

Meeting Date
<b>04/28/15</b>



AGENDA	
Section	UNFINISHED BUSINESS
Item No.	<i>IV A</i>

**AGENDA REPORT**  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval of Exchange Agreement between Brevard County and Florida Inland Navigation District (FIND) - District 3
DEPT/OFFICE:	Parks and Recreation Department Environmentally Endangered Lands (EEL) Program

Requested Action:

It is requested the Board of County Commissioners (BoCC) approve and authorize the Chairman to sign the Resolution and Exchange Agreement between Brevard County and Florida Inland Navigation District.

Summary Explanation & Background:

On March 17, 2015, the BoCC authorized staff to advertise a land exchange between Brevard County and Florida Inland Navigation District (FIND). The required advertisement period was completed on March 24<sup>th</sup> and 31<sup>st</sup>, 2015, in the Florida Today newspaper.

FIND owns property (site BV-24) in Grant-Valkaria that has been identified since the early 1990's as a future containment basin site for dredged materials from maintenance of the Intracoastal Waterway (ICW). In 1991, the EEL Program's Selection and Management Committee (SMC) identified the FIND site as containing substantial scrubby pine Flatwoods and the use of the site for spoil disposal may have significant endangered species impacts due to the size of the Florida scrub-jay population in this area. Preservation of the Valkaria area, which includes the FIND property, is critical to the survival of the Florida scrub-jay population in this region.

In 1995, the County acquired 84.39 acres, adjacent to the FIND property, through a mitigation donation for the Cypress Creek Development. In 1997, the County began talks with FIND regarding a potential exchange of the adjacent County owned property due to the higher quality scrub habitat that exists on the FIND property. (Continued on Page 2)

**Fiscal Impacts:**

FY 14/15 - No fiscal impacts.

FY 15/16 – There are no fiscal impacts to General Revenue Funds in the 15/16 budget. The potential fiscal impacts to EEL Program funds are approximately \$130,000 to \$145,000 (half of re-design costs and due diligence), if the exchange occurs within this fiscal year. EEL Program acquisition funds are available in fund 3219 and cost center 340250.

Name: Mike Knight, EEL Program Manager  
Phone: 321-255-4466 [mike.knight@brevardparks.com](mailto:mike.knight@brevardparks.com)

Clerk to the Board Instructions: Please return Board memorandum, 3 fully executed Exchange Agreements and Resolution to the EEL Program

Exhibits Attached: Resolution, Exhibit A-Exchange Agreement (4), Map, Florida Today Affidavit

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager, Mel Scott		Jack Masson, Parks & Recreation Department Director			
Stockton Whitten		Assistant County Manager, Venetta Valdengo					



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972

April 29, 2015

**M E M O R A N D U M**

**TO:** Jack Masson, Parks and Recreation Director

**RE:** Item V.A., Resolution and Exchange Agreement with Florida Inland Navigation District (FIND) for Land Exchange

The Board of County Commissioners, in regular session on April 28, 2015, adopted Resolution No. 15-055, and executed Exchange Agreement with Florida Inland Navigation District (FIND) for exchange property. Enclosed are a certified copy of the Resolution and three fully-executed copies of the Exchange Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

Encls. (4)

cc: EEL Program Manager  
Contracts Administration  
Finance  
Budget

## Agenda Report- Advertisement for Exchange Agreement between County and FIND-Continued Page 2

In 2009, the EEL SMC recommended continued support for the proposed concept of the FIND land exchange. On May 19, 2009, the Board of County Commissioners (BoCC), authorized staff to proceed and finalize details for the exchange of property. As part of this 2009 Board approval, the County agreed to reimburse FIND up to \$150,000 for their re-design costs of the BV-24 basin, if the exchange were to occur.

The United States Fish & Wildlife Service (USFWS) is responsible for FIND's project permitting and are supportive of this land exchange concept. USFWS has stated that an exchange would preserve some of the most critical scrub habitat in the area and would benefit the survival of the regional scrub-jay population.

County staff, in cooperation with FIND, has developed an Exchange Agreement, which has been reviewed by the County Attorney and Risk Management and subsequently was approved by the FIND Board on December 13, 2014.

The Exchange Agreement outlines the following:

- County will exchange 69.36 +/- acres of land for FIND's 83.19 +/- acres
- The exchange is contingent upon FIND obtaining necessary permitting.
- Upon closing, each party will bear the costs of their own due diligence (boundary survey, title commitments and environmental site assessments) for the property that each party will receive in the exchange
- Upon closing, the County will reimburse FIND half of the re-design costs for the basin, not to exceed \$88,823.38
- The potential overall cost to the County, at closing, is estimated to be between \$130,000 and \$145,000 (this includes half of the basin re-design costs and due diligence expenses).

On January 21, 2015, the EEL SMC recommended that the Exchange Agreement be forwarded to the BoCC for approval. The requested action today is to approve and authorize the Chairman to execute the Exchange Agreement and Resolution.

In 2014, the County received a grant from the State of Florida for the removal of muck from the Indian River Lagoon and negotiations are underway between the County and FIND to utilize their spoil containment basins for this purpose. Approval of this exchange could be beneficial for future muck removal activities in the Indian River Lagoon.

RESOLUTION NO. 2015- 055

A RESOLUTION PURSUANT TO SECTION 125.37, FLORIDA STATUTES AUTHORIZING THE EXCHANGE OF COUNTY PROPERTY FOR OTHER REAL PROPERTY OWNED BY THE FLORIDA INLAND NAVIGATION DISTRICT (FIND); AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the County owns 69.36 acres of certain real property within the Town of Grant-Valkaria (EEL Parcel) and desires to exchange this parcel for a 83.19 acre parcel owned by FIND, pursuant to the terms set forth in the Exchange Agreement attached as Exhibit "A" and incorporated herein; and

**WHEREAS**, FIND will combine the EEL Parcel with other lands it currently owns to create a new Dredged Material Management Area known as the FIND BV-24A Site; and

**WHEREAS**, the County will combine the FIND parcel with other lands it currently owns and manages for scrub jay habitat and preservation; and

**WHEREAS**, FIND has determined that such an exchange would be in the public interest and within its statutory responsibilities by providing the land required for dredged material management for the Atlantic Intracoastal Waterway; and

**WHEREAS**, COUNTY has determined that such an exchange would be in the public interest and within its statutory responsibilities by obtaining land for scrub jay habitat and preservation.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

The County hereby agrees to exchange the above-described lands with FIND pursuant to the terms and conditions set forth in the Exchange Agreement.

**IN WITNESS THEREOF**, the parties hereto have caused these presents to the signed all as of the date and year first written above.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board on 04-28-15

**Exhibit "A"**

**EXCHANGE AGREEMENT**

**This Exchange Agreement ("Agreement")** is made and entered into as of the 28th day of April, 2015, by and among FLORIDA INLAND NAVIGATION DISTRICT, an independent special district authorized and existing by virtue of the laws of the State of Florida ("FIND"), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("COUNTY").

**WHEREAS**, FIND is the owner of certain property in Brevard County, Florida containing 83.19 acres, more or less, and depicted in red on Exhibit "A" as Parcel A, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "FIND Parcel"); and

**WHEREAS**, County is the owner of a parcel of real property in Brevard County, Florida containing 69.36 acres, more or less, and depicted in green on Exhibit "A" as Parcel B, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "EEL Parcel");and

**WHEREAS**, the COUNTY has proposed to FIND an exchange of properties between the parties, such that COUNTY will own the FIND Parcel, and FIND will own the EEL parcel; and

**WHEREAS**, FIND will combine the EEL Parcel with other lands it currently owns to create a new Dredged Material Management Area known as the FIND BV-24A Site; and

**WHEREAS**, FIND has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by providing the land required for dredged material management for the Atlantic Intracoastal Waterway; and

**WHEREAS**, COUNTY has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by obtaining land for scrub jay habitat and preservation.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Agreement to Exchange.** FIND and the COUNTY,; hereby agree to exchange with one another parcels of real property, described in this Agreement, on the terms and conditions set forth in this Agreement.

**Section 2. Property to be Transferred to the COUNTY.** FIND will convey the FIND Parcel to the County. Should Brevard County, now or in the future, use the FIND Parcel for creation of a Scrub Jay (*Aphelocoma coerulescens*) Preserve, Brevard County shall, without cost to FIND, accept into such a Scrub Jay Preserve any and all scrub jays that require relocation from the FIND BV-24A Site. If Brevard County does not create a Scrub Jay Preserve but should habitat space be present within the FIND Parcel and state and federal agencies approve, the County shall allow the transfer of any and all Scrub Jays that require relocation from the FIND BV-24A Site as a result of the Dredged Material Management Area footprint on the BV-24A Site, without charge or cost for the transfer of Scrub Jays to County lands.

**Section 3. Property to be Transferred to FIND.** COUNTY will convey the EEL Parcel to FIND.

**Section 4. Exchange Values.** COUNTY and FIND stipulate that the EEL Parcel and the FIND Parcel are approximately equal in value and neither party shall owe the other party any additional consideration as a result of any actual difference between the values of the respective properties.

**Section 5. Title to be Conveyed: Evidence of Title.** Each party shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Agreement. Within thirty (30) days after the delivery of the boundary survey of the FIND Parcel, as described in Section 6, the COUNTY may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title insurance company insuring marketable title to the FIND Parcel. Within thirty (30) days after the delivery of the boundary survey of the EEL Parcel, as described in Section 6, FIND may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title

insurance company, insuring marketable title to the EEL Parcel. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

**Section 6. Surveys.** Within ninety (90) of the Effective Date, the COUNTY shall obtain a boundary survey of the FIND Parcel, at its expense and FIND shall obtain a boundary survey of the EEL Parcel, at its expense. The boundary surveys shall be prepared and certified by a Florida registered land surveyor and mapper. The legal descriptions of the respective parcels created pursuant to said boundary surveys shall be reasonably satisfactory to both parties and shall be used in the deeds of conveyance. In the event either boundary survey shows any encroachment on either parcel or that improvements intended to be located on either parcel encroach on the land of others, or if either survey shows evidence of unrecorded easements, the same shall be treated as a title defect in the manner provided in Section 7.

**Section 7. Defects in Title.** If the title insurance commitments of Surveys obtained pursuant to Section 6 of this Agreement disclose any matters that would render title to the FIND Parcel unmarketable and/or matters that would render title to the EEL parcel unmarketable, the affected party shall notify the other party, in writing, within fifteen (15) days of receipt of the title commitment or boundary survey, as the case may be, specifying the defect or defects. Such other party shall have one hundred twenty (120) days from the date of receipt of such notice to remove the defect or defects and shall use diligent efforts in connection therewith. However, such other party shall not be required to file a lawsuit to cure such defect or defects. If such other party is unsuccessful in removing the defects within such one hundred twenty (120) day period, the objecting party shall have the right to either (a) waive such defects and accept title as it then is, without any claim for damages, or (b) terminate this Agreement, in which event the COUNTY and FIND shall be released from any and all further obligations and liabilities hereunder. Any matters disclosed by the title insurance commitment or the survey which are not timely objected to by the grantee party, or which are waived by the grantee party, shall be deemed a "Permitted Exception" as to that parcel.

**Section 8. Environmental Site Assessment.** Each party, within ninety (90) days of the Effective Date and at its sole expense, may conduct an Environmental Site Assessment of the parcel to be conveyed to it to determine the existence and extent, if any, of any Hazardous Material on the parcel. In the event that the Environmental Site Assessment discloses one or

more Recognized Environmental Conditions, the applicable party shall have an additional ninety (90) days to conduct such other and additional sampling, analysis and investigations as said party deems necessary. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law, as defined in Section 9 below.

**Section 9. Hazardous Materials.** If the environmental site assessment provided for in Section 8 confirms the presence of Hazardous Materials on either parcel, either party, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should neither party elect to terminate this Agreement, the grantee of the contaminated parcel shall accept title "as-is" and is responsible, at its sole cost and expense, for pursuing any assessment, clean up and monitoring of the parcel necessary as to Hazardous Materials existing on the parcel, to bring the parcel into full compliance with Environmental Law. "Environmental Law" shall mean all federal, state and local laws, including statutes, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the protection of the environmental or human health, welfare or safety, or to the emission, discharge, seepage, release or threatened release of any contaminant, chemical, waste, irritant, petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyl, asbestos, hazardous or toxic substance, material or waste or any kind into the environment, including, without limitation, ambient air, surface water, ground water, or land including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource and Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act of 1986, Chapters 161, 253, 373, 376 and 403, Florida Statutes, Rules of the U.S. Environmental Protection Agency, Rules of the Florida Department of Environmental Protection, and the rules of the Florida water management districts now or at any time hereafter in effect.

Nothing contained herein shall be construed to limit either party's legal liability under any Environmental Law for Hazardous Materials located on the property. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section

768.28, Florida Statutes or other limitations imposed on potential liability under state or federal law.

**Section 10. Representations and warranties.** For the purpose of this section each party hereby represents and covenants, in its capacity as grantor of the parcel it proposes to convey to the other, as follows:

(a) This Agreement has been duly executed by, and is a valid and binding agreement enforceable in accordance with its terms;

(b) Neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated herein, will conflict with, or result in a breach of, any contract, license or undertaking to which the granting party or by which any of its property is bound, or constitute a default there under, or result in the creation of any lien or encumbrance upon the parcel it proposes to convey (or any part thereof), or contravene any provision of any law, administrative regulation, or judgment, order, decree, writ or injunction of any court of competent jurisdiction;

(c) No legal or administrative proceeding is pending or, to the best knowledge of the granting party, threatened against the granting party, which would or could adversely affect its right to convey the proposed parcel (or any part thereof) as contemplated in this Agreement. There are no condemnation or eminent domain proceedings pending or, to the best knowledge of the granting party, threatened with respect to the parcel proposed for conveyance (or any part thereof) and there are no legal or administrative proceedings pending or, to the best knowledge of the granting party, threatened affecting the parcel to be conveyed (or any part thereof);

(d) The granting party has good, clear, indefeasible, insurable and marketable title to the parcel to be conveyed, subject to no mortgage (other than existing mortgages satisfiable and which shall be satisfied at or prior to Closing), construction or other lien or encumbrance other than the grantee's Permitted Exceptions.

(e) All taxes, whether Federal, State, local or otherwise, which could become a lien against or otherwise affect all or any portion of the grantee's interest therein as the

transferor thereof, or the grantee's interest therein as the transferee thereof, that have become due or payable at or prior to the date hereof, have been paid, including without limitation, all real estate taxes, tangible personal property taxes, sales taxes and any and all other taxes which relate to all or any portion of the parcel to be conveyed or could otherwise affect all or any portion of the parcel to be conveyed.

(f) The transfer of the parcel as contemplated herein, will not violate any subdivision statute, ordinance, law, or code or plat presently in existence;

(g) The parcel to be conveyed is not subject to any prescriptive easement or adverse possession;

(h) No "Hazardous Substance" (as hereinafter defined) has, to the knowledge of grantor, been disposed of, buried beneath, or percolated beneath the parcel to be conveyed or any improvements thereon, nor has any toxic, explosive or Hazardous Substance ever been removed from the parcel to be conveyed and stored off site. Further, to the knowledge of the grantor, there has been no "Release" (as hereinafter defined) of a Hazardous Substance on or from the parcel to be conveyed or any improvements thereon.

(i) The parcel to be conveyed and any improvements thereon have not, to the knowledge of the grantor, been used and are not presently being used for the handling, transportation or disposal of a Hazardous Substance. Neither the grantor, nor any lessee, licensee nor other party acting at the direction of or with consent of the grantor or said lessee or licensee, has manufactured, treated, stored or disposed of any Hazardous Substance on the parcel to be conveyed or any improvement thereon;

(j) With respect to the parcel to be conveyed, to the knowledge of the grantor, the Parcel is in material compliance with all applicable federal, state and local laws, administrative rulings, and regulations of any court, administrative agency or other governmental or quasi-governmental authority, relating to the protection of the environment (including, without limitation, laws prohibiting the creation of a public nuisance). With respect to said Parcel, the grantor has not received notification that it is a potentially responsible party under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or Section 7003 of the Resource Conservation and

Recovery Act of 1976, as amended ("RCRA"), nor has the grantor received notification from any federal, state, or local government, agency, or regulatory body, of a violation under any federal, state, or local law regulating the disposal or discharge of any toxic, explosive or other Hazardous Substance.

(k) For purposes hereof, the term "Hazardous Substance" means any one or more of the following: (i) any substance deemed hazardous under Section 101(14) of CERCLA, (ii) any other substance deemed hazardous by the Environmental Protection Agency pursuant to Section 102(a) of CERCLA, (iii) petroleum (including, without limitation, crude oil or any fraction thereof), (iv) any substance deemed hazardous pursuant to Section 1004(5) of RCRA, (v) any solid waste identified in Section 1004(27) of RCRA or (vi) any other hazardous or toxic substance, material, compound, mixture, solution, element, pollutant, or waste regulated under any federal, state or local statute, ordinance or regulation. The term "Release" shall have the meaning given to such term in Section 101(22) of CERCLA.

(l) The grantor has not received notice of, nor does the grantor have any knowledge of, any default or breach by the grantor of any covenant, condition, restriction, right of way, easement, or agreement affecting the Parcel ; and

(m) All of the representations and other provisions contained in this Section, in other Sections in this Agreement and in any other document to be delivered by the grantor as contemplated hereby shall (i) be true, accurate and complete both as of the date hereof or the effective date of such other document, as the case may be and as of the Closing and (ii) shall survive the Closing. Further, the truth, accuracy and completeness of all of such representations and warranties of the grantor shall, notwithstanding anything contained herein to the contrary, be a condition precedent to the grantee's obligation to close hereunder; provided, however, the grantee shall not have any obligation to investigate the truth, accuracy or completeness of said representations and warranties and, in the event same are not true, accurate or complete, but the grantee nonetheless elects to close hereunder, such shall not constitute a waiver of any of the grantee's rights and remedies as a result of a breach thereof. The grantor shall, to the extent permitted by law, indemnify and hold the grantee harmless from any and all losses, claims, damages, costs, expenses, obligations and liability arising out of or with respect to any breach or violation of any of the grantor's representations contained in this Agreement or in any other document to be delivered by the grantor. Nothing contained in this

Agreement shall be construed as a waiver of either party's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on either party's potential liability under state or federal law.

**Section 11. Conditions Precedent as to FIND.** Notwithstanding anything contained herein to the contrary, this Agreement and FIND's obligations hereunder are, unless waived in whole or in part in writing by FIND (which FIND shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) FIND has obtained a permit under the Endangered Species Act from the U.S. Fish and Wildlife Service to use the EEL Parcel, together with any adjacent FIND-owned land, as a dredged material management facility;

(b) FIND has obtained all other federal, state and water management district permits necessary to construct a dredged material management facility on the BV-24 site;

(c) FIND has not terminated this Agreement pursuant to Section 7 or 9;

(d) All the representations and warranties hereof of COUNTY shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies arising out of a breach or violation of any such representations or warranties of COUNTY;

(e) COUNTY shall have satisfied, fulfilled or performed all of its obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies hereunder to enforce any failure of COUNTY to fully satisfy, fulfill or perform such obligations;

(f) COUNTY shall not have furnished any notice of termination as may be permitted hereunder; and

(g) COUNTY shall, at its sole cost and expense, have caused the termination of any lease of the EEL Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under.

(h) Should FIND cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

**Section 12. Conditions Precedent as to COUNTY.** Notwithstanding anything contained herein to the contrary, this Agreement and COUNTY's obligations hereunder are, unless waived in whole or in part in writing by COUNTY (which COUNTY shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) All the representations and warranties hereof of FIND shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of COUNTY's rights or remedies arising out of a breach or violation of any such representations or warranties of FIND;

(b) FIND shall have satisfied, fulfilled and/or performed all of their obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of COUNTY's rights or remedies hereunder to enforce any failure of FIND to fully satisfy, fulfill or perform such obligations;

(c) FIND shall not have furnished any notice of termination as may be permitted hereunder;

(d) FIND shall, at its sole cost and expense, have caused the termination of any lease of the FIND Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under; and

(e) COUNTY has not terminated this Agreement pursuant to Section 7 or 9

(f) Should COUNTY cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

**Section 13. Closing: Costs and other expenses.** The closing of this transaction ("Closing") shall occur and exchange of possession of the Parcels shall take place at the County Attorney's office in Viera, Florida (or at such other place as shall be mutually agreed upon) within thirty (30) days after all of the Conditions Precedent as to both parties have been satisfied or waived in writing by the parties (unless extended by other provisions hereof) or on such other date as shall be mutually agreed upon ("Closing Date"). In the event that all of the Conditions Precedent set forth in Sections 11 and 12 have not been satisfied or waived within twelve (12) months of the Effective Date, the party for whose benefit such Condition Precedent exists shall have the option of (i) terminating this Agreement whereupon all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from or (ii) agreeing to an additional six-month period to satisfy such Conditions Precedent (or to waive them). The County Manager or designee is authorized to extend the closing deadline up to six months on behalf of the COUNTY in the event additional time is needed for FIND to obtain the permit described in paragraph 11(a) above. In the event this Agreement is so extended, and at the end of said six-month period the Conditions Precedent have not been satisfied or waived in writing by the party for whose benefit such Condition Precedent exists, this Agreement shall terminate and all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from. Time is of the essence with respect to said Closing.

The cost of performing or obtaining the surveys, any state documentary stamps which are required to be affixed to the deeds, the cost of the title insurance commitments and policies issued pursuant to this Agreement, the cost of recording the deeds, and any other normal and customary closing costs shall be paid by each respective party of the parcel to be acquired. Each party shall pay its own attorney's fees incurred in connection with the negotiation, preparation, execution, and closing of this Agreement.

As to the FIND BV-24A Site for FIND's containment basin, County will reimburse FIND, at closing, for half of the quoted costs associated with deliverables for the re-design of the FIND BV-24A Site, after the exchange, charged by FIND's engineer, not to exceed a reimbursement of \$88,823.38. The costs for deliverables from FIND's engineer will include:

- Site boundary and topographic survey with legal description
- Environmental Documentation Report
- Phase I and Phase II (if necessary) Environmental Site Assessment Report
- Preliminary permit-level drawings
- Site Management Plan
- Engineering narrative

**Section 14. Closing Obligations.**

(a) At Closing, COUNTY shall:

(i) deliver to FIND a county deed in the form prescribed in Section 125.411, Florida Statutes in form and substance satisfactory to FIND and its counsel, conveying the EEL Parcel to FIND subject only to the FIND Permitted Exceptions; The County shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to FIND possession of the EEL Parcel;

(iii) deliver to FIND a Non-Foreign Affidavit (i.e., Foreign Investment In Real Property Act ("FIRPTA") Affidavit) in form and substance satisfactory to FIND and its counsel;

(iv) deliver or cause to be delivered to FIND and the Title Insurance Company such documents as may be required by the Title Insurance Company or FIND or its counsel to release the EEL Parcel from any security interests created at any time at or prior to Closing and otherwise to insure marketable title to the EEL subject only to the FIND Permitted Exceptions as herein provided, and, to the extent that any of such documents are not available to the Title Insurance Company and the parties hereto at Closing, cause the Title Insurance Company to deliver copies thereof to FIND forthwith after Closing, and deliver to FIND and the Title Insurance Company any and all executed affidavits and other documents necessary to

delete all standard exceptions which can be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(v) deliver to FIND an affidavit executed by COUNTY and dated the Closing Date stating that there: (1) exists no condemnation of or similar proceeding with respect to the EEL Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the EEL Parcel (or any part thereof), COUNTY or this Agreement; and (3) the representations set forth in Section 4 hereof remain true and correct as of the date of Closing;

(vi) deliver to FIND or such other party designated by FIND or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by COUNTY at Closing as elsewhere provided in this Agreement;

(vii) deliver to FIND or such other party designated by FIND such other instruments, documents and matters as FIND may reasonably require.

(viii) reimbursement of costs associated with the redesign of the BV-24A Site, described above in Section 13.

(b) At Closing, FIND shall:

(i) deliver to COUNTY a Florida form of special warranty deed in form and substance satisfactory to COUNTY and its counsel, conveying the FIND Parcel to COUNTY subject only to the COUNTY Permitted Exceptions; FIND shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to COUNTY possession of the FIND Parcel;

(iii) deliver to COUNTY a Non-Foreign Affidavit (i.e., FIRPTA Affidavit) in form and substance satisfactory to COUNTY and its counsel;

(iv) deliver to COUNTY and the Title Insurance Company any and all executed affidavits and other documents necessary to delete all standard exceptions which can

be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(v) deliver to COUNTY an affidavit executed by FIND and dated the Closing Date stating that: (1) there exists no condemnation of or similar proceeding with respect to the FIND Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the FIND Parcel (or any part thereof), FIND or this Agreement; and (3) the warranties and representations set forth in Paragraph 4 hereof remain true and correct as of the date of Closing;

(vi) deliver to COUNTY or such other party designated by COUNTY or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by FIND at Closing as elsewhere provided in this Agreement; and

(vii) deliver to COUNTY or such other party designated by COUNTY such other instruments, documents and matters as COUNTY may reasonably require.

**Section 15. Brokers.** Each party hereto represents unto to the other that there are no real estate brokers, mortgage brokers, sales persons, finders or any like party involved with respect to the transactions contemplated hereby and that no brokerage fees, finders' fees, broker's commissions or the like are and/or shall be due as a result of their respective executions of this Agreement or which will be due as a result of the Closing or any other matters contemplated hereby by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto hereby agrees to indemnify and hold the other harmless from all losses, claims, damages, costs, expenses and liability arising out of any breach of such indemnifying party's representations and warranties as set forth above in this Section including, but not limited to, costs and attorneys' fees through all trial and appellate levels and post judgment proceedings and regardless of whether or not any action may be instituted.

**Section 16. Condemnation.** In the event of the commencement of any condemnation or eminent domain proceedings for any public or quasi-public purpose at any time prior to the Closing, resulting or which could result in the taking of all or any part of the Parcels, any party shall have the option of canceling this Agreement, in which event this

Agreement shall be null, void and have no further force or effect and all parties hereto shall be released and relieved from any and all further liability and obligations hereunder. In the event that the parties agree not to cancel this Agreement and choose to close the transaction contemplated hereby, the transferor of the property thus affected shall assign to the transferee thereof any and all condemnation or eminent domain proceeds and the transferor's rights to receive same. Each party agrees not to enter into any settlement of any condemnation proceedings or eminent domain proceedings involving any of the properties comprising the Parcels without the prior written consent of the other parties.

**Section 17. Default.** In the event of a default by any party under this Agreement, the non-defaulting party shall have available to it all rights and remedies under the laws of the State of Florida including, but not limited to, the right to specifically enforce this Agreement or to obtain damages as a result of such default.

**Section 18. Notices.** Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

**If to COUNTY:** Brevard County  
Mike Knight, EEL Program Manager  
91 East Drive  
Melbourne, Florida 32904

**With copy to:** Office of the Brevard County Attorney  
Attn: Christine Lepore, Assistant County Attorney  
2725 Judge Fran Jamieson Way, Bldg. C  
Viera, Florida 32940

**If to FIND:** Florida Inland Navigation District  
1314 Marcinski Road  
Jupiter, Florida 33477  
Attention: Executive Director

**With a copy to:** Peter L. Breton, Esq.  
Breton, Lynch, Eubanks et al.

1209 North Olive Avenue  
West Palm Beach, FL 33401

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

**Section 19. Effective Date of Agreement.** The date of this Agreement shall be the date the same has been last signed and/or initialed for final binding approval by all parties, with a fully executed duplicate original in the hands of the other parties. Said date shall be evidenced by the insertion of same in the introductory paragraph of this Agreement and is referred to herein as the "Effective Date."

**Section 20. Waiver.** No waiver of any rights or remedies hereunder by any party hereto shall be effective unless same shall be in writing executed by the party to be charged and any such waiver shall not be deemed to be a continuing or future waiver but shall be limited to the specific instance for which same was given.

**Section 21. Governing Law, Venue and Attorneys' Fees.** This Agreement and all matters related hereto shall be governed by the laws of the State of Florida and venue for any action or proceeding between the parties arising hereunder and/or in regard hereto shall be exclusively in Brevard County, Florida. In the event of any action or proceeding between the parties with respect to this Agreement or any document or instrument delivered in connection herewith, each party shall be responsible for its own attorney's fees and litigation costs.

**Section 22. Successors.** This Agreement shall be binding upon and inure to the benefit of all successors to and permitted assigns of the parties hereto.

**Section 23. Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original, and all such counterparts shall for all purposes constitute a single instrument.

**Section 24. Pronouns, Singular and Plural.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter and the singular shall be deemed to refer to the plural and vice versa, all as the context of usage shall require.

**Section 25. Section Captions.** Section and Exhibit titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

**Section 26. Time of the Essence.** Time is of the essence in this transaction and it may be extended only by written agreement by and between the parties hereto.

**SECTION 27. Weekends and Holidays.** In the event any date for performance hereunder shall occur or any period hereunder shall expire on a Saturday, Sunday or legal holiday celebrated in the State of Florida, then the date for such performance or date of expiry shall be automatically extended until the next business day thereafter which is not a Saturday, Sunday or legal holiday celebrated in the State of Florida.

**Section 28. Survival.** All representations, warranties, covenants and other provisions of this Agreement shall survive Closing except to the extent provided herein to the contrary, if at all.

**Section 29. No Presumption as to Drafting.** The parties hereto acknowledge that they have extensively negotiated the terms and provisions hereof. Accordingly, the parties hereto intend and agree that this Agreement shall be construed without regard to any presumption, principle or other rule regarding construction of any or all terms and provisions against the party causing this Agreement to be drafted. Further, both parties hereto hereby waive, to the maximum extent permitted by law, all such aforesaid presumptions, principles and rules.

**Section 30. Entire Agreement.** This Agreement and all Exhibits and other attachments hereto, if any, embody the entire agreement and understanding of the parties

hereto. This Agreement may not be changed, altered or modified except by an instrument in writing, signed by the party against whom the enforcement of any change, alteration or modification is sought.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first above written.

**FLORIDA INLAND NAVIGATION DISTRICT**

By:   
Tyler Chappell, Chairman

**BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA**

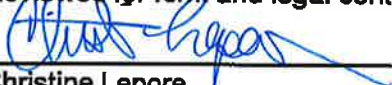
Attest:

\_\_\_\_\_  
Scott Ellis, Clerk

By: \_\_\_\_\_  
Robin Fisher, Chairman

As Approved by the Board on \_\_\_\_\_

Reviewed for form and legal content:

  
\_\_\_\_\_  
Christine Lepore  
Assistant County Attorney

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**FLORIDA INLAND NAVIGATION DISTRICT**

By:   
Tyler Chappell, Chairman

**BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA**

By:   
Robin Fisher, Chairman

As Approved by the Board on 04-28-15.

Attest:

  
\_\_\_\_\_  
Scott Ellis, Clerk

Reviewed for form and legal content:

\_\_\_\_\_  
Christine Lepore  
Assistant County Attorney

# EXHIBIT "A"

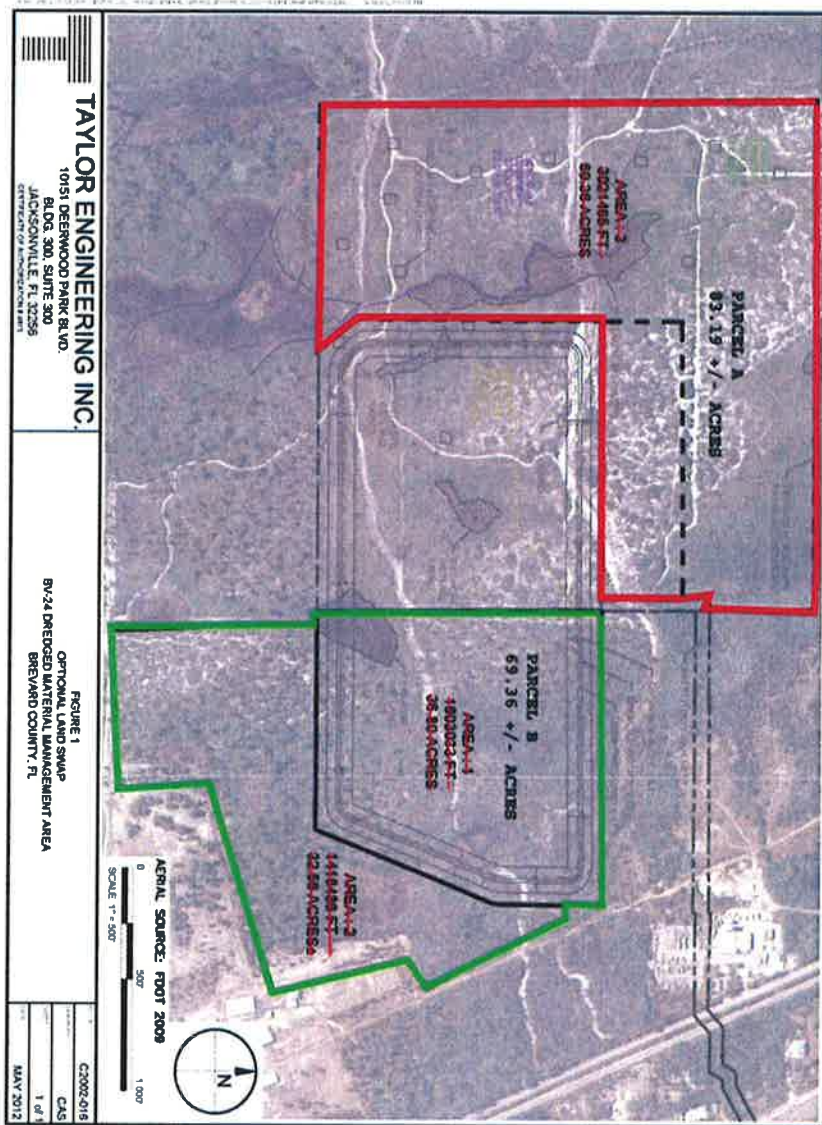


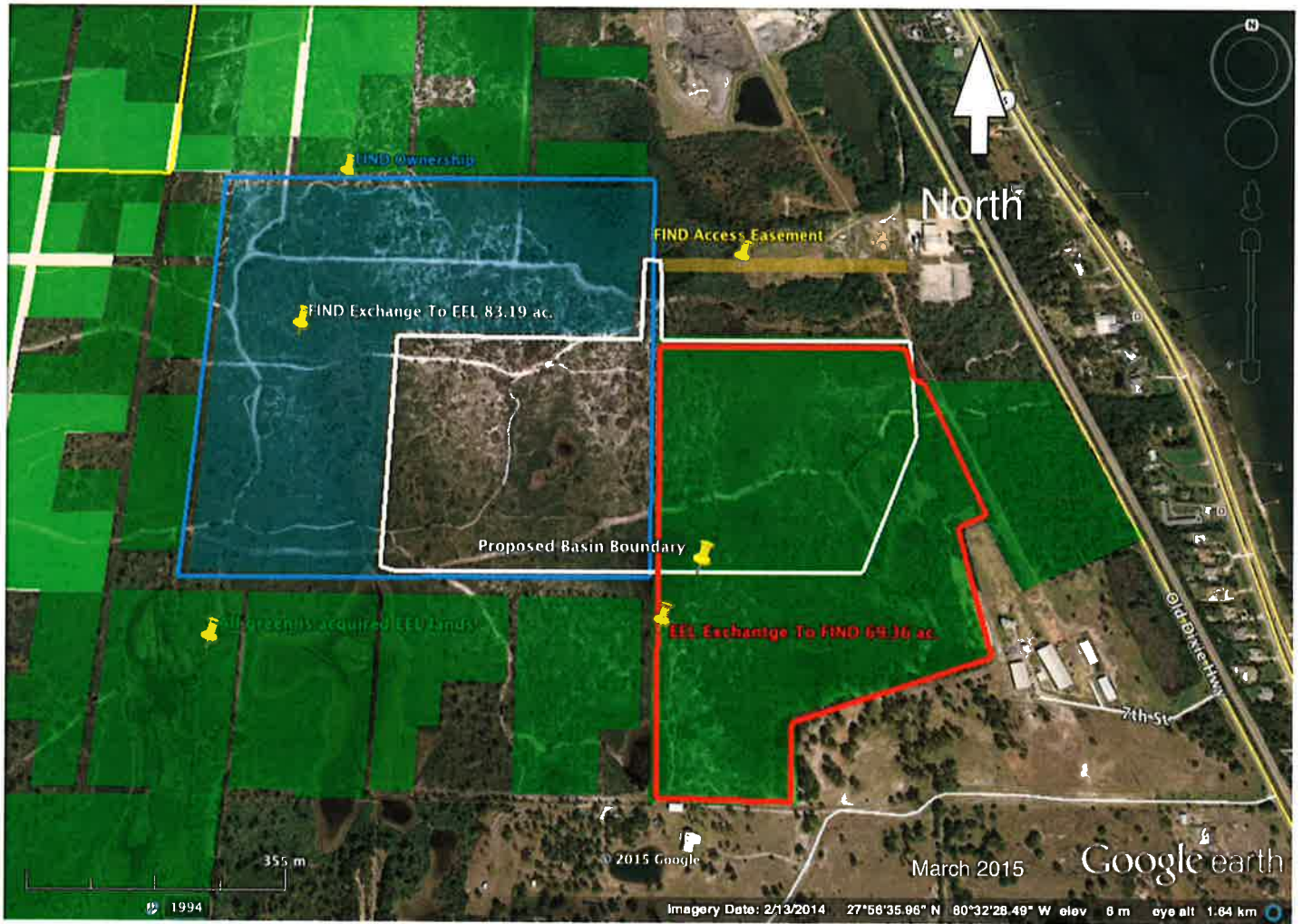
EXHIBIT "D"

**TAYLOR ENGINEERING INC.**  
10151 DEERWOOD PARK BLVD.  
BLDG. 300, SUITE 300  
JACKSONVILLE, FL 32256  
CERTIFICATE OF INCORPORATION FILED

OPTIONAL LAND SWAP  
BREWARD COUNTY, FL

C2002-016  
DAS  
1 of 1  
MAY 2012

FIND Property Exchange Map



Mailed to:

Brevard County EEL Program  
91 East Dr  
Melbourne FL 32904

A daily publication by:



STATE OF FLORIDA  
COUNTY OF BREVARD

**Kathy Cicala**

Before the undersigned authority personally appeared \_\_\_\_\_  
who on oath says that she is LEGAL ADVERTISING SPECIALIST of the FLORIDA TODAY, a  
newspaper published in Brevard County, Florida; that the attached copy of advertising being a

**LEGAL NOTICE**

Ad # (	351066	\$	112.40	the matter of:
Acct. # (	6BC920	)		
<b>BREVARD COUNTY EEL PROGRAM</b>				
the	Court	<b>PUBLIC NOTICE</b>		
<b>APRIL 28, 2015</b>				

AD#351066.03/24.03/31/2015

Tuesday, April 28, 2015 9:00 AM Public Notice  
Proposed land exchange between Brevard  
County and Florida Inland Navigation District  
within the Town of Grant-Valkaria. Brevard  
County Board of County Commission meeting-  
2725 Judge Fran Jamison Way, Viera, bldg C,  
1st floor, Commission Chambers. Contact (321)  
255-4466 X37. In accordance with the Ameri-  
cans with Disabilities Act and Section 265.36 of  
the Florida Statutes, persons needing special  
accommodations or an interpreter to partici-  
pate in the proceedings, please notify Brian  
Breth in the Housing and Human Services  
Department, no later than 48 hours prior to the  
meeting, at (321) 833-8276

as published in the FLORIDA TODAY in the issue(s) of:

March 24 & 31, 2015

Affiant further says that the said FLORIDA TODAY is a newspaper in said Brevard County,  
Florida, and that the said newspaper has heretofore been continuously published in said  
Brevard County, Florida, regularly as stated above, and has been entered as periodicals  
matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one  
year next preceding the first publication of the attached copy of advertisement; and affiant  
further says that she has neither paid nor promised any person, firm or corporation any  
discount, rebate, commission or refund for the purpose of securing this advertisement for  
publication in said newspaper.

(Signature of Affiant)

31st day of March 2015

(Signature of Notary Public)

Ruby Royer

(Name of Notary Typed, Printed or Stamped)

Sworn to and subscribed before this:

RUBY ROYER  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF088043  
Expires 1/30/2019

Personally Known  or Produced Identification \_\_\_\_\_  
Type Identification Produced: \_\_\_\_\_

RECEIVED

APR - 2 2015

BREVARD COUNTY EEL PROGRAM  
ADMINISTRATION

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor: Florida Inland Navigation District (FIND)</b>	
<b>2. Fund/Account #: 3219/340250</b>	<b>Division Name: EEL PROGRAM</b>
<b>4. Contract Description: Exchange Agreement-County/FIND-south region</b>	
<b>5. Contract Monitor: JENNY ASHBURY</b>	<b>6. Mail Stop #: 74</b>
<b>7. Dept./Office Director: JACK MASSON</b>	<b>8. Contract Type:</b>
<b>ACTION DATE: PLEASE CALL JENNY 321-369-8169 WHEN ORIGINALS AND AO 29 ARE READY</b>	<b>ACTION REQUIREMENT: Need complete data</b>

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	x		MK	2/6/15
Risk Management	_____	_____	_____	_____
County Attorney	<u>X</u>	_____	<u>CL</u>	<u>2/10/15</u>

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.*

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**


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User Agency	x		MK	2/6/15
Risk Management	x		JLJ 	2/11/15 _____
County Attorney	_____	_____	_____	_____

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AO-29: EXHIBIT I

RECEIVED

FEB 17 2015 

BREVARD COUNTY EEL PROGRAM  
ADMINISTRATION