II.G., II.I., and II.J of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$253,940,000, total costs of initial construction are projected to be \$45,256,000, total costs of periodic nourishment are projected to be \$208,684,000, the Non-Federal Sponsor's contribution required under Article II.D.2. of this Agreement is projected to be \$16,599,000, and the Non-Federal Sponsor's cash contribution required under Article II.G.2. of this Agreement is projected to be \$76,035,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required under Article II.D.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 120 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for initial construction, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction through the first fiscal year of initial construction, including the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction. Not later than such scheduled date, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-

Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or provided an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of the period of initial construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction; and (b) the non-Federal proportionate share of financial obligations for initial construction as they are incurred during the period of initial construction.

4. If at any time during the period of initial construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for initial construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., II.E., II.I., or II.J. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of initial construction or termination of this Agreement during the period of initial construction, and upon resolution of all relevant claims and appeals relevant to initial construction, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of initial construction, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the period of initial construction and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement during the period of initial construction.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction by delivering a check payable to "FAO, USAED, Jacksonville District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of total costs of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement during the period of initial construction, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Non-Federal Sponsor shall provide the contribution required under Article II.G.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 120 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment through the first fiscal year of the authorized periodic nourishment period. Not later than such scheduled date, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or provided an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.E.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for periodic nourishment incurred prior to the commencement of the authorized periodic nourishment period; and (b) the non-Federal proportionate share of financial obligations for periodic nourishment as they are incurred during the authorized periodic nourishment period.

4. If at any time during the authorized periodic nourishment period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for periodic nourishment for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.E.1. of this Agreement.

F. Upon completion of each iteration of periodic nourishment or termination of this Agreement during the authorized periodic nourishment period, and upon resolution of all claims and appeals relevant to the periodic nourishment, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of periodic nourishment, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the authorized periodic nourishment period and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.I. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of total costs of periodic nourishment costs plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total costs of periodic nourishment plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period by delivering a check payable to "FAO, USAED,

Jacksonville District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of total costs of periodic nourishment costs plus costs due to any betterments provided in accordance with Article II.I. of this Agreement during the authorized periodic nourishment period, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

1. At least annually the Non-Federal Sponsor shall monitor the beach and other Project features to determine losses of nourishment material from the Project design section and provide the results of such monitoring to the Government.

2. The Non-Federal Sponsor shall grade and reshape the beach using material within the Project area and maintain other Project features associated with the beach.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and

to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600 7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army" and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring Non-Federal preparation and implementation of flood plain management plans.

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall

be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., II.G., II.I., II.J., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. or VI.F. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601 - 9675, that may

exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor or the Government during the period of initial construction for such investigations for hazardous substances shall be included in total costs of initial construction and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Non-Federal Sponsor or the Government during the authorized periodic nourishment period for such investigations for hazardous substances shall be included in total costs of periodic nourishment and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate initial construction or periodic nourishment of the Project, or, if already in initial construction or periodic nourishment, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to

otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chairman
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

If to the Government:

District Engineer
U.S. Army Engineer District
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery on lands subject to federal cost sharing that exceed the one percent limit shall be included in total project costs and cost shared in accordance with the provisions of this Agreement. Any costs of mitigation and data recovery on lands not subject to federal cost sharing (undeveloped private lands and privately owned shores that do not provide public benefits) that exceed the one percent limit shall not be included in total project costs but shall be paid by the Non-Federal Sponsor.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Brevard County Shore Protection Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$285,147,000, as calculated in accordance with ER 1105-2-100 using October 1, 1999 price levels and allowances for

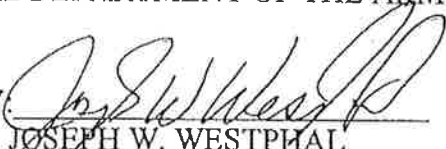
projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).


THE DEPARTMENT OF THE ARMY

BREVARD COUNTY, FLORIDA

BY:


JOSEPH W. WESTPHAL
Assistant Secretary of the Army
(Civil Works)

BY:


NANCY HIGGS
Chairman
Brevard County Board
of County Commissioners

DATE:

April 20, 2000


DATE:

April 20, 2000

CERTIFICATE OF AUTHORITY

I, Scott Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Brevard County, Florida in connection with the Brevard County, Florida Shore Protection Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
19th day of April 2002.



Scott Knox
County Attorney
Brevard County, Florida

CERTIFICATION REGARDING LOBBYING

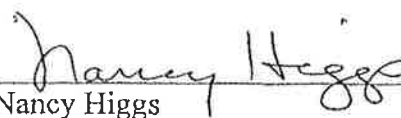
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Nancy Higgs
Chairman
Brevard County Board of
County Commissioners

DATE: April 20, 2000