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RENEWAL TO AGREEMENT FOR CONSTRUCTION SERVICES

THIS RENEWAL #2 is made and entered into this 21st day of April, 2024 by and between MARTIN COUNTY, a political subdivision of Florida ("COUNTY"), and FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC. (CONTRACTOR).

WITNESSETH

WHEREAS, the COUNTY and CONTRACTOR entered into an Agreement for Construction Services to provide EMERGENCY DUNE RESTORATION pursuant to Martin County Contract #RFB2020-3192 dated April 21, 2020, and;

WHEREAS, the Term of the Agreement provides for the option to renew for an additional year, and;

WHEREAS, the COUNTY and CONTRACTOR desire to exercise the option to renew that Agreement.

NOW THEREFORE, in consideration of the premises and the mutual benefits which all accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually covenanted and agreed as follows:

1. The COUNTY exercises its option to renew this Agreement for one (1) year pursuant to the Term of the Agreement.
2. The CONTRACTOR agrees to this renewal.
3. The Agreement is hereby renewed until 4/20/2025.
4. Pricing and all remaining terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.
5. This Contract shall be effective beginning on the date first written above notwithstanding it or some of the Contract documents being signed on a different date.

IN WITNESS WHEREOF, the parties hereto have executed this renewal of this Agreement as of the date first set forth above.

**FERREIRA CONSTRUCTION SOUTHERN
DIVISION CO., INC.**



John Ciabattari
Vice President

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

Krysti L. Brotherton

Digitally signed by Krysti L.
Brotherton
Date: 2024.02.19 15:10:01 -05'00'

Krysti L. Brotherton, NIGP-CPP, CPPO, CPPB
Chief Procurement Officer

****Please provide current contact information below and return this renewal with a copy of your most recent Certificate of Liability Insurance:**

Name: John Ciabattari

Phone number: (772) 286-5123

Email Address: jciabattari@ferreiraconstruction.com

**AMENDMENT TO AGREEMENT BETWEEN COUNTY AND CONTRACTOR
RFB2020-3192**

THIS AMENDMENT #2 made and entered into this 15th day of September in the year 2023, by and between **MARTIN COUNTY**, a political subdivision of Florida, (Hereinafter "County"), 2401 SE Monterey Road, Stuart, Florida 34996 and **FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC.** (Hereinafter "Contractor"), 13000 SE Flora Ave., Hobe Sound, FL 33455.

WITNESSETH

WHEREAS, the **County** and **Contractor** entered into an Agreement for EMERGENCY DUNE RESTORATION on April 20, 2020; and

WHEREAS, the **County** and **Contractor** desire to amend the Agreement to allow for annual price adjustments.

WHEREAS, the **County** and **Contractor** desire to amend the Agreement to increase the costs listed in Exhibit E of the original agreement due to inflation affecting the cost of construction material.

NOW THEREFORE, in consideration of the promises, covenants, and mutual benefits which all accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually covenanted and agreed that the contract will be amended as follows:

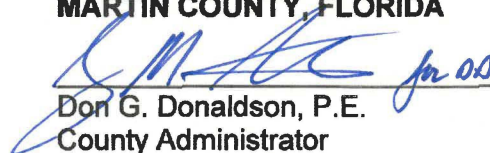
1. Exhibit E of the Original Agreement is replaced by Amendment #2, Exhibit E.
2. All remaining pricing, terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the date first set forth above.


REVIEWED BY


James Gorton
Public Works Director


**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**


Don G. Donaldson, P.E.
County Administrator

**FERREIRA CONSTRUCTION SOUTHERN
DIVISION CO., INC.**


John Ciabattari
Vice President

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**


Sarah W. Woods
County Attorney

**EXHIBIT E
AMENDMENT #2**

**RFB2020-3192
EMERGENCY DUNE RESTORATION
BID FORM**

GROUP I - DUNE RESTORATION			
Item	Description	Unit of Measure	Price per Unit
1	Provide less than 65,000 tons of Sand	Ton	\$16.63
2	Provide more than 65,000 tons of Sand	Ton	\$ 16.63

List upland sand source: Stewart Materials

Items 3 to 8 are For Monument Range R-1 to R-27			
Item	Description	Unit of Measure	Price per Unit
3	Transport & Deliver Sand	Ton	\$16.42
4	Mobilization/Demobilization	work order	\$3,729.95
5	Place & Grade Fill	Ton	\$5.95
6	Site Restoration R-3 + 300	work order	\$12,800.78
7	Site Restoration R-11 + 250	work order	\$9,282.37
8	Site Restoration R-22 + 800	work order	\$16,551.37
Items 9 to 13 are For Monument Range R-27 to R-36			
9	Transport & Deliver Sand	Ton	\$16.99
10	Mobilization/Demobilization	work order	\$3,729.95
11	Place & Grade Fill	Ton	\$5.95
12	Site Restoration of House of Refuge	work order	\$5,622.18
13	Site Restoration of Bathtub Beach	work order	\$9,949.56

The bidder must bid on all 13 items in Group I to be considered for award. Award of Group I will be made to one primary vendor and up to two alternates providing the lowest most responsive bid for the group.

GROUP II - MISCELLANEOUS BEACH RESTORATION SERVICES			
Items 14 to 17 are for Sand Removal, Screening and Placement			
Item	Description	Unit of Measure	Price per Unit
14	Mobilization/Demobilization	work order	\$4,892.63
15	Site to Site Mobilization	work order	\$937.00
16	Sand Removal, Screening and Placement less than 4000 CY of sand	Cubic yard	\$21.25
17	Sand Removal, Screening and Placement more than 4000 CY of sand	Cubic Yard	\$18.75
Items 18 to 19 are for Debris Removal			
18	Mobilization/Demobilization	work order	\$1,519.12
19	Debris Clearing & Stockpiling	Cubic Yard	\$15.07
Items 20 through 21 are for Escarpment Leveling			
20	Mobilization/Demobilization	work order	\$703.30
21	Escarpment Leveling	Linear Foot	\$2.21
Items 22 through 23 are for Beach Tilling			
22	Mobilization/Demobilization	work order	\$4,251.25
23	Beach Tilling	Acre	\$718.92

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RENEWAL TO AGREEMENT FOR CONSTRUCTION SERVICES

THIS RENEWAL #1 is made and entered into this 21st day of April, 2023 by and between MARTIN COUNTY, a political subdivision of Florida ("COUNTY"), and FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC. (CONTRACTOR).

WITNESSETH

WHEREAS, the COUNTY and CONTRACTOR entered into an Agreement for Construction Services to provide Emergency Dune Restoration pursuant to Martin County Contract # RFB2020-3192 dated April 21, 2020, and;

WHEREAS, the Term of the Agreement provides for the option to renew for an additional year, and;

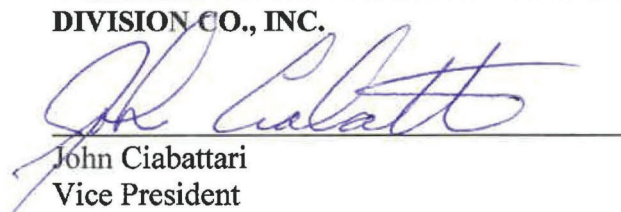
WHEREAS, the COUNTY and CONTRACTOR desire to exercise the option to renew that Agreement.

NOW THEREFORE, in consideration of the premises and the mutual benefits which all accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually covenanted and agreed as follows:

1. The COUNTY exercises its option to renew this Agreement for one (1) year pursuant to the Term of the Agreement.
2. The CONTRACTOR agrees to this renewal.
3. The Agreement is hereby renewed until April 21, 2024.
4. Pricing and all remaining terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.
5. This Contract shall be effective beginning on the date first written above notwithstanding it or some of the Contract documents being signed on a different date.

IN WITNESS WHEREOF, the parties hereto have executed this renewal of this Agreement as of the date first set forth above.

**FERREIRA CONSTRUCTION SOUTHERN
DIVISION CO., INC.**


John Ciabattari
Vice President

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

Krysti L. Brotherton

Digitally signed by Krysti L.
Brotherton
Date: 2023.02.15 10:18:56 -05'00'

Krysti L. Brotherton, NIGP-CPP, CPPO, CPPB
Chief Procurement Officer

Please provide current contact information below and return this renewal with a copy of your most recent Certificate of Liability Insurance:

Name: John Ciabattari, Vice President

Phone number: (772) 286-5123

Email Address: jciabattari@ferreiraconstruction.com

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**AMENDMENT TO AGREEMENT BETWEEN COUNTY AND CONTRACTOR
RFB2020-3192**

THIS AMENDMENT #1 made and entered into this 18th day of February 2022, by and between **MARTIN COUNTY**, a political subdivision of Florida, (Hereinafter "County"), 2401 SE Monterey Road, Stuart, Florida 34996 and **FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC.** (Hereinafter "Contractor"), 13000 SE Flora Ave., Hobe Sound, FL 33455.

WITNESSETH

WHEREAS, the County and Contractor entered into an Agreement for EMERGENCY DUNE RESTORATION on April 21, 2020; and

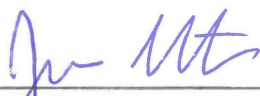
WHEREAS, the County and Contractor desire to amend the Agreement to add unit pricing for the supply and installation of native coastal vegetation and dune protection fence/rope.

NOW THEREFORE, in consideration of the promises, covenants, and mutual benefits which all accrue to the parties hereto in carrying out the terms of this Agreement, it is mutually covenanted and agreed that the contract will be amended as follows:

1. Add unit pricing for the supply and installation of native coastal vegetation and dune protection fence/rope (GROUP III – Miscellaneous Beach Restoration Services) as outlined in Exhibit E (Amendment #1).
2. All remaining pricing, terms and conditions of the Agreement not specifically amended herein shall remain in full force and effect.

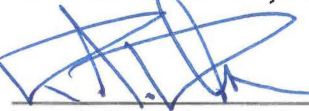
IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the date first set forth above.

REVIEWED BY




James Gorton
Public Works Director

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**




Don G. Donaldson, P.E., C.F.M.
Deputy County Administrator

**FERREIRA CONSTRUCTION
SOUTHERN DIVISION CO., INC.**



John Ciabattari
Vice President

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**



Sarah W. Woods
County Attorney

**EXHIBIT E
AMENDMENT #1**

**RFB2020-3192
EMERGENCY DUNE RESTORATION**

GROUP III - MISCELLANEOUS BEACH RESTORATION SERVICES

Provide and install coastal native vegetation, sea oats (4 plant seedlings per unit average) and other pioneer zone species including dune panic grass, seashore paspalum grass, railroad vine, beach bean, beach morninglory, dune sunflower, in 96 cell liner size or equivalent, at unit price installed. Dune Protection fence and installation.

Item	Description	Unit of Measure	Price per Unit
1	Sea Oats (4 plant seedlings per unit average)	per plant (each)	\$ 1.88
2	Seashore Paspalum grass	per plant (each)	\$ 1.88
3	Railroad vine	per plant (each)	\$ 2.09
4	Beach Bean	per plant (each)	\$ 2.09
5	Beach Morninglory	per plant (each)	\$ 2.09
6	Dune Sunflower	per plant (each)	\$ 1.88
7	Dune protection fence/rope	LF	\$ 12.75

Ferreira Construction

John Ciabattari

Company Name

Name of Authorized Representative (Print)

13000 Se Flora Ave

Vice President

Street Address

Title

Hobe Sound, FL 33455


jciabattari@ferreiraconstruction.com

City, State, Zip

E-mail Address

772-286-5123

Telephone


Authorized Signature

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ARTICLE 1 DEFINITIONS

1.1 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Actual Costs.*

- a. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- b. cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. rental cost of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- d. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- e. additional cost of field supervision and field office personnel directly attributable to the charge, exclusive of the cost of estimating, contract administration, and purchasing.

2. *Addenda.* Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

3. *Agreement.* The written instrument which is evidence of the agreement between COUNTY and CONTRACTOR covering the Work. Also referred to as "Contract".

4. *Bonds.* Performance bond and payment bond and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the Contract Documents and in accordance with the law of Florida.

5. *Change Order.* A written document which is signed by CONTRACTOR and COUNTY and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

6. *Claim.* Any action, change order, demand, invoice, lawsuit, request, or statement, for money, property, or services made to any agent, employee, or officer of the County. Claim does not include tort claims as that term is used in Section 768.28(5) Florida Statutes as amended from time to time.

7. *Contract Documents.* The Contract Documents establish the rights and obligations of the parties and include the following: Agreement (including Exhibits), Work Order, entire bid package including Advertisement, all Addenda and Instructions to Bidders, CONTRACTOR'S completed Bid Form package, Notice of Award, Notice to Proceed, drawings, specifications, plans, data, studies, surveys, calculations, permit applications, estimates, photographs, reports, approved submittals, and other documents prepared by, through, or under CONTRACTOR that fix, depict and/or describe the size, quality and character of the Project, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically

identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Architect/Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

8. *Contract Price.* The moneys paid to CONTRACTOR under Contract Documents.

9. *Contract Time.* The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Architect/Engineer's written recommendation of final payment.

10. *CONTRACTOR.* The individual or entity with whom COUNTY has entered into the Agreement."

11. *Day means a calendar day unless noted otherwise.*

12. *Drawings.* That part of the Contract Documents prepared or approved by an Architect or Engineer which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

12. *Effective Date of the Agreement.* The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

13. *FEMA* means the Federal Emergency Management Agency.

14. *Field Order.* A written order issued by Architect/Engineer's or COUNTY which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

15. *Final Completion or Final Acceptance.* The completion of all Work called for under the Contract Documents, including, but not limited to, satisfactory operation of all equipment (other than COUNTY supplied equipment or facilities or those installed by separate CONTRACTORS); correction of all punch list items to the satisfaction of COUNTY, payment of all trade CONTRACTORS, subcontractors, and materialmen; settlement of all claims, if any; payment and release of all mechanic's, materialmen's, and similar liens; delivery of all guarantees, equipment operation and maintenance manuals, as-built drawings, building certificates, electrical certificates, mechanical certificates, plumbing certificates, and all other required approvals and acceptances by any municipality within Martin County, Martin County itself, the State of Florida or other authorities or agencies having jurisdiction; and removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.

16. *Notice to Proceed.* A written notice given by COUNTY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

17. *Public Record.* All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the COUNTY and the CONTRACTOR.
18. *Samples.* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
19. *Shop Drawings.* All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
20. *Specifications.* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
21. *Substantial Completion.* The stage in construction when the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (1) the items that affect operational integrity and function of the Project must be capable of continuous use; (2) all permits and other regulatory requirements must be satisfied; and (3) a Certificate of Occupancy must be issued where one is required. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
22. *Surety.* The corporate body that is responsible for the CONTRACTOR in connection with the Work as set forth in the Bonds and that is included in the most recent United States Department of the Treasury List of Acceptable Sureties and authorized to issue surety bonds in Florida, and which maintains a surety rating of “A-” or better or equivalent rating by a nationally recognized rating agency.
23. *Underground Facilities.* All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
24. *Work.* Services as defined in each individual Work Order to be paid for in accordance with the unit prices indicated in CONTRACTOR’s bid.
25. *Work Order.* A formal document that is dated, serially numbered, and executed by both the COUNTY and the CONTRACTOR in response to COUNTY’s request for proposal, by which COUNTY accepts CONTRACTOR’s proposal for specific Services and CONTRACTOR indicates a willingness to perform such specific Services under the terms and conditions specified in this AGREEMENT.

ARTICLE 2

WORK/PRELIMINARY REQUIREMENTS

2.1 Work. CONTRACTOR agrees to furnish and complete all authorized and approved work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, construction management and contract administration services for site development, permitting, regulatory matters, testing, environmental mitigation, traffic, landscaping, accounting, coordination, and construction of the Project..

2.2 Commencement of Work and Notices to Proceed. The Date of Commencement of all Work shall be the date indicated in the Notice to Proceed and/or Work Order. Notice to Proceed as to each Work Order shall be issued by the Project Manager after the CONTRACTOR has delivered to the COUNTY the executed Work Order, the Bonds and Insurance Certificates in accordance with the Work Order and AGREEMENT, and the Board has approved this AGREEMENT. No Work shall be performed by the CONTRACTOR or its Professionals, subconsultants, or subcontractors, and no irrevocable commitments to vendors shall be made prior to the Date of Commencement, at which time, CONTRACTOR may commence to perform Work.

2.3 Nothing contained in any Work Order shall conflict with the terms of this AGREEMENT, and the terms of this AGREEMENT shall be deemed to be incorporated in each individual Work Order as if fully set forth therein. A Work Order shall contain the following:

- a. A description of the specific Services to be performed, a schedule and amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs such as, labor rates by classification, hours for each classification, extended price, subcontracted labor (also broken out), material, other direct costs, overhead rate, indirect rate, and profit/fee. The sufficiency of such budget detail is subject to the approval of the COUNTY; and
- b. Any other additional instructions or provisions relating to the specific Services authorized pursuant to each Work Order that do not conflict with the terms of this Agreement.

2.4 Preconstruction Conference(s). If required by the specific services outlined in the Work Order, the CONTRACTOR shall meet with the COUNTY for review and acceptance of the CONTRACTOR'S initial submittals, CPM Schedule, Final Schedule of Values, personnel and Subcontractor list, to review mobilization requirements, to establish procedures for handling shop drawings and other Submittals and Applications for Payment, and to establish a working understanding among the parties as to the Work.

2.5 Assumption of Risks. CONTRACTOR shall become familiar with and prepare for the normal weather conditions existing in Martin County, Florida. Normal weather conditions are expected to impact the Work in numerous ways, including but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. CONTRACTOR'S Contract Price and Project Schedule, and any subsequent approved revisions thereto, shall sufficiently anticipate and include normal weather Days as reflected by 10-year average of historical records produced by the National Weather Service. Additionally, the CONTRACTOR assumes the risk for all costs associated with concealed Site conditions which are foreseeable through the exercise of due diligence. Again, it shall be the obligation of CONTRACTOR to fully investigate the Site and provide sufficient contingency amounts for

conditions which are foreseeable.

ARTICLE 3 CONTRACT PRICE

The OWNER shall pay the CONTRACTOR for the performance of Work outlined in each individual Work Order issued in accordance with the Contract Documents, the fixed Contract Price outlined in each individual Work Order, based on the unit costs in the Bid. The obligations of the OWNER under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the Board of County Commissioners of Martin County.

ARTICLE 4 CONTRACTOR RESPONSIBILITIES

4.1 CONTRACTOR represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, specifications set forth in each Work Order, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

4.2 The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the AGREEMENT is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

4.3 CONTRACTOR understands and acknowledges that all documents and materials provided with the RFP and any addenda, are general and preliminary, and that CONTRACTOR shall not rely on the accuracy or completeness thereof. CONTRACTOR acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

4.4 CONTRACTOR shall be responsible to the COUNTY for acts and omissions of CONTRACTOR and CONTRACTOR'S agents, employees, Professionals, subconsultants, subcontractors, and all other parties performing Work by, through and under CONTRACTOR.

4.5 CONTRACTOR shall be responsible for the management, coordination and supervision of all design, permitting, and construction means, methods, techniques, sequences and procedures for completion of the Work.

4.6 The CONTRACTOR agrees to bind specifically every Professional, subconsultant and

subcontractor to the applicable terms and conditions of the AGREEMENT, for the benefit of the COUNTY.

4.7 CONTRACTOR represents that it is fully experienced and properly qualified to perform the Work under the Contract Documents and that it is properly licensed, equipped, organized and financed to perform such Work.

4.8 CONTRACTOR shall act as an independent CONTRACTOR and not as the agent of COUNTY. The CONTRACTOR shall supervise and direct the Work and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction subject to compliance with the Contract Documents.

4.9 The CONTRACTOR shall employ and maintain a full-time on-site Superintendent who shall have been designated in writing by the CONTRACTOR and pre-approved by the COUNTY. The Superintendent shall be dedicated to this the Project full time and shall have full authority to act on behalf of the CONTRACTOR. The superintendent shall be capable of properly interpreting the Contract Documents and be thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to receive instructions from the Engineer and to execute the orders or directions of the Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. A Superintendent shall be provided regardless of the amount of work sublet. The Superintendent shall speak and understand English, and the CONTRACTOR shall maintain at least one other responsible person who speaks and understands English, on the project during all working hours. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the Superintendent of the CONTRACTOR shall be mailed to the address set forth in the Agreement for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR's duty of supervision and fiscal management as provided by Florida law. The COUNTY shall have the right of direct removal of any Superintendent of the CONTRACTOR. Any change in the Superintendent of the CONTRACTOR assigned to the Project shall be subject to the COUNTY's prior written approval. The Superintendent shall have full authority to receive instructions from the Owner and/or Engineer, and to execute the orders or directions of the Owner and/or Engineer, including promptly supplying any materials, tools, equipment, labor, and incidentals that may be required. The Superintendent shall provide such superintendence regardless of the amount of work sublet.

4.10 The CONTRACTOR shall not employ any subcontractor or consultant against whom the COUNTY may have an objection in the COUNTY's sole discretion.

4.11 The CONTRACTOR represents to the COUNTY that the CONTRACTOR (and its officers, directors, partners or shareholders who holds ten (10%) percent or more of the outstanding stock of the CONTRACTOR), does not have any financial interest in or with (i.e. is not an officer, director, partner or ten percent plus shareholder) any person, entity, subcontractor, consultant, design professional, materialman, supplier, or any other subcontractor performing any Work or the Project. CONTRACTOR agrees to obtain prior written consent from the COUNTY before entering into any Contract on this Project in which it has a common financial interest.

4.12 The CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings on-site in good order and annotated to show all changes made

during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents (thus creating "As-Built Documents") and provided to the COUNTY, and the COUNTY approves those As-Built Documents.

4.13 The CONTRACTOR shall, at its expense, attend any and all meetings called by COUNTY to discuss the Work under the Contract.

4.14 CONTRACTOR shall deliver to the COUNTY both prior to commencing each Work Order and also at the completion of the Project and before receipt of Final Payment, a DVD video of the Project showing the site before Work is commenced, the site as it progresses on a monthly basis, and after Work has been completed for any vertical construction project valued over \$200,000.00. CONTRACTOR shall identify on the DVD the station numbers as those areas of the Project are taped, as well as the date recorded. The cost of the recording is included in the bid submitted by the CONTRACTOR.

4.15 CONTRACTOR shall not establish and shall not allow its employees to engage in any commercial activities on the site of any Work Order.

4.16 The CONTRACTOR shall, at its expense, arrange for, develop and maintain all utilities in Work areas to meet the requirements of the Contract. Such utilities shall be furnished by CONTRACTOR at no additional cost to the COUNTY, and shall include, but not be limited to, the following: telephone service for the CONTRACTOR'S use; construction power as required at each point of construction; and water as required throughout the construction. Prior to final acceptance of the Work the CONTRACTOR shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Contract. The COUNTY will assume the utility costs directly related to its usage of areas in which it has taken Beneficial Occupancy.

4.17 Maintenance of Traffic. The CONTRACTOR shall be responsible for the proper maintenance, control, and detour of traffic in the area of construction, during the course of construction. All traffic control and maintenance procedures shall be in accordance with the requirements of either the Florida Department of Transportation, Martin County, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR'S responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies so that its Proposal reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper maintenance, control, detour and protection. The CONTRACTOR shall notify all such agencies and the COUNTY 48 hours in advance of any traffic detour.

4.18 The CONTRACTOR is responsible for adequate drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed.

4.19 Fire hydrant on or adjacent to the highway shall be kept accessible and no obstruction shall be placed within fifteen feet (15') of any hydrant.

4.20 Heavy Equipment shall not be operated close enough to pipe headwalls or other structures

to cause their displacement.

4.21 Where the COUNTY determines it to be necessary for maintaining the security of livestock or adjacent property or for protection of pedestrians, the CONTRACTOR shall erect and operate under temporary security fencing. Permanent fencing shall be addressed as required by the Plans and Specifications.

ARTICLE 5 PAYMENT

5.1 Schedule of Values. The CONTRACTOR's Unit Price Proposal for each Work Order shall serve as the schedule of values for basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the COUNTY. Progress payments on account of Work will be based on the number of units completed.

5.2 Progress Payments

A. Applications for Payments

1. All payments made to the CONTRACTOR, whether Partial or Final, shall be strictly in accordance with Section 218.70, Florida Statutes, addressing payment, retainage and punch list procedures for the performance of public works projects to which the Project applies. CONTRACTOR is required to include Section 218.70, Florida Statutes, in all Subcontractor and vendor agreements. At least 25 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to COUNTY for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. Such supporting documents shall include but not be limited to releases from all parties who have served Notices to CONTRACTOR for the Project, a current release from CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and a monthly dated CPM schedule for Projects valued over \$200,000.00. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR'S entitlement to receive payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that COUNTY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect COUNTY'S interest therein, all of which must be satisfactory to COUNTY.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR'S legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be 10% of the Contract Price for all projects valued at \$200,000.00 or more, or as otherwise stipulated in the Work

Order. Retainage will not be held for projects valued under \$200,000.00. After 50% completion of the construction, the amount of retainage withheld from each subsequent progress payment shall be five (5%) percent. "Fifty Percent Completion" of the Work is defined as that point in time where 50% of the overall value of the Work items incorporated and which will remain in place subsequent to final completion of the Work have been completed, based upon the schedule of values contained in the Contract. As such, and by way of example, the value of CONTRACTORS mobilization, general conditions, supervision or like items which do not involve permanent incorporation of Work do not apply to the determination of "Fifty Percent Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

B. Review of Applications

1. COUNTY will, within 10 days after the date on which the Application for Payment is stamped as received by the COUNTY, either process the payment or return the Application to CONTRACTOR indicating in writing COUNTY'S reasons for refusing to recommend payment. COUNTY may reject the payment request or invoice within 20 days after the date on which the payment request or invoice is stamped as received by the COUNTY. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. The corrected payment requests or invoices must be paid or rejected on the later of:

- a. Ten (10) days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

2. COUNTY and/or Architect/Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to COUNTY, based on COUNTY and/or Architect/Engineer's observations on the Site of the executed Work as an experienced and qualified professional and on COUNTY and/or ENGINEER'S review of the Application for Payment and the accompanying data and schedules, that to the best of COUNTY and/or Architect/Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to CONTRACTOR'S being entitled to such payment appear to have been fulfilled in so far as it is Architect/Engineer's responsibility to observe the Work.

3. By recommending any such payment Architect/Engineer will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Architect/Engineer in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by COUNTY or entitle COUNTY to withhold payment to CONTRACTOR.

4. Neither COUNTY and/or Architect/Engineer's review of CONTRACTOR'S Work for the purposes of recommending payments nor Architect/Engineer's recommendation of any payment, including final payment, will impose responsibility on Architect/Engineer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR'S failure to comply with Laws and Regulations applicable to CONTRACTOR'S performance of the Work. Additionally, said review or recommendation will not impose responsibility on Architect/Engineer to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to COUNTY free and clear of any Liens.

5. Architect/Engineer may refuse to recommend the whole or any part of any payment if, in Architect/Engineer's opinion, it would be incorrect to make the representations to COUNTY. Architect/Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Architect/Engineer's opinion to protect COUNTY from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. COUNTY has been required to correct defective Work or complete Work; or

C. Payment Becomes Due

1. If approved, payment is due twenty-five (25) days after the payment request or invoice is stamped as received by County, Payment on a corrected payment requests, must be paid or rejected on the later of:

- a. Ten (10) days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

D. Reduction in Payment

1. COUNTY may refuse to make payment of the full amount recommended by Architect/Engineer because:

- a. claims have been made against COUNTY on account of CONTRACTOR'S performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to COUNTY to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling COUNTY to a set-off against the amount recommended.
- d. if the Work is defective, or completed Work has been damaged requiring correction or replacement;

2. if the Work for which payment is requested cannot be verified;

3. because of the failure of CONTRACTOR to make proper payments to Subcontractor for labor, materials or equipment in connection with the Work;

4. if the Contract Price has been reduced because of Modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

5. if the COUNTY has been required to correct defective Work or complete the Work in accordance with the Contract Documents;

6. because of the CONTRACTOR'S failure to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;

7. because of any other breach of, default under or violation of, or failure to comply with, the provisions of the Contract Documents.

8. If COUNTY refuses to make payment of the full amount recommended by Architect/Engineer, COUNTY must give CONTRACTOR written notice (with a copy to Architect/Engineer) within 10 days stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. COUNTY shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by COUNTY and CONTRACTOR, when CONTRACTOR corrects to COUNTY'S satisfaction the reasons for such action.

5.3 CONTRACTOR'S Warranty of Title. The CONTRACTOR warrants and guarantees that title to all Work covered by an Application for Payment, whether incorporated in the Work or not, shall pass to the COUNTY prior to the making of the Application for Payment, free and clear of all liens, claims, security interests, purchase money security interest, chattel paper or encumbrances of any nature whatsoever ("Liens").

5.4 The CONTRACTOR shall promptly pay all Subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the COUNTY, out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR on account of such person's portion of the Work. The CONTRACTOR shall, by appropriate agreement with each Subcontractor or other person, require each subcontractor or other person to make payments to Sub-subcontractors in similar manner.

5.5 A Certificate of Payment, a progress payment, or partial or entire use of the Project by the COUNTY shall not constitute acceptance of Work not in accordance with the Contract Documents.

5.6 In accordance with the provisions of Section 255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by Section 713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for, or to induce payment of, a progress payment or a final payment; such waivers shall comply with the form set forth in 255.05, Florida Statutes as amended from time to time. Written consent from the surety in a form acceptable to the County regarding the project or payment may be given in lieu of waivers.

5.7 If one or more "Notice of Non-Payment" is received by the COUNTY, no further payments will be approved until non-payment(s) have been satisfied and a "Release of Claim" for each "Notice" has been submitted to the COUNTY. Upon request, CONTRACTOR shall furnish acceptable evidence that all such claims or liens have been satisfied. If CONTRACTOR fails to satisfy the nonpayment, COUNTY may make payment and back charge CONTRACTOR for any and all costs associated with such payment.

5.8 Progress. If at any time during the progress of Work, CONTRACTOR'S actual progress is inadequate to meet the requirements of the Contract, COUNTY may, but is not required to, notify CONTRACTOR to implement some or all of the following remedial actions at the sole cost and expense of CONTRACTOR:

1. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;
2. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;
3. Reschedule the Work in conformance with the specification requirements.

5.9 Neither such notice by COUNTY nor COUNTY'S failure to issue such notice shall relieve CONTRACTOR of its obligation to achieve the quality of Work and rate of progress required by the Contract.

ARTICLE 6 TIME OF PERFORMANCE

6.1 Time is of the essence for each Work Order issued under this Agreement.

6.1.1 Substantial Completion

The following items, as applicable, shall be completed prior to an inspection for Substantial Completion:

1. All general construction completed and the project components shall be clean, and all systems fully functional.
2. All mechanical and electrical Work substantially complete, fixtures in place, connected, cleaned and usable.
3. All electrical circuits shall be scheduled in panels, and all panels and disconnect switches properly labeled.
4. All painting shall be completed; all signs installed.
5. All floors, glass and metal Work shall be cleaned.
6. All finish hardware shall be installed, and all doors shall be in good Working order.
7. Project site shall be cleared of the CONTRACTOR'S excess equipment, temporary facilities, trailers, and/or building supplies. All temporary construction shall be removed, and all Sitework completed.
8. All operations and maintenance manuals for all equipment shall have been submitted.
9. Manufacturers certifications and warranties shall be delivered to COUNTY.
10. All operations and maintenance training related literature, software and back-up disks have been provided.
11. All required spare parts, materials, as well as any special measuring devices and tools shall have been provided to COUNTY.
12. All air and water balancing reports shall have been submitted.
13. All keys and blanks shall have been provided.

6.1.2 When CONTRACTOR considers the entire Work Order ready for its intended use CONTRACTOR shall notify COUNTY in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Architect/Engineer issue a certificate of Substantial Completion. Promptly thereafter, COUNTY and CONTRACTOR, and Architect/Engineer shall make an inspection of the Work to determine the status of completion. For the purpose of this Contract, and for the compliance of those procedures, duties and obligations as set forth in Section 218.70 and Section 218.735, Florida

Statutes the term “Substantial Completion” is defined as that point where COUNTY is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that COUNTY is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If COUNTY and Architect/Engineer do not consider the Work substantially complete, Architect/Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Architect/Engineer considers the Work substantially complete, Architect/Engineer will prepare and deliver to COUNTY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. If Architect/Engineer considers the Work substantially complete, then, for construction projects having an estimated cost of less than 10 million dollars:

In addition to Section 218.735, Florida Statutes, punch list procedures to render the Work complete, satisfactory and acceptable are established as follows:

1. Within five (5) days of Substantial Completion of the construction services purchased as defined in the Contract, CONTRACTOR shall schedule a walkthrough with COUNTY (“Initial Walkthrough” a/k/a “IW”). The purpose of the IW is to develop a preliminary checklist (“Checklist”) of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and COUNTY during the IW. The IW is to occur within ten (10) days of Substantial Completion of the Work as defined by the Contract, again predicated upon the CONTRACTOR’S timely initiation of a request for the IW. At its option, COUNTY may conduct the IW with its Field Inspector.
2. CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Checklist either during the IW itself, or thereafter for a period of fifteen (15) days from the date of the IW.
3. No later than fifteen (15) days following the scheduled IW, CONTRACTOR shall again initiate and request a second walkthrough of the Project with COUNTY. The purpose of this second walkthrough is to identify which items remain to be performed from the IW Checklist and to supplement that list as necessary (based, for example, upon work which may have been damaged as a result of the CONTRACTOR’S performance of completion of items contained on the IW Checklist) and for the purpose of developing a joint Final Punch List.
4. The intent of this section is for COUNTY and the CONTRACTOR to cooperate to develop a Final Punch List to be completed no later than thirty (30) days from the date of reaching Substantial Completion of the construction services purchase as defined in the Contract.
5. In no event may the CONTRACTOR request payment of final retainage under Section 718.735, Florida Statutes until the CONTRACTOR considers the Final Punch List to be 100% complete.

6. CONTRACTOR agrees to complete the Final Punch List items within forty-five (45) days of the date of its issuance by COUNTY.
7. CONTRACTOR acknowledges and agrees that no item contained on the Final Punch List shall be considered a warranty item until such time as (a) the Final Punch List is 100% complete, and (b) COUNTY has been able to operate or utilize the affected punch list item for an additional period of fifteen (15) days.
8. CONTRACTOR acknowledges and agrees that COUNTY may, at its option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such COUNTY generated lists prior to Substantial Completion is to attempt to streamline the punch list process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by COUNTY during performance of the Work.
9. CONTRACTOR acknowledges and agrees that in calculating 150% of the amount which may be withheld by COUNTY as to any Final Punch List item for which a good faith basis exists as to it being complete, as provided for by Section 218.735, Florida Statutes, COUNTY may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punch List item. Such percentage shall in no event relate to the schedule of value associated with such Work activity, but rather total costs are based upon the value (i.e. cost) of completing such Work activity based upon market conditions at the time of Final Punch List completion.

6.1.3 COUNTY shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but COUNTY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

6.2 Partial Utilization

A. Use by COUNTY at COUNTY'S option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which COUNTY, Architect/Engineer, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by COUNTY for its intended purpose without significant interference with CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. COUNTY at any time may request CONTRACTOR in writing to permit COUNTY to use any such part of the Work which COUNTY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to COUNTY and Architect/Engineer that such part of the Work is substantially complete and request Architect/Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify COUNTY and Architect/Engineer in writing that CONTRACTOR considers any such part of the Work ready for

its intended use and substantially complete and request Architect/Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, COUNTY, CONTRACTOR, and Architect/Engineer shall make an inspection of that part of the Work to determine its status of completion. If Architect/Engineer does not consider that part of the Work to be substantially complete, Architect/Engineer will notify COUNTY and CONTRACTOR in writing giving the reasons therefore.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with this Agreement regarding property insurance.

6.3 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Architect/Engineer will promptly make a final inspection with COUNTY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

6.4 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of Architect/Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments and §218.70 et. seq., Fla.Stat.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to COUNTY) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens and as approved by COUNTY, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which COUNTY or COUNTY'S property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to COUNTY to indemnify COUNTY against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of Architect/Engineer's observation of the Work during construction and final inspection, and Architect/Engineer's review of the final Application for Payment and

accompanying documentation as required by the Contract Documents, Architect/Engineer is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, Architect/Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Architect/Engineer's recommendation of payment and present the Application for Payment to COUNTY for payment. At the same time Architect/Engineer will also give written notice to COUNTY and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, Architect/Engineer will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Upon completion of all items on the punch list, final payment is due twenty-five (25) days after the payment request or invoice is stamped as received by County, Payment on a corrected payment requests, must be paid or rejected on the later of:

- a. Ten (10) days after the date the corrected payment request or invoice is stamped as received; or
- b. If the governing body is required by ordinance, charter or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the COUNTY held after the corrected payment request is stamped as received.

If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the COUNTY may continue to withhold an amount not to exceed 150 percent of the total costs to complete such items.

6.5 If Substantial Completion is not obtained at the inspection called by the CONTRACTOR, for reasons that are the fault of the CONTRACTOR, the cost of any subsequent inspections requested by the CONTRACTOR for the purpose of determining Substantial Completion shall be at the cost of the CONTRACTOR and shall be assessed against the final payment application. Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the CONTRACTOR within the time-frame established.

ARTICLE 7 LIQUIDATED DAMAGES; FORCE MAJEURE

7.1 Upon failure of the CONTRACTOR to Substantially Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Substantial Completion.

7.2 Upon failure of the CONTRACTOR to Finally Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the COUNTY daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the COUNTY's estimated damages resulting from the delay to Final Completion.

7.3 Milestones, milestone completion dates and applicable liquidated damages shall be in accordance with the Work Order.

7.4 If the milestones are not strictly complied with, then Liquidated damages will be assessed against the CONTRACTOR, which are agreed upon in the Work Order, and it is further agreed that such Liquidated Damages bear a reasonable relationship to damages to be incurred by COUNTY, and are not a penalty.

7.5 Force Majeure. A party shall not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affecting the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. If either party invokes this provision to avoid performance of any obligation under this Agreement and a Court determines that party wrongfully invoked this provision to evade performance of such an obligation, the aggrieved party shall be entitled to its reasonable attorney's fees and costs for obtaining the Court's determination of the same.

ARTICLE 8 CLAIMS FOR ADDITIONAL TIME

8.1 If the CONTRACTOR'S performance of this Contract is delayed: i) which delay is beyond the reasonable control and without the fault or negligence of the CONTRACTOR or its subcontractors; or ii) by changes ordered in the Work, and in either event where such delay or change in the Work affects the critical path, then the Contract Time shall be extended by Change Order as determined by the COUNTY . If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, CONTRACTOR shall provide COUNTY a written notice of claim upon discovering the cause of the alleged delay. Such notice of claim shall include the following information, or else be waived:

1. Nature of the delay or change in the Work;
2. Dates of commencement and cessation of the delay or change in the Work;
3. Activities on the current progress schedule affected by the delay or change in the Work;
4. Identification and demonstration that the delay or change in Work affects the critical path;
5. Identification of the source of delay or change in the Work;
6. Anticipated extent of the delay or change in the Work; and
7. Recommended action to minimize the delay.

8.2 The CONTRACTOR shall not be entitled to any extension of time for delays resulting from any cause unless CONTRACTOR shall have notified the COUNTY in writing within seven (7) days of commencement of the delay.

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waives any and all claims for damages which they may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing or passive interference by the COUNTY, Architect, Architect/Engineer, or its agents, and waives damages which it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension of time granted herein being the CONTRACTOR'S sole remedy, with the exception that in the event of demonstrated critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed \$250.00 per each day of delay. Apart from extensions of time or acceleration costs approved by COUNTY and any applicable extended general conditions, no payment of claim for delay damages shall be made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided CONTRACTOR have otherwise satisfied the requirements of this Contract, the CONTRACTOR shall be entitled to an increase in the Contract sum based upon approved general condition, insurance, and bond premium costs resulting from delays for which the Architect/Engineer has approved by Change Order. an extension of time for performance; provided, however, COUNTY shall not be required to pay such additional amounts for any days following the date on which CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

8.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled critical path of construction. Based on 30-Year, National Weather Service historical rainfall averages for Martin County, the CONTRACTOR shall anticipate the amount of rainfall days affecting the schedule as normal conditions outlined in the following months below:

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC
2	2	3	2	3	5	5	6	6	5	3	2

ARTICLE 9 SITE CONDITIONS

9.1 Field Measurements. Before undertaking each part of the construction, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to the COUNTY any conflict, error or discrepancy which CONTRACTOR or any of its Subcontractors or Suppliers may discover and shall obtain a written interpretation or clarification from COUNTY before proceeding with any Work affected. CONTRACTOR shall remain liable to

COUNTY for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents prepared by CONTRACTOR.

9.2 Differing Site Conditions. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the COUNTY in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract. The COUNTY will promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR'S cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. CONTRACTOR'S failure to provide notice upon discovery of the differing site condition shall waive any entitlement to such an adjustment in the Contract Price or Contract Time.

ARTICLE 10 INDEMNIFICATION

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the CONTRACTOR, its SUBCONTRACTS, CONSULTANTS or SUPPLIERS or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Contract, or in preparation for the work and services under this Contract, or any extension, modification, or amendment thereto by change order to otherwise.

CONTRACTOR hereby agrees to indemnify and hold harmless MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, its officers and employees from liabilities, damages, lawsuits, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of the Construction Contract.

ARTICLE 11 TERMINATION

11.1 Notwithstanding any other provision of this Contract, the CONTRACTOR may be held in default of its contractual obligation under this Contract if the CONTRACTOR:

1. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;
3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
4. performs Work that does not conform to Work Order requirements;

5. fails to meet the Work Order schedule or fails to make progress on the Work so as to endanger performance of the Work Order;

6. abandons or refuses to proceed with any or all Work; or

7. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents or Work Order.

11.2 The COUNTY must provide written notice to the CONTRACTOR notifying it that the COUNTY is declaring it in default and providing the CONTRACTOR with five (5) days after receipt of such written notice of default, to cure such default. In the event that the CONTRACTOR fails to cure the default within the three (3) day default period, the COUNTY may:

1. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR;

2. accept assignment of subcontracts pursuant to this Agreement; and

3. finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or

4. terminate the CONTRACTOR and hire a completion CONTRACTOR to finish the Work by whatever reasonable method the COUNTY may deem expedient, and charge all completion costs, including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to CONTRACTOR, or back charge CONTRACTOR for any and all such completion costs, or

5. set off any and all such completion costs against any monies then due or to become due on any other projects that the COUNTY has with CONTRACTOR.

11.3 Upon default, CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

11.4 If, after notice of termination, it is determined for any reason that the CONTRACTOR was not in default, or that the delay was excusable under the provisions of the Contract Documents, the rights and obligations of the parties shall be the same as if the notice of termination had been a Termination by the COUNTY for Convenience.

11.5 Termination by the COUNTY for Convenience. Notwithstanding any other provision to the contrary in the Contract Documents, the COUNTY reserves the right at any time and in its sole and absolute discretion to terminate the services of the CONTRACTOR with respect to the Work by giving written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the COUNTY shall reimburse the CONTRACTOR for, an equitable portion of the Contract Price based on the portion of the Work completed prior to the effective date of termination and for any other reasonably expended costs attributable to such termination. However, CONTRACTOR shall not be entitled to receive its anticipated profits for any unperformed Work.

11.6 Should the CONTRACTOR'S Contract be terminated for any reason, the CONTRACTOR shall, at no additional cost to the COUNTY , give written permission to the COUNTY to utilize all design documents necessary for the purpose of completing the Project with another CONTRACTOR.

ARTICLE 12 SUSPENSION OF WORK

The COUNTY may, without cause, order the CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the COUNTY may determine.

ARTICLE 13 CHANGES IN THE WORK

13.1 The COUNTY may, at any time or from time to time, order additions, deletions or revisions in the Work. Upon request of the COUNTY, a request for proposal will be issued to the CONTRACTOR detailing the proposed additions, deletions or revisions to the Work. The request for proposal shall include such details as man-hours, man-hour rates, quantities, quantity unit rates, equipment, equipment unit rates and mark-ups. The CONTRACTOR shall complete and return the request for proposal to the COUNTY within ten (10) days from receipt thereof. The request for proposal shall include any increases or decreases in Contract Time or Contract Price and shall include any additional modifications required by virtue of the requested change, whether or not such additional modifications were specifically identified in the request for proposal. The request for proposal may then be: 1) issued as a Change Order in accordance with the provisions of the Contract Documents; 2) modified and thereafter issued as a Change Order in accordance with the provisions of the Contract Documents; or 3) withdrawn.

13.2 The COUNTY may authorize minor changes or alterations in the Work not involving extra cost or time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alterations authorized by the COUNTY entitles it to an increase in the Contract Price or extension of Contract Time, it shall treat the Field Order as a request for proposal and issue a proposal for the changes in Contract Price and Contract Time prior to proceeding with the Work covered in the Field Order. The procedures outlined in the Contract Documents shall then be followed. Acceptance of the Final Payment by the CONTRACTOR shall constitute acknowledgment by the CONTRACTOR that all payments due for modifications required under Field Orders have been incorporated into the Final Payment.

13.3 Additional Work performed by the CONTRACTOR without authorization of a written Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time.

13.4 It is the CONTRACTOR'S responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the COUNTY.

13.5 The COUNTY may, at any time, without notice to the Surety, by Field Order or by properly

executed Change Order, make any change in the Work within the general scope of the Contract Documents, including but not limited to changes:

- A. in the Drawings and designs, and Specifications;
- B. in the method or manner of performance of the Work;
- C. in the COUNTY -furnished facilities, equipment, materials, services or site;
or
- D. directing acceleration in the performance of the Work.

13.6 Except as herein provided, no order, statement, or conduct of the COUNTY shall be treated as a Change Order or Field Order or entitle the CONTRACTOR to an equitable adjustment hereunder.

13.7 No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

13.8 The value of any additional Work or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways at the sole discretion of the COUNTY:

- A. where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- B. by negotiated lump sum; or
- C. cost plus. If this option is selected, COUNTY reserves the right to request any and all documentation from CONTRACTOR in support of its foregoing actual costs, and CONTRACTOR agrees promptly to supply such information.

13.9 For changes in the Work performed by CONTRACTOR's own forces, CONTRACTOR shall be entitled to a percentage mark-up for actual costs as defined in Section 1 of ten (10) percent.

13.10 For changes in the Work performed by subcontractors, (a) the subcontractor shall be entitled to mark-up the cost of the change(s) by ten (10) percent, and (b) the CONTRACTOR shall be entitled to mark-up the subcontractor's total by five (5) percent. The foregoing shall be the maximum amount allowable for subcontractor's and CONTRACTORs actual costs as defined in Section 1.

ARTICLE 14

MATERIALS, EQUIPMENT AND WORKMANSHIP; SUBSTITUTIONS

14.1 Only new, unused items of recent manufacture, of designated quality, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by COUNTY to order removal of rejected materials and equipment shall not relieve CONTRACTOR from responsibility for quality of the materials supplied nor from any other obligation under the Contract Documents.

14.2 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications will be acceptable regardless of COUNTY'S failure to

discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the WORK meeting applicable code requirements relieve CONTRACTOR from responsibility for the quality and securing progress of Work as required by the Contract Documents.

14.3 Prior to proposing any substitute item, CONTRACTOR shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in COUNTY'S interest, and will in no way have a detrimental effect upon the Project completion date and schedule.

14.3.1 The burden of proof of equality of a proposed substitution for a specified item shall be upon CONTRACTOR. CONTRACTOR shall support its request with sufficient test data and other means to permit COUNTY to make a fair and equitable decision on the merits of the proposal. CONTRACTOR shall submit drawings, samples, data and certificates and additional information as may be required by the COUNTY for proposed substitute items as required by the Contract Documents.

14.3.2 Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. COUNTY will be the sole judge of whether or not the substitution is equal in quality, utility and economy to that specified.

14.3.3 CONTRACTOR shall allow an additional 15 days for COUNTY'S review of substitutions. All requests for substitutions with submittal data must be made at least fifty (50) days prior to the time CONTRACTOR must order, purchase or release for manufacture or fabrication. Approval of a substitution shall not relieve CONTRACTOR from responsibility for compliance with all requirements of the Contract. CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.

14.3.4 If COUNTY rejects CONTRACTOR'S substitute item on the first submittal, CONTRACTOR may make only one additional request for substitution in the same category. Upon the second request, the CONTRACTOR shall be invoiced the expenses of the COUNTY allocable to the review of such submittal data. The foregoing amounts shall be deducted, as applicable, from the next succeeding partial payment to the CONTRACTOR, or from the final payment.

ARTICLE 15 COMPLIANCE

15.1 All work, labor, materials and equipment provided under each Work order shall be performed in strict compliance with any and all applicable building and fire, life and safety codes and strictly in accordance with plans and specifications. CONTRACTOR must satisfy itself that the Plans, Drawings and Specifications in fact comply with all applicable codes. CONTRACTOR shall notify COUNTY prior to commencement of Work of any requirement of the plans and specifications not in strict compliance with such codes. There will be no extra payment for

compliance to existing codes or any item of interpretation regarding enforcement of existing codes. CONTRACTOR is representing by acceptance of this Agreement that it has thoroughly researched all applicable codes and regulations affecting this Project.

15.2 If, during the term of this Contract, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Contract which become effective and which affect the cost or time of performance of the Contract, CONTRACTOR shall immediately notify COUNTY in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Contract. Upon concurrence by COUNTY as to the effect of such changes, an adjustment in the Contract Price and/or time of performance will be made. If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, CONTRACTOR shall immediately report the same in writing to COUNTY who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the CONTRACTOR was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

15.3 CONTRACTOR shall give all notices and at all times comply with all applicable laws, codes, ordinances, rules and regulations in effect during the time of performance of the Work.

15.4 CONTRACTOR shall deliver a product which will meet or exceed the Design Criteria package standards, provide a complete and functional facility including but not limited to all necessary interfaces between this facility and adjacent existing facilities, and/or anticipated future facilities. All built-in equipment, systems, controls, devices and finishes necessary for the efficient use and maintenance of the facility and its related site work, except as otherwise noted and/or clarified herein, shall be included in the Work.

ARTICLE 16

NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY

16.1 CONTRACTOR covenants and agrees that the CONTRACTOR shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with the respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, physical handicaps (except where based on a bona fide occupational qualification) marital status, race, color, religion, national origin or ancestry.

16.2 As required by FEMA, during the performance of this contract, the CONTRACTOR agrees as follows:

16.2.1 CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.
- d. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subCONTRACTOR or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- i. Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.
- j. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- k. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- l. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

ARTICLE 17

DEFECTIVE WORK

17.1 Rejecting Defective Work. The COUNTY shall have authority to disapprove or reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does

not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). Such parties shall also have authority to require special inspection or testing of the Work as such parties may individually or severally deem necessary, whether or not the Work is fabricated, installed or completed.

17.2 Correction of Defective Work. Upon presentation of a Defective Work Notice to the CONTRACTOR or CONTRACTOR'S Project Superintendent, the CONTRACTOR shall meet within twenty-four (24) hours with the COUNTY, and, at the sole option of COUNTY, the COUNTY'S representative, to discuss a work plan and time-line to correct the defective Work. The CONTRACTOR shall have no more than five (5) working days to begin corrective action and repairs in accordance with the agreed upon schedule; provided, however, all repairs to natural gas, telephone, radio, computer security, water, waste water, electric air conditioning services and all emergency services shall be commenced within twelve (12) hours of notification, or by 7:00 a.m. whichever is earlier, and CONTRACTOR shall complete the repairs in an expeditious manner befitting the nature of the deficiency. If the CONTRACTOR refuses to comply with the twenty four (24) hour meeting requirement, or the agreed upon correction schedule, the COUNTY has the right to do any of the following: (1) correct any Work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due the CONTRACTOR, or (2) hold back final payment due CONTRACTOR until such time as the Work is completed to the satisfaction of the COUNTY and in compliance with the Contract Documents. The COUNTY shall have the sole discretion to determine if the Work is satisfactory and in compliance with Contract Documents. The foregoing remedies are not exclusive and the COUNTY reserves the right to pursue any and all other remedies it deems applicable.

ARTICLE 18 BONDS AND INSURANCE

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the COUNTY, furnish a Public Payment Bond and a Performance Bond, and record that Bond with the Clerk of the Circuit Court's office, pursuant to Section 255.05, Florida Statutes, in at least an amount equal to the Contract Price for any Work Order valued at \$200,000.00 or greater, covering the faithful performance of this Agreement and all CONTRACTOR'S faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its authorization to do business in the State of Florida is terminated or it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an "A-" or better, CONTRACTOR shall within five (5) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to COUNTY. An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in Section 95.11, Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with Section 95.11, Florida Statutes, and applicable case law.

18.2 Insurance

18.2.1. Certificate of Insurance. One (1) certified true copy of the policy/policies must be furnished by CONTRACTOR to COUNTY prior to commencement of any Work Order including demolition, site work, site preparation or construction Work. The Certificate(s) of Insurance must indicate Martin County Board of County Commissioners as additional insureds on all policies. The statement "Additional Insureds" is to be listed in the Description Block of the Insurance Certificate. The indication that Martin County Board of County Commissioners is a Certificate Holder is not sufficient for this issue. The insurance certificate must indicate the Project name and all other requirements set forth in Section 18 and the sample Accord Certificate of Insurance provided.

18.2.2. General Insurance Requirements

- a. CONTRACTOR and, where designated, each of its subconsultants, Professionals, and subcontractors shall obtain and maintain during the full duration of Work required under this AGREEMENT, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements.
- b. All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the COUNTY.
- c. The policy(s) shall provide for 30 Days prior written notice to the COUNTY, by registered or certified mail, if cancellation or any change that will reduce the coverages required herein.
- d. The policy(s) shall be written for the estimated construction Work, commencing with the initial demolition, Site Work and/or Site preparation and ending at the Final Completion date, and shall contain an endorsement providing for extension of the policy(s) for up to two (2) years. The Products and Completed Operations portions of the General Liability shall extend for a period of two years after the Final Acceptance of the Project by the COUNTY .
- e. All liability policies required herein shall be written on an occurrence basis.
- f. The policies shall name the COUNTY , its commissioners and staff as additional insureds as their interest may appear under this Agreement.
- g. All insurers shall agree to waive all rights of subrogation against the COUNTY and each individual member of the Board of County Commissioners, Constitutional Officers or staff.

18.2.3. Premiums. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance required under this Agreement and shall be solely responsible for the

payment of all deductibles to which such policies are subject.

18.2.4. Specific Insurance Limits are as follows:

a. Workers' Compensation - The CONTRACTOR shall carry Workers' Compensation insurance on behalf of all employees who are required to provide a service under this Agreement, as required by Section 440, Florida Statutes and Employers Liability of limits no less than:

\$500,000	each accident
\$500,000	disease - policy limit
\$500,000	each employee

b. Commercial General Liability - including but not limited to bodily injury, \$2,000,000 per location aggregate covering all Work performed under this Agreement. The insurance shall include all major divisions of coverage and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), COUNTY's and CONTRACTORS Protective, Products and Completed Operations.

c. Automobile Liability - including bodily injury and property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than Agreement.

d. Umbrella Liability - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than \$1,000,000.

e. Hazardous Material - if the Work being performed involves hazardous materials, the need to procure appropriate insurance coverage will be addressed in a contract modification. However, if hazardous materials are identified while carrying out this Agreement, no further Work is to be performed in the area of the hazardous material until the COUNTY has been consulted as to the need to procure and maintain such coverage.

g. Property Insurance/Builders Risk (if applicable) – CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

This insurance shall:

1. include the interests of COUNTY, CONTRACTOR, subcontractors, Architect/Engineer, Architect/Engineer's consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition

occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by COUNTY prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Architect/Engineer;

5. allow for partial utilization of the Work by COUNTY ;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by COUNTY, CONTRACTOR, and Architect/Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

8. The COUNTY and CONTRACTOR waive all rights against each other and any of their subcontractors, agents and employees and the Architect/Engineer, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to Work, except as to proceeds of such insurance held by CONTRACTOR as fiduciary.

18.2.5 Waiver of Subrogation. CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 19

PERFORMANCE GUARANTEE AND WARRANTY

19.1 All materials and equipment incorporated into any Work Order shall be warranted and guaranteed as new quality, and of the highest grade of quality for their intended use, and all Work shall be performed in good workmanship and shall be in accordance with all plans and specifications and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, shall exhibit high quality architectural principles, and shall be in compliance with all governing laws, regulations, applicable building codes, hurricane design, and applicable Florida Building Code. CONTRACTOR warrants all Work against defects for a period of one year (unless longer guarantees or warranties are provided for elsewhere in the Contract or at law in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by CONTRACTOR or any of its subcontractors.

19.2 CONTRACTOR shall repair or replace the defective Work and cure such defect within 48 hours of receipt of written notice. CONTRACTOR warrants such repaired or replaced Work for a period of one (1) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should CONTRACTOR fail to timely cure such defects, COUNTY may proceed to performed the work at CONTRACTOR'S expense and may backcharge CONTRACTOR for all costs associated with the work.

19.3 CONTRACTOR agrees to require that all of its subcontractors, suppliers and materialmen provide warranties in their agreements at least sufficient to satisfy CONTRACTOR'S obligations in this Agreement; and CONTRACTOR shall assign all such warranties to the COUNTY as a condition precedent to the receipt of final payment. CONTRACTOR agrees to defend and indemnify COUNTY against all fees and costs should CONTRACTOR fail to obtain the warranty protections required herein.

19.4 For all equipment that has a manufacturer's warranty, the CONTRACTOR shall assign such warranty to the COUNTY. The manufacturer's warranty period shall be concurrent with the CONTRACTOR'S warranty to the COUNTY. In the event that the equipment manufacturer or supplier is unwilling to provide such a warranty, the CONTRACTOR shall obtain a 2-year equipment warranty commencing at the time of acceptance of the equipment by the COUNTY.

ARTICLE 20

SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

20.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the CONTRACTOR shall maintain at the site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the CONTRACTOR shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to COUNTY upon completion of the Work.

20.2 Shop Drawings, Product Data and Samples.

20.3 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CONTRACTOR proposes to conform the construction to the Contract Documents.

20.4 The CONTRACTOR shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. Design Criteria Professional shall review Shop Drawings, Product Data, Samples and similar submittals for compliance with the Design Criteria Documents and shall provide comments, if any, within fifteen (15) days of receiving such documents.

20.5 Responsibility. The CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by COUNTY'S approval of Shop Drawings, Product Data, Samples or similar submittals unless the CONTRACTOR has specifically informed COUNTY of such deviation at the time of the submittal and COUNTY has

given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by COUNTY'S approval thereof.

ARTICLE 21 SAFETY

21.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the COUNTY and Users who may be affected thereby. The CONTRACTOR shall set forth in writing its safety precautions and programs in connection with the Work and submit the same to the COUNTY for review. The COUNTY may, but shall not be obligated to, make suggestions and recommendations to the CONTRACTOR with respect thereto.

21.2 All Work, whether performed by the CONTRACTOR, its subcontractor or sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

1. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970 and the Trench Safety Act, as amended and all state, Martin County and, where the Project is located in a municipality, municipal, rules and regulations now or hereinafter in effect; and

2. all codes, rules, regulations and requirements of the COUNTY and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

21.3 Should the CONTRACTOR fail to provide a safe area for the performance of the Work or any portion thereof, the COUNTY shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be borne by the CONTRACTOR.

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The COUNTY shall have the right, but not the obligation, to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

21.5 Emergencies. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the COUNTY, is obligated to act, at its discretion, to prevent threatened damage, injury or loss. If the CONTRACTOR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the

Contract Time, it may make a claim therefore as provided in the Contract Documents.

ARTICLE 22

PROTECTION OF WORK AND PROPERTY

22.1 CONTRACTOR shall, throughout the performance of the Contract, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the COUNTY and third parties from loss or damage from whatever cause arising out of the performance of the Contract and shall comply with the requirements of the COUNTY and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. COUNTY, its insurance carriers, or representatives may, but shall not be required to, make periodic patrols of the Work site as a part of its normal safety, loss control and security programs. In such event, however, the CONTRACTOR shall not be relieved of its aforesaid responsibilities and the COUNTY shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the CONTRACTOR by this Contract.

22.2 Before the CONTRACTOR disposes of any existing improvements or equipment which are to be removed as a portion of the Work, and for which disposition is not specifically provided for elsewhere in the Contract Documents, CONTRACTOR shall contact the COUNTY and determine if the removal items are to be salvaged. Items to be salvaged by the COUNTY shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the COUNTY. Equipment and materials which will not be salvaged by the COUNTY shall become the property of the CONTRACTOR to be removed from the site and disposed of in an acceptable manner. To the extent CONTRACTOR intends to temporarily store materials at a site near or adjacent to the Project site prior to ultimate removal or disposal, CONTRACTOR must first obtain written authorization from the COUNTY, as well as, the property owner.

22.3 Preservation of Trees. Those trees which are designated on the Drawings for preservation shall be carefully protected from damage. The CONTRACTOR shall erect and maintain such protections such as barricades, guards, and enclosures as is necessary for the protection of the trees during all construction operations. CONTRACTOR shall replace any and all trees damaged during construction activities (other than trees specified to be removed) at no expense to the COUNTY.

22.4 Preservation of Private Property. The CONTRACTOR shall exercise extreme care to avoid unnecessary disturbance of private property as applicable. Trees, shrubbery, gardens, lawn and other landscaping that must be removed shall be replaced and replanted to restore the construction easement to the condition existing prior to construction. All soil preparation procedures and replanting operations shall be under the supervision of a nurseryman experienced in such operations. Any vegetation requiring relocation, temporary or otherwise, which is damaged or destroyed, shall be replaced at no cost to the COUNTY. CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the COUNTY.

22.5 Until final acceptance of the Work by the COUNTY pursuant to this Contract, the CONTRACTOR shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including COUNTY -furnished supplies, equipment or other items to be

utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

22.6 Manholes, fire alarms, etc., shall not be obstructed by CONTRACTOR. CONTRACTOR is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written approval from the appropriate governmental entity.

ARTICLE 23 UTILITY COORDINATION

23.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, public utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported and protected, or the CONTRACTOR shall be solely responsible for coordinating their relocation. The CONTRACTOR shall give all proper notices, shall comply with requirements of such parties in the performance of its Work, shall permit entrance of such parties on the Work site in order that they may perform their necessary Work, and shall pay all charges and fees made by such parties for this Work. The CONTRACTOR'S attention is called to the fact that there may be delays on the Project due to Work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.

23.2 At all points where the Work constructed by CONTRACTOR connects to existing utilities and services, the actual Work of making the necessary connection to the existing service or utility shall be arranged for by CONTRACTOR at no expense to COUNTY (unless specifically indicated otherwise). Services and utilities included within (but not limited to) this responsibility are roads, ditches, electrical, sewer, mechanical utilities, water, fencing, etc. Connections shall be made at a time that will result in the least possible interference with existing services.

ARTICLE 24 HAZARDOUS MATERIALS

CONTRACTOR shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The CONTRACTOR will notify the COUNTY immediately if explosive or hazardous materials are encountered on the Project site. Transporting explosive or hazardous materials onto the site will require prior written approval from the COUNTY. CONTRACTOR shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work. In the event that hazardous material is improperly handled or stored by the CONTRACTOR, its subcontractors, any sub-subcontractors, or any employee or agent of any of the aforementioned which results in contamination of the site, CONTRACTOR shall immediately notify the COUNTY and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the CONTRACTOR'S sole cost and expense.

ARTICLE 25

AUDIT

The CONTRACTOR agrees that the COUNTY, or any of its duly authorized representatives shall have access to and the right to examine any and all books, documents, papers, and records of the CONTRACTOR, and may at its option conduct an audit of the CONTRACTOR'S financial books and records concerning this Project. The CONTRACTOR agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination to constitute non-allowable costs under this Agreement. The CONTRACTOR shall promptly refund by check payable to the COUNTY the amount of such reduction of payments. All required records shall be maintained until the later of an audit is completed and all questions arising therefore are resolved, or six (6) years after completion of the Work and issuance of the final completion certificate.

ARTICLE 26

PUBLIC RECORDS

26.1 The CONTRACTOR shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

26.1.1 Keep and maintain public records required by the County to perform the Agreement.

26.1.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

26.1.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the County.

26.1.4. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the CONTRACTOR or keep and maintain public records required by the County to perform the Agreement. If the CONTRACTOR transfers all public records to the County upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

26.2 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 288-5481, pur_div@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FL 34996.

26.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

ARTICLE 27 ASSIGNMENT

27.1 CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the COUNTY and SURETIES.

27.2 If for any reason the COUNTY terminates its agreement with the CONTRACTOR, the CONTRACTOR hereby assigns this Agreement to the COUNTY. CONTRACTOR shall include in each of its subcontracts language that requires its Subcontractors to agree to such assignment and to perform their responsibilities and to fully complete the work required by this Contract directly for the COUNTY.

ARTICLE 28 ATTORNEY'S FEES AND COSTS

28.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the COUNTY in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs and all expenses, even if not taxable as court costs, including, but not limited to any costs from any state court or federal court proceedings, whether in a trial court or in an appellate court.

28.2 Except as otherwise provided in this Agreement, the parties expressly agree that each party will bear its own attorneys' fees and court costs incurred in connection with this Agreement.

ARTICLE 29 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

- (a) Certified United States Mail, postage prepaid, return receipt requested; or

- (b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or
- (c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or
- (d) Email if and only if agreed to in advance by COUNTY and CONTRACTOR in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

Purchasing Division
Martin County
2401 SE Monterey Rd.
Stuart, FL 34996

WITH A COPY TO:

County Attorney
Martin County
2401 SE Monterey Rd.
Stuart, FL 34996

FOR CONTRACTOR:

Ferreira Construction Southern Division Co., Inc.
13000 SE Flora Avenue
Hobe Sound, FL 33455

CONTRACTOR shall be required to notify the County, in writing, whenever there is a change in the address of CONTRACTOR (to the place) for which notice is to be sent (giving notice), as required in this section. In the event CONTRACTOR fails to maintain a current address on record with the County as required herein, County shall be deemed to have notified CONTRACTOR by using the last known address on record and County shall not have any responsibility or obligation to investigate the validity of the address that CONTRACTOR has provided. As a result, CONTRACTOR agrees to hold County harmless and defend same for any action or occurrence or non-occurrence as a result of CONTRACTOR not receiving notice due to CONTRACTOR's failure to update its address for notification.

All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same unless otherwise expressly provided in this Agreement.

ARTICLE 30
RESOLUTION OF CLAIMS AND DISPUTES; CERTIFIED CLAIMS

30.1 **Mediation.** As a condition precedent to the filing any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator. If a party fails to comply with this section, including, but not limited to, filing a lawsuit without mediating before filing the lawsuit, the party in violation shall be liable for the reasonable attorneys' fees and costs of the other party in enforcing this provision, and such amounts shall be awarded by the Court.

30.2 **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida. If any claim arising from, related to or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HERETO EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO AN ADVISORY JURY. If a party fails to withdraw a request for jury trial or for an advisory jury in a lawsuit arising out of this agreement after written notice by the other party of a violation of this section, the party making the request for jury trial or advisory jury shall be liable for the reasonable attorneys' fees and court costs of the other party in contesting the request for jury trial or advisory jury, and such amounts shall be awarded by the Court in adjudicating the motion.

30.3 **Certified claims.** If CONTRACTOR submits a claim seeking an increase in the Contract Price in the amount of ten percent (10%) or more of the Contract Price, an increase in the Contract Time for substantial or final completion by more than thirty (30) days, or both, upon the request of the COUNTY in its sole discretion, CONTRACTOR shall, within thirty (30) days, submit to COUNTY a "certified claim," that is, a claim made in writing under oath by a person duly authorized by the CONTRACTOR, and shall contain a statement that:

- (i) The claim is made in good faith;
- (ii) The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- (iii) The amount of the claim accurately reflects the amount that the claimant believes is due from the COUNTY; and
- (iv) The certifying person is duly authorized by the claimant to certify the claim.

FAILURE TO PROVIDE THE REQUESTED CERTIFICATION WITHIN THE PRESCRIBED

PERIOD OF THIRTY (30) DAYS SHALL CONSTITUTE A FORFEITURE OF THE ENTIRE CLAIM.

30.4. False, fraudulent, or inflated claim. If a court finds a certified claim is false, fraudulent, or inflated, whether in whole or in part, CONTRACTOR shall:

- (i) Be liable to the COUNTY for an amount equal to three (3) times the amount of the claim that is false, fraudulent, or inflated;
- (ii) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
- (iii) Be liable to the COUNTY for all costs and fees (including, without limitation, reasonable attorneys' fees, court costs, expert fees, and consulting fees) incurred by the COUNTY to review, defend, and evaluate the claim; and
- (iv) Be subject to debarment from COUNTY contracting for a period not to exceed five (5) years.

31.5 Innocent claimant, notice. Notwithstanding the foregoing, CONTRACTOR is an innocent claimant and not liable for a false, fraudulent, or inflated claim if CONTRACTOR submitted a certified claim to the COUNTY reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages and had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted, and within fifteen (15) days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the COUNTY with immediate written notice thereof.

ARTICLE 31 MISCELLANEOUS

31.1 Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONTRACTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

31.2 Pledge of Credit. The CONTRACTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Agreement.

31.3 Time. If any deadline required by this Agreement ends on a Saturday, Sunday, or legal holiday, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday.

31.4 Entirety of Agreement. All prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein are merged into this Agreement. No modification, amendment or alteration of this Agreement may be made unless made in writing pursuant to the terms of this Agreement.

31.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remaining provisions survive and are fully binding and enforceable.

31.6 FEMA Compliance Requirements. COUNTY and CONTRACTOR shall comply with the FEMA Contract Provisions attached hereto as Exhibit C and incorporated by reference herein as applicable.

[This area is left blank intentionally.]


IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement as of the date first above written.

REVIEWED BY

**BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**




James Gorton
Deputy Public Works Director



Don G. Donaldson, P.E.
Deputy County Administrator

FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC.



John Ciabattari
Vice President

EXHIBIT A

SAMPLE



RFB#2020-3192
EMERGENCY DUNE RESTORATION
WORK ORDER NO. _____

Pursuant to that certain Contract ("**Contract**") between Martin County ("**County**") and _____ ("**Contractor**") dated _____, **Contractor** hereby agrees to provide the services specified on Exhibit "A", under the terms and conditions and at a cost of \$_____ all as more specifically described in Exhibit "A", attached hereto and incorporated by this reference. The terms of the **Contract** shall be deemed to be incorporated in each individual Work Order as if fully set forth herein.

Substantial Completion Time: _____ calendar days

Final Completion Time: _____ calendar days

Liquidated Damages: _____ per day

IN WITNESS WHEREOF, the **County** and the **Contractor** have executed this Work Order effective this _____ day of _____ 20__.

CONTRACTOR COMPANY NAME

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

Name & Title

Department Director Name/Title

A Payment & Performance Bond for all jobs over \$200,000 is required to be recorded with the Martin County Clerk of the Circuit Court before commencement of work per F.S. 255.05

EXHIBIT B

SCOPE OF SERVICES

Includes, but is not limited to: all labor, materials and services in preparation for severe storm events that may result in damaging erosion to Martin County (County) beaches and prompt the need for emergency dune restoration. The County desires to secure contracts with contractors capable of performing emergency dune restoration and other miscellaneous beach services.

Bids shall include all costs for preparing the site for beach access and returning the site to pre-construction conditions including but not limited to, boardwalk removal and replacement and asphalt repairs.

The goods and/or services listed in this bid are for the purposes of price comparison and are not intended to be all inclusive. The County may add goods and/or services at any time during the term of this Agreement at a cost to be agreed upon by the Vendor and the County.

Martin County will not be held to any minimum/maximum quantities or dollars during the term of Contract.

EXHIBIT C

FEMA CONTRACT PROVISIONS

EQUAL EMPLOYMENT OPPORTUNITY

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September

24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and

federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

DAVIS-BACON ACT

Compliance with the Davis-Bacon Act.

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Additionally, contractors are required to pay wages not less than once a week.

COPELAND ANTI-KICKBACK ACT

Compliance with the Copeland “Anti-Kickback” Act.

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the

contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Martin County Board of County Commissioners (COUNTY) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Martin County Board of County Commissioners (COUNTY) and understands and agrees that the Martin County Board of County Commissioners (COUNTY) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

DEBARMENT AND SUSPENSION

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with

obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 an 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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site:
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

ACCESS TO RECORDS

Access to Records. The following access to records requirements apply to this contract:

1. The Contractor agrees to provide the Martin County Board of County Commissioners (COUNTY), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, the Martin County Board of County Commissioners (COUNTY) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS SEAL, LOGO, AND FLAGS

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

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

EXHIBIT D

TECHNICAL SPECIFICATIONS

Summary

In preparation for severe storm events that may result in damaging erosion to Martin County (County) beaches and prompt the need for emergency dune restoration, the County desires to secure contracts with contractors capable of performing emergency dune restoration and other miscellaneous beach services.

Bids shall include all costs for preparing the site for beach access and returning the site to pre-construction conditions including but not limited to, boardwalk removal and replacement and asphalt repairs.

Group I - Emergency Dune Restoration:

Is to provide suitable beach-compatible fill material for dune restoration, transport and deliver suitable beach-compatible fill material, place and grade suitable beach-compatible fill material seaward and/or landward of the Coastal Construction Control Line (CCCL) within designated fill areas and restore site access.

Group II - Miscellaneous Beach Services:

Is to provide sand removal, screening, & placement, debris removal, escarpment leveling and beach tilling.

Note that the bid prices submitted are to be inclusive of all labor, supplies, materials, equipment and permits necessary to complete items 1 through 23 meeting the technical specifications as determined in the bid.

For Group I (Items 1 – 13), the Contractor must have the capacity to provide, transport, deliver, place, and grade no less than 50,000 cubic yards (cy) of sand (\approx 65,000 tons) at a daily rate of no less than 2,000 cy of sand during daylight hours. The Contractor shall provide, transport and begin placing fill material within 48 hours of receipt of a Work Order.

For Group II, the Contractor shall commence work under Bid Items 14 through 23 within 48 hours of receipt of a Work Order.

Two sets of Drawings are referenced in these Technical Specifications. The following are descriptions of these Drawings:

- Solicitation Drawings contain general plan views of the Martin County coastline, identify the “Construction Access” sites, and are part of this Solicitation. The Solicitation Drawings (included as sheets 1 through 8) are intended for bidding

- purposes only.
- Construction Drawings will be issued in conjunction with a Work Order.

Note the County will issue specific Work Orders, when the need arises, authorizing work related to any of the above services in Group I (Bid Items 1 – 13) or Group II (Bid Items 14 – 23). Work Orders will be consistent with the Contractor's lump sum and unit prices submitted in the Bid Schedule.

1.2 Governing Specifications

The Contractor must conduct work in compliance with the following:

- A. State of Florida Department of Transportation Standard Specifications for Road and Bridge Construction Dated 2010 (FDOT Specs).
- B. Sediment Quality Control/Quality Assurance Plan

Note the requirements herein shall govern over any conflicts or inconsistencies between the above references and the Technical Specifications.

The Contractor must comply with all state, federal, and local permits. Upon issuance of a Work Order, the County will provide the Contractor with the applicable Florida Department of Environmental Protection permit. It is the Contractor's responsibility to review the permit and ensure his/her construction activities comply with permit conditions. It is the Contractor's responsibility to obtain and comply with all other required permits.

1.3 Bid Comparisons for Sand Quality

As further discussed in Section 2.1.1 below, the Bidder must provide a physical sample of the proposed fill material, sufficient data indicating the proposed material meets all sediment compliance specifications listed in Table 1 below, and a written summary of the processing methodology used to produce the fill material. The County will use the submitted sample and data to verify that the proposed fill material meets the sediment specifications.

Due to the inherent differences between fine sand and coarse sand, the County's Engineer (Engineer) will determine an overfill factor, based upon procedures identified in the U.S. Army Corps of Engineers *Coastal Engineering Manual*, for each bid received. The overfill factor indicates the quantity of fill material required to volumetrically replace a unit of native beach sand. Note the "overfill factor" is calculated by comparison of the native beach mean grain size (M_n), native beach sorting value (σ_n), the sand source mean grain size (M_b), and sand source sorting value (σ_b) – all in "phi" units. The Engineer will use a native beach mean grain size of 1.57 phi (0.34 mm), a native beach standard deviation of 1.29 phi, and the sand source data provided by each Bidder to calculate the overfill factors. The Engineer will verify that the overfill ratio meets the standards listed in Table 1.

Silt content plays a crucial role in the amount of turbidity generated from fill material when it comes in contact with the ocean, and past beach restoration projects using upland sources

have raised concern regarding the nature of the fine sediments within upland fill material. Table 1 specifies a maximum silt content of 0.5% to minimize potential turbidity and dust generated from the fill.

Table 1 Sediment Compliance Specifications

Sediment Parameter	Parameter Definition	Compliance Value
Mean grain size*	mean grain size	0.32 – 0.55 mm
Max. Silt Content	passing #230 sieve	0.5%
Max. Shell Content**	retained on #4 sieve	5.0%
Munsell Color Value (dry sand)	Hue	2.5Y, N, or 10YR
	Value	6 or lighter
	Chroma	1 or 2
The beach fill material shall not contain construction debris, toxic material, other foreign matter, coarse gravel or rocks.		

*The native beach mean grain size and standard deviation equal 1.57 phi (0.34 mm) and 1.29 phi.

**Shell Content is used as the indicator of fine gravel content for the implementation of quality control/quality assurance procedures.

Work Violations

Work done in violation of these specifications or a verbal or written stop order from the County or Engineer will be considered as unsatisfactory progress for purposes of progress payments.

1.4 Measurement and Payment

Work Orders issued to the selected Contractor(s) will be consistent with the Contractor's lump sum and unit prices submitted in the Bid Schedule. The work descriptions under Section 2 — Execution includes additional measurement and payment information.

Payment for the cost of mobilization and demobilization under Bid Items 4, 10, 14, 15, 18 20, and 22 will be made as follows subject to other terms of this specification:

- Ten percent of the lump sum payment will be payable to Contractor upon completion of mobilization at the Work site.
- An additional forty percent will be payable upon completing eight hours of work, subject to approval by the Engineer.
- The remaining fifty percent will be payable upon the completion of demobilization after the completion of the dune construction.

Section 2 — EXECUTION

2.1 *Dune Restoration Work*

The following sections describe the work associated with Bid Items 1 – 13.

2.1.1 Provide Fill Material

Under Bid Items 1 and 2, the Contractor shall provide beach-compatible fill material and load the material onto trucks. Note Bid Item 3 addresses providing trucks and transporting the fill material. The Contractor must have the capacity to provide no less than 50,000 cubic cy of sand (\approx 65,000 tons) at a daily rate of no less than 2,000 cy during daylight hours and begin providing sand within 48 hours of receipt of a Work Order.

The Contractor shall ensure that all fill material meets the sediment compliance specifications listed in Table 1 above, also listed in the Sediment Quality Control/Quality Assurance Plan. The fill material shall also derive from a source landward of the Coastal Construction Control Line and have a moisture content of less than ten percent (10%). The Contractor shall provide benchmark samples, conduct the sand source visual assessments, and meet the daily reporting requirements specified in the Sediment Quality Control/Quality Assurance Plan. During construction, the Contractor must verify, using a moisture meter, the moisture content of the source material upon request by the Engineer.

With the bid, the Contractor shall submit:

- a) a statement with available documentation of the Contractor's capacity to provide fill material (total volume & daily rate of production)
- b) available sand source data demonstrating compliance with sediment compliance criteria
- c) a written summary of the processing methodology used to produce the fill material
- d) a drawing of the upland sand source with plan and cross-section views that shall include:
 - existing physical features that would enable the County and/or Engineer to identify the proposed sand source in the field,
 - core logs (if available) and the proposed horizontal and vertical boundaries of the borrow area,
 - Surveyed grade elevations with the grade elevations identified
- e) a representative sample ($30\text{in}^3 \pm$) of the proposed fill material within a sealed airtight container or bag.

The Bidder must provide the above information for **each Upland source** and **submit a separate Bid Schedule for Group I for each Upland source.** The Bidder shall identify the source on the Bid Schedule in the appropriate space under Group I.

Note the County and/or Engineer shall independently assess (a) the Contractor's capacity to provide fill material and (b) the Contractor's sand sample(s) and sand source data for compliance with the Sediment Quality Control/Quality Assurance Plan criteria. Upon request, the Contractor shall arrange for County and/or Engineer to visit and observe

the Contractor's stockpile(s) and/or source(s) of fill material.

Measurement & Payment of Fill Quantities: The County will base payment for providing fill material on the weight of said material. The Contractor shall weigh, immediately before and after loading, the Contractor's trucks used to transport the sand fill from the upland source to the Construction Access sites. Each truck shall be weighed immediately before and after filling every time the truck is filled to determine the net weight of fill material loaded in the truck. The sand within the truck shall not contain more than 10% moisture and generally be free of excess water. The fill material is subject to the approval of the Engineer and the Contractor shall provide moisture content readings, using a moisture meter, at the request of the Engineer. Trucks shall be weighed in a location that is easily accessible and will cause no delay in the transport of the fill to the Construction Accesses. The Contractor shall provide a scale(s) certified by the Florida Department of Transportation. The weight tickets provided under Bid Item 3 and 9 will document the loaded fill quantity eligible for payment under Bid Items 1 or 2. With its requests for payment, the Contractor shall provide the County with copies of all certified weight tickets. Otherwise, payment may be made on the basis of an alternate method as may be acceptable to the Contractor, County and Engineer.

2.1.2 Transport & Delivery

Under Bid Item 3 and 9, the Contractor shall provide all labor and equipment necessary to transport sand from the loading site identified in Bid Items 1 and 2 and deliver the fill material to the Construction Access sites shown on the Solicitation Drawings and listed in Table 1. No loss of fill material, or spillage, shall occur during transport to the Construction Access sites. The Contractor shall ensure that all trucks are covered in order to prevent spillage of fill material. If the Contractor fails to prevent spillage during transport, the Contractor shall suspend transport operations and promptly repair equipment or change operations so as to prevent spillage prior to resumption of transport operations. The Contractor must have the capacity to transport no less than 50,000 cubic cy of sand (\approx 65,000 tons) at a daily rate of no less than 2,000 cy of sand during daylight hours and begin transporting the sand within 48 hours of receipt of a Work Order.

Measurement & Payment of Fill Quantities: The County will base payment for Transport and Delivery on the weight of fill material provided, as described in Section 2.1.1. Under Bid Item 3 and 9, the Contractor shall provide a "weight ticket" for each truckload citing the net weight of material in the truck, the date and time of loading, the date and time of delivery to the Construction Access site, and the project name; these tickets will document the delivered fill quantity under Bid Item 3 and 9. During construction, by 10 a.m. each day, the Contractor will provide to the County a daily log including (1) a summary table of all truck loads of sand delivered to the site during the prior day, including the net weight and the location of delivery for each truckload, and (2) the total tonnage of sand delivered through the prior day. With the Contractor's requests for payment under this bid item, the Contractor shall provide the County with copies of all certified weight tickets.

The Contractor shall exclude the public from the work area in the immediate vicinity of his operations. The Contractor shall provide flagman and all signage necessary to ensure

the safety of its personnel and the public.

Table 1 - Construction Access Sites

Construction Access ID	FDEP Monument Location	Approximate Shoreline Length (feet)		
		North of Access	South of Access	Total Length
Jensen Beach	R-3 + 300	2,070	3,600	5,670
R-11 + 250	R-11 + 250	3,600	5,200	8,800
Stuart Beach	R-22 + 800	5,200	3,800	9,000
House of Refuge	R-29.5	2,250	2,450	4,700
Bathtub Reef	R-35	2,450	700	3,150

2.1.3 Place & Grade Sand

Under Bid Items 4 and 10 the Contractor shall mobilize and demobilize labor and equipment necessary to place and grade sand. Additionally, the Contractor shall include under Bid Item 5 and 11 all other costs associated with the placement and grading of sand delivered and placed at the site.

Under Bid Items 5 & 11, the Contractor shall transport sand from the Construction Access sites shown on the Solicitation Drawings to the fill area designated by the Work Order. The County expects that the Contractor will place sand transported from a Construction Access to a point midway to the adjacent Construction Access. The Contractor shall place and grade sand to meet the lines and grades shown on the Construction Drawings associated with the Work Order; the Contractor shall place sand only within the limits shown on the Construction Drawings. The Contractor shall “back blade” the placed fill to achieve a compaction level suitable for potential planting of dune vegetation by others, as approved by the County. The Contractor must have the capacity to place and grade no less than 50,000 cubic cy of sand (\approx 65,000 tons) at a daily rate of no less than 2,000 cy of sand during daylight hours and begin placing sand within 48 hours of receipt of a Work Order.

Contractor shall exclude the public from the work area in the immediate vicinity of his operations. Contractor shall install warning signs to warn the public of all construction activities. Contractor shall be responsible for providing and maintaining all access routes necessary for his equipment and plant to and from the work sites. Contractor shall ascertain the environmental conditions that can affect access, such as climate, terrain, winds, current, waves, etc.

Daily/Monthly Report of Operations: The Contractor shall prepare and submit to the Engineer one electronic copy (in Adobe PDF format) of the Daily Report of Operations describing the beach placement operations and progress on each day. This report shall be submitted on a daily basis and not in groups (groups = multi-days reports packaged together at one time) except as noted below. In addition to the daily report, Contractor shall prepare

a Monthly Report of Operation for each month or partial month's work. The monthly report shall be submitted on or before the 7th of each month, consolidating the previous month's work. Upon completion of the job, Contractor shall submit three (3) hardcopies one electronic copy (in Adobe PDF format) of a consolidated job report, combining the daily reports.

Dressing: The Contractor shall grade and dress the fill so as to eliminate any abrupt humps and depressions in the beach fill surfaces. Final dressing shall not take place until all filling activity is completed. The Contractor shall remove all grade stakes used in the placement of the fill, including any portions of stakes that break-off below the surface.

Any cost associated with Dressing shall be incorporated in the unit cost for Bid Items 5 & 11— Place and Grade Fill.

Material Placement: The County expects the Contractor to employ trucks to transport fill to the staging area and bulldozers, front end loaders, off-road dump trucks, or similar equipment to move the fill material from the Construction Access sites to the beach for placement. The Contractor shall seek to minimize compaction of the existing beach to the maximum extent possible. For bid purposes, grading and other construction equipment will not be permitted outside the work areas generally shown on the Solicitation Drawings, except for ingress and egress to and from the access areas. Construction Drawings associated with Work Orders will include project-specific work areas. The Contractor shall not stockpile any equipment or debris on the beach.

The Engineer reserves the right to vary the width or grade of the dune from the grades shown on the Construction Drawings in order to establish a uniform dune or adjust the fill volume. The beach is subject to constant change, thus the grade elevations on the beach at the time of construction may vary from the elevations shown on the Construction Drawings. The dune fill cross section and plan views shown on the Construction Drawings are based on the design fill volume and the baseline beach conditions included in the drawings.

The Contractor shall monitor the excavation and fill operations and shall notify the County if and when the quantity to be placed appears to exceed the Contract quantities. Any changes in Contract quantities shall require a Change Order. The quantity of sand specified on a Work Order is the maximum sand quantity eligible for payment, unless otherwise authorized by a Change Order.

Any cost associated with Material Placement shall be incorporated in the unit cost for Bid Items 5 & 11 — Place and Grade Fill.

Unsuitable Material: The Contractor shall remove from the beach fill site any fill that fails to comply with the sediment compliance specifications of the Sediment Quality Control/Quality Assurance Plan. The Contractor shall replace the removed material with fill that complies with the said specifications. The Contractor shall remove and replace the material at its own expense. If the County or Contractor detects unsuitable material at any given time, the Contractor shall immediately stop providing such material and shall immediately remove the unsuitable material prior to any further construction. The

Contractor shall remove the material in a manner approved by the County and the FDEP-approved Sediment Quality Control/Quality Assurance Plan.

Pre-Construction and Progress Meetings: Prior to commencement of construction, the Contractor shall meet on site(s) with the County, Engineer, and FDEP representative as required in the FDEP permit. The meeting attendees shall verify the pre-construction conditions of the Construction Access sites and discuss the project details; the Engineer will take photographs to document pre-construction conditions. At this meeting, the Contractor shall (a) identify his proposed trucking routes, (b) provide a schedule for the work, (c) specify methods of construction staking, and (d) propose the location of beach access and staging areas. These items are subject to review and acceptance by the Engineer and County. The Contractor shall also attend periodic progress meetings to be scheduled by the County. Any cost associated with the Pre-Construction and Progress Meetings shall be incorporated in Bid Item 3a — Mobilization & Demobilization.

Layout of Work/Staking: The Contractor shall complete the layout of the work, as defined in a Work Order, and shall be responsible for all measurements that may be required for the execution of the work. The Contractor shall furnish at its own expense such stakes, templates, platforms, equipment, tools and material, and all labor as may be required to layout and execute the work. It shall be the responsibility of the Contractor to maintain and preserve all grade stakes. Wood grade stakes will not be allowed. The material used for grade stakes shall be metal pipes that can be completely removed intact by the Contractor after placement of the fill. If the Contractor (directly or through his negligence) destroys stakes prior to acceptance of the work, the Contractor shall replace the stake. The Contractor is responsible for all surveying required to complete the work.

The Contractor shall maintain a grade stake recovery log documenting the location (station, range or other acceptable format), date of placement, and the date of removal for each grade stake. Any stakes which are lost or partially recovered shall be noted in the log. A final copy of this log will be provided to the County.

Any cost associated with the Layout of Work/Staking shall be incorporated in Bid Items 4 & 10 — Mobilization & Demobilization.

Construction Access: The Contractor will access the dune construction areas via the Construction Access site(s) designated in a Work Order. During construction, the Contractor shall make provisions to (a) not interfere with normal vehicular traffic and (b) control public access and provide for public safety within the construction areas and Construction Access sites. The Contractor shall disturb existing beach/dune topography, vegetation, and upland improvements only to the minimum extent necessary for construction and construction access and other authorized activities. To the maximum extent feasible, the Contractor shall limit clearing (for access to the beach) to areas of exotic vegetation, subject to County approval. The Contractor shall avoid disturbing native vegetation wherever possible; any disturbance of existing native vegetation by the Contractor shall be restored by the Contractor at no additional cost to the County. The Contractor shall coordinate with the County prior to disturbing any existing vegetation.

The final limits of the staging and access areas indicated on the drawings shall be field-determined by the County, Engineer, and Contractor during the Pre-Construction Meeting. The Contractor shall be responsible for investigating and obtaining any additional areas which may be necessary for construction operations. The additional areas will be subject to approval by the County.

Any cost associated with Construction Access shall be incorporated in Bid Items 4 & 10 — Mobilization & Demobilization.

Work Area: The construction limits available to the Contractor for accomplishing the work are generally shown on the Solicitation Drawings and shall be specifically identified in Construction Drawings associated with Work Orders. The Contractor shall accomplish the work in such a manner so as to minimize disruption to the general public and vehicular traffic. The Contractor shall make whatever provisions are necessary to ensure public safety within the Contractor's access, storage and work areas; such provisions shall include lights, where appropriate. During construction, the Contractor may store material and equipment in locations approved by the County at the Pre-Construction Meeting.

Any cost associated with the Work Area shall be incorporated in Bid Item 4 & 10 — Mobilization & Demobilization.

Inspection Notification: The Contractor shall notify the County at least 48 hours before the following construction activities at each of the designated sites:

- Mobilization
- Arrival of sand at the site
- Finish grading
- Beach tilling
- Site restoration
- Demobilization

Measurement & Payment of Fill Quantities: The County will base payment for work under Bid Item 5 & 11 on the weight of fill material provided, as described in Section 2.1.1. The weight tickets provided under Bid Items 3 & 9 will document the fill quantity eligible for payment under Bid Items 5 & 11. With its requests for payment, the Contractor shall provide the County with copies of all certified weight tickets.

2.1.4 Site Restoration

Under Bid Items 6, 7, 8, 12 & 13 the Contractor shall restore the Construction Access sites and general construction area to a condition equal to or better than the pre-construction condition. The Contractor shall submit a Construction Access and Equipment Staging Area Restoration Plan to the County for review and approval prior to the Pre-Construction Meeting. The Plan shall address Contractor measures to prevent damage to the Construction Accesses and shall identify measures for restoration. The Contractor shall additionally propose measures to limit damage to any pavement, pavement striping, signage, vegetation, and improvements present in the construction area

designated in the Work Order. Upon completion of the work and demobilization of equipment, facilities, vehicles, and crew from the work area, the Contractor shall restore any pavement, pavement striping, signage, vegetation and improvements (including any FDEP survey reference monuments) that may have been damaged or disturbed as a direct result of the Contractor's construction activities. The Contractor shall coordinate with the County prior to and during all construction activities.

Restoration shall include removal of all the Contractor's equipment and waste either for disposal or reuse. The Contractor shall restore to previous condition, all site and landscape features damaged or destroyed during construction operations outside the limits of the approved work areas and within the designated work area. All material brought to the site for the stabilization of any access area shall be removed from the site by the Contractor. Before the County considers the project complete, the Contractor shall restore to pre-construction elevations any topography disturbed by construction activities.

As discussed under the "Construction Access" section above, the Contractor may identify and obtain approval for additional access areas not identified by the County. Compensation for the restoration of any such alternate construction access areas shall be negotiated under a Work Order and shall not exceed the compensation for restoration of the nearest construction access as identified in Bid Items 6, 7, 8, 12 & 13.

2.2 *Miscellaneous Beach Services Work*

The following sections describe the work associated with Bid Items 14 – 23.

2.2.1 Sand Removal, Screening & Placement

Under Bid Items 14 - 17, the Contractor shall mobilize and demobilize labor and equipment necessary to screen beach sand, remove the screened material, and regrade the sand, as specified within a Work Order. Said screen shall entail a 3/4" screen. As part of the work under this bid item, the Contractor shall (a) remove any screened debris and deposit the debris at an approved upland disposal area and (b) place and grade the screened sand on the beach immediately seaward of the existing dune as directed by the County and/or Engineer. The County shall provide on-site personnel who will observe the sand removal and screening process and record the total cubic yards of material for payment.

2.2.2 Debris Removal

Under Bid Items 18 - 19, the Contractor shall mobilize and demobilize labor and equipment necessary to clear storm-related debris and stockpile the debris within Construction Access sites, as specified within a Work Order following a storm event. The Contractor shall stockpile the storm-related debris as directed by the County and/or Engineer. Quantities for payment shall be based upon measurements of stockpiled debris, as approved by the Engineer.

2.2.3 Escarpment Leveling

Under Bid Items 20 & 21, the Contractor shall mobilize and demobilize labor and equipment necessary to level escarpments (≥ 18 inches in height), as specified in a Work Order, that may have formed along the beach or dune. The Contractor shall level escarpments to yield a maximum 1V:5H slope or as otherwise approved by the Engineer.

2.2.4 Beach Tilling

Under Bid Items 22 & 23, the Contractor shall mobilize and demobilize labor and equipment necessary to till the beach (seaward of the existing or proposed dune toe) as specified within a Work Order. The Contractor shall conduct the beach tilling in compliance with the FDEP permit. Typical permit specifications include tilling to a depth of 36 inches and overlapping each pass of the beach tilling equipment by no less than 6 inches to ensure thorough and even beach tilling.

DRAFT
SEDIMENT QUALITY CONTROL/QUALITY ASSURANCE PLAN
FOR BEACH OR DUNE RESTORATION USING AN UPLAND SAND SOURCE

[Permit Number]

MARTIN COUNTY
EMERGENCY BEACH FILL PROJECT
03/2011

A. INTRODUCTION

Pursuant to Fla. Admin. Code r. 62B-41.008 (1) (k) 4.b., permit applications for inlet excavation, beach restoration, or nourishment shall include a quality control/assurance plan that will ensure that the sediment from the borrow areas to be used in the project will meet the standard in Fla. Admin. Code r. 62B-41.007(2)(j). To protect the environmental functions of Florida's beaches, only beach compatible fill shall be placed on the beach or in any associated dune system. Beach compatible fill is material that maintains the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system.

The Department has received the results of geotechnical investigations that provide adequate data concerning the character of the sediment and the quantities available within the spatial limits of the upland sand source(s). The Department has received an analysis of the existing or native sediment and the sediment within the permitted upland sand source(s), including the methods of mining and post-mining processing, that demonstrates its compatibility with the naturally occurring beach sediment in accordance with Fla. Admin. Code r. 62B-41.007(2)(j). The sediment analysis and volume calculations were performed using established industry standards and are certified by a Professional Engineer or a Professional Geologist registered in the State of Florida.

Based upon this information, the Department of Environmental Protection (Department) has determined that use of the sediment from the upland sand source(s) will maintain the general character and functionality of the sediment occurring on the beach and in the adjacent dune and coastal system. Furthermore, this information provides sufficient quality control/quality assurance (QC/QA) that the mean grain size and carbonate content of the sediment from the upland sand source(s) will meet the requirements of Fla. Admin. Code r. 62B-41.007(2)(j); hence, additional QC/QA procedures are not required for these sediment parameters during construction.

This plan outlines the responsibilities of each stakeholder in the project as they relate to the placement of beach compatible material on the beach. These responsibilities are in response to the possibility that non-beach compatible sediments may exist within the upland sand source(s) and could be unintentionally placed on the beach. The QC Plan specifies the minimum construction management, inspection and reporting requirements placed on the Contractor and enforced by the Permittee, to ensure that the sediment from the upland sand source(s) to be used in the project meet the compliance specifications. The QA Plan specifies the minimum construction oversight, inspection and reporting requirements to be undertaken by the Permittee or the Permittee's On-Site Representative to observe, sample, and test the placed sediments to verify the sediments are in compliance.

B. SEDIMENT QUALITY SPECIFICATIONS

The sediment from the upland sand source(s) is similar in Munsell color and grain size distribution to the material in the existing coastal system at the beach placement site. The Department and the Permittee acknowledge that it is possible that discrete occurrences of non-beach compatible sediments may exist within the permitted upland sand source(s) that do not comply with the limiting parameters of Fla. Admin. Code r. 62B-41.007(2)(j) 1. – 5. or vary in Munsell color from the composite value. Furthermore, the Department may consider more restrictive values for the sediment parameters to ensure that the sediment from the upland sand source(s) is similar in color and grain size distribution to the sediment in the existing coastal system at the beach placement site. Therefore, fill material compliance specifications for the sediment from the upland sand source(s) proposed for this project are provided in Table 1.

The compliance specifications take into account the variability of sediment on the native or existing beach and are values which may reasonably be attained given what is known about the upland sand source(s). Beach fill material which falls outside of these limits will be considered unacceptable and subject to remediation.

Table 1- Sediment Compliance Specifications

Sediment Parameter	Parameter Definition	Compliance Value
Mean grain size*	mean grain size	0.32 – 0.55 mm
Max. Silt Content	passing #230 sieve	0.5%
Max. Shell Content**	retained on #4 sieve	5.0%
Munsell Color Value (dry sand)	Hue	2.5Y, N, or 10YR
	Value	6 or lighter
	Chroma	1 or 2
The beach fill material shall not contain construction debris, toxic material, other foreign matter, coarse gravel or rocks.		

*Shell Content is used as the indicator of fine gravel content for the implementation of quality control/quality assurance procedures.

C. QUALITY CONTROL PLAN

The contract documents shall incorporate the following technical requirements, or equivalent language that addresses the sediment quality monitoring on the beach, and, if necessary, remedial actions. The Permittee will seek to enforce these contract requirements during the execution of work. The Contractor's Quality Control Plan shall be submitted for review and acceptance by the Permittee. This Plan shall also address sediment quality assurance by including: (1) the specific sampling frequency and testing methodology to be provided by the Contractor, (2) the name, address and point of contact for the Licensed Testing Laboratory to be used for the required collection of samples and laboratory testing, and (3) how the Contractor intends to assess compliance with the Sediments Compliance Specifications as shown in Table 1 above.

The characteristics of the in-situ materials in the upland sand source(s) are indicated by the

geotechnical data, including the boring logs and grain size distribution curves. The characteristics of the processed material are also included with the geotechnical data. However, the Contractor should be aware that it is possible for material of differing characteristics to be present and that the mining process may correspondingly require revisions to produce beach compatible sand consistent with the Sediment Compliance Specifications in Table 1.

1. Assessment at Upland Sand Source. The material shall be observed while the material is being loaded into the trucks for transport to the Construction Access/Staging Area. Both the Contractor and the Permittee will have benchmark samples labeled with the permit number, "Benchmark Sample", date collected, site name and information on where the sample was attained. The benchmark sample shall be material that has been deemed beach compatible in accordance with the Sediment Compliance Specifications and shall serve as the minimum requirement for the material being placed on the beach. If any material appears to be non-compliant, it shall be set aside for testing and/or further processing and not transported to the beach.

a. For conventional hydraulic excavation and stockpiling. The Contractor will collect a sediment sample at not less than 4 samples for each 3,000 cubic yards of stockpiled material to visually assess grain size, Munsell color, shell content, and silt content against the benchmark sample. The sample shall be a minimum of 1 U.S. pint (approximately 200 grams). This assessment will consist of handling the fill material to ensure that it is predominantly sand to note the physical characteristics and assure the material meets the sediment compliance parameter specified in this Plan. If deemed necessary, quantitative assessments of the sand will be conducted for grain size, silt content, shell content and Munsell color using the methods outlined in section D.7.b. Each sample will be archived with the date, time, and location of the sample. The results of these daily inspections, regardless of the quality of the sediment, will be appended to or notated on the Contractor's Daily Report. All samples will be stored by the Permittee for at least 60 days after project completion.

b. For material requiring special handling and material processing. If special handling and material processing are necessary to produce beach compatible material consistent with the Sediment Compliance Specifications in Table 1, then sampling and laboratory testing of the processed sand shall be conducted at the upland mine(s) from the stockpiled material before the material is transported to the Construction Access/Staging Areas. The Contractor will collect 4 representative samples from approximately every 3,000 cubic yards of material in the stockpile no less than 6 inches below the surface. The samples shall be tested at a Licensed Testing Laboratory using the criteria outlined in Section D.7.b.

If a sample does not meet the Sediment Compliance Specifications in Table 1, then the 3,000 cubic yards of material represented by that sample shall not be transported to the Construction Access/Staging Area. The material may undergo further processing to meet the Sediment Compliance Specifications with additional testing to verify the additional processing produces material that meets the Sediment Compliance Specifications, or the material shall be set aside and not used.

2. Beach Observation. The Contractor will continuously visually monitor the sediment being placed on the beach. An assessment will be made during placement at a minimum of once every hour. This assessment will consist of handling the fill material to ensure that it is predominantly sand and to note the physical characteristics, and assure the material meets the Sediment

Compliance Specifications in Table 1. If noncompliant sediment is placed on the beach, the Contractor will immediately cease placement until any stockpiled material at the beach construction staging area can be verified as beach compatible and verbally notify the Permittee's On-site Representative, providing the time, location, and description of the noncompliant sediment. The Contractor will take the appropriate remediation actions as directed by the Permittee or Permittee's Engineer.

D. QUALITY ASSURANCE PLAN

The Permittee will seek to enforce the construction contract and Department permits related to sediment quality. In order to do so, the following steps shall be followed:

1. **Construction Observation.** Construction observation by the Permittee's On-Site Representative will be performed daily basis during periods of active construction. The Permittee's On-Site Representative will collect a sediment sample to visually assess grain size, Munsell color, shell content, and silt content against the benchmark sample. The observation will include handling the fill material to ensure that it is predominantly sand to note the physical characteristics and assure the material meets the sediment compliance parameter specified in this Plan. If deemed necessary, quantitative assessments of the sand will be conducted for grain size, silt content, shell content and Munsell color using the methods outlined in section D.7.b.

2. **On-Site Representative.** The Permittee will provide on-site observation by individuals with training or experience in beach nourishment and construction inspection and testing, and who are knowledgeable of the project design and permit conditions. The project Engineer will actively coordinate with the Permittee's On-Site Representative, who may be an employee or sub-contractor of the Permittee or the Engineer. Communications will take place between the Engineer and the Permittee's On-Site Representative on a weekly basis.

3. **Pre-Construction Meeting.** The project QC/QA Plan will be discussed as a matter of importance at the pre-construction meeting. The Contractor will be required to acknowledge the goals and intent of the above described QC/QA Plan, in writing, prior to commencement of construction.

4. **Contractor's Daily Reports.** The Permittee's On-Site Representative will review the Contractor's Daily Reports which will characterize the nature of the sediments encountered at the upland sand source and placed along the project shoreline with specific reference to moist sand color and the occurrence of rock, rubble, shell, silt or debris.

5. **On Call.** The project Engineer will be continuously on call during the period of construction for the purpose of making decisions regarding issues that involve QC/QA Plan compliance.

6. **Addendums.** Any addendum or change order to the Contract between the Permittee and the Contractor will be evaluated to determine whether or not the change in scope will potentially affect the QC/QA Plan.

7. **Post-Construction Sampling for Laboratory Testing.** To assure that the fill material placed on the beach was adequately assessed by the borrow area investigation and design, the Project Engineer will conduct assessments of the sediment as follows:

a. Post-construction sampling of each acceptance section and testing of the fill material will be conducted to verify that the sediment placed on the beach meets the expected criteria/characteristics provided during from the geotechnical investigation and borrow area design process. Upon completion of an acceptance section of constructed beach, the project Engineer will collect two (2) duplicate sand samples at each Department reference monument profile line to quantitatively assess the grain size distribution, moist Munsell color, shell content, and silt content for compliance. The Engineer will collect the sediment samples of a minimum of 1 U.S. pint (at least 200 grams) each from the bottom of a test hole a minimum of 18 inches deep within the limits of the constructed berm. The Engineer will visually assess grain size, Munsell color, shell content, and silt content of the material by handling the fill material to ensure that it is predominantly sand, and further to note the physical characteristics. The Engineer will note the existence of any layering or rocks within the test hole. One sample will be sent for laboratory analysis while the other sample will be archived by the Permittee. All samples and laboratory test results will be labeled with the Project name, FDEP Reference Monument Profile Line designation, date sample was obtained, and "Construction Berm Sample."

b. All samples will be evaluated for visual attributes (Munsell color and shell content), sieved in accordance with the applicable sections of ASTM D422-63 (Standard Test Method for Particle-Size Analysis of Soils), ASTM D1140 (Standard Test Method for Amount of Material in Soils Finer than No. 200 Sieve), and ASTM D2487 (Classification of Soils for Engineering Purposes), and analyzed for carbonate content. The samples will be sieved using the following U.S. Standard Sieve Numbers: 3/4", 5/8", 3.5, 4, 5, 7, 10, 14, 18, 25, 35, 45, 60, 80, 120, 170, and 230.

c. A summary table of the sediment samples and test results for the sediment compliance parameters shall accompany the complete set of laboratory testing results. The column headings will include: Sample Number; Mean Grain Size (mm); Sorting Value; Silt Content (%); Shell Content (%); Munsell Color Value; and a column stating whether each sample MET or FAILED the compliance values found in Table 1. The sediment testing results will be certified by a P.E or P.G. registered in the State of Florida. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the sand search investigation and borrow area design shall be included in the sediment testing results report. The Permittee will submit sediment testing results and analysis report to the Department within 90 days following beach construction.

d. In the event that a section of beach contains fill material that is not in compliance with the sediment compliance specifications, then the Department will be notified. Notification will indicate the volume, aerial extent and location of any unacceptable beach areas and remediation planned.

E. REMEDIATION

1. Compliance Area. If a sample does not meet the compliance value for construction debris, toxic material, other foreign material, coarse gravel, or rock the Permittee shall determine the aerial extent of the noncompliant beach fill material and remediate regardless of the extent of the noncompliant material. If a sample is noncompliant for the silt content, shell content, or Munsell

color, and the aerial extent exceeds 10,000 square feet of beach berm or 100 linear feet of dune for dune-only projects, the Permittee shall remediate.

2. Notification. If an area of newly constructed beach or dune does not meet the sediment compliance specifications, then the Department (JCPCCompliance@dep.state.fl.us) will be notified. Notification will indicate the aerial extent and location of any areas of noncompliant beach fill material and remediation planned. As outlined in section E.4 below, the Permittee will immediately undertake remediation actions without additional approvals from the Department. The results of any remediation will be reported to the Department following completion of the remediation activities and shall indicate the volume of noncompliant fill material removed and replaced.

3. Sampling to determine extent. In order to determine if an area greater than 10,000 square feet of beach berm or 100 linear feet of dune for dune-only projects is noncompliant, the following procedure will be performed by the Permittee's On-site Representative or Engineer:

- a. Upon determination that the first sediment sample is noncompliant, at minimum, five (5) additional sediment samples will be collected at a maximum 25-foot spacing in all directions and assessed. If the additional samples are also noncompliant, then additional samples will be collected at a 25-foot spacing in all directions until the aerial extent is identified.
- b. The samples will be visually compared to the acceptable sand criteria. If deemed necessary by the Engineer, quantitative assessments of the sand will be conducted for grain size, silt content, shell content, and Munsell color using the methods outlined in section D.7.b. Samples will be archived by the Permittee.
- c. A site map will be prepared depicting the location of all samples and the boundaries of all areas of noncompliant fill.
- d. The total square footage will be determined.
- e. The site map and analysis will be included in the Contractor's Daily Report.

4. Actions. The Permittee or Permittee's Engineer shall have the authority to determine whether the material placed on the beach is compliant or noncompliant. If placement of noncompliant material occurs, the Contractor will be directed by the Permittee or Permittee's Engineer on the necessary corrective actions. Should a situation arise during construction that cannot be corrected by the remediation methods described within this QC/QA Plan, the Department will be notified. The remediation actions for each sediment parameter are as follows:

- a. Silt: blending the noncompliant fill material with compliant fill material within the adjacent construction berm or dune sufficiently to meet the compliance value, or removing the noncompliant fill material and replacing it with compliant fill material.
- b. Shell: blending the noncompliant fill material with compliant fill material within the adjacent construction berm or dune sufficiently to meet the compliance value or removing the noncompliant fill material and replacing it with compliant fill material.
- c. Munsell color: blending the noncompliant fill material with compliant fill material within the adjacent construction berm or dune sufficiently to meet the compliance value or removing the noncompliant fill material and replacing it with compliant fill material.
- d. Coarse gravel: screening and removing the noncompliant fill material and replacing it with compliant fill material.

- e. Construction debris, toxic material, or other foreign matter: removing the noncompliant fill material and replacing it with compliant fill material.

All noncompliant fill material removed from the beach will be transported to an appropriate upland disposal facility located landward of the Coastal Construction Control Line or returned to the upland mine.

5. Post-Remediation Testing. Re-sampling shall be conducted following any remediation actions in accordance with the following protocols:

- a. Within the boundaries of the remediation actions, samples will be taken at maximum of 25-foot spacing.
- b. The samples will be visually compared to the acceptable sand criteria. If deemed necessary by the Engineer, quantitative assessments of the sand will be conducted for grain size, silt content, and Munsell color using the methods outlined in section D.7.b. Samples will be archived by the Permittee.
- c. A site map will be prepared depicting the location of all samples and the boundaries of all areas of remediation actions.

6. Reporting. A post-remediation report containing the site map, sediment analysis, and volume of noncompliant fill material removed and replaced will be submitted to the Department within 7 days following completion of remediation activities.

All reports or notices relating to this permit shall be emailed and sent to the Department at the following locations:

DEP Bureau of Beaches & Coastal Systems

JCP Compliance Officer

Mail Station 300

3900 Commonwealth Boulevard

Tallahassee, Florida 32399-3000

phone: (850) 414-7716

e-mail: JCP_Compliance@dep.state.fl.us

End of Plan

FDEP Version dated April 26, 2010

EXHIBIT E

RFB2020-3192 EMERGENCY DUNE RESTORATION BID FORM

GROUP I - DUNE RESTORATION			
Item	Description	Unit of Measure	Price per Unit
1	Provide less than 65,000 tons of Sand	Ton	\$14.96
2	Provide more than 65,000 tons of Sand	Ton	\$14.96

List upland sand source: Stewart Materials

Items 3 to 8 are For Monument Range R-1 to R-27			
Item	Description	Unit of Measure	Price per Unit
3	Transport & Deliver Sand	Ton	\$9.28
4	Mobilization/Demobilization	work order	\$3,229.95
5	Place & Grade Fill	Ton	\$4.17
6	Site Restoration R-3 + 300	work order	\$10,240.63
7	Site Restoration R-11 + 250	work order	\$7,425.90
8	Site Restoration R-22 + 800	work order	\$13,241.10
Items 9 to 13 are For Monument Range R-27 to R-36			
9	Transport & Deliver Sand	Ton	\$9.50
10	Mobilization/Demobilization	work order	\$3,229.95
11	Place & Grade Fill	Ton	\$4.17
12	Site Restoration of House of Refuge	work order	\$4,497.75
13	Site Restoration of Bathtub Beach	work order	\$7,959.65

The bidder must bid on all 13 items in Group I to be considered for award. Award of Group I will be made to one primary vendor and up to two alternates providing the lowest most responsive bid for the group.

GROUP II - MISCELLANEOUS BEACH RESTORATION SERVICES			
Items 14 to 17 are for Sand Removal, Screening and Placement			
Item	Description	Unit of Measure	Price per Unit
14	Mobilization/Demobilization	work order	\$3,914.11
15	Site to Site Mobilization	work order	\$750.00
16	Sand Removal, Screening and Placement less than 4000 CY of sand	Cubic yard	\$17.00
17	Sand Removal, Screening and Placement more than 4000 CY of sand	Cubic Yard	\$15.00
Items 18 to 19 are for Debris Removal			
18	Mobilization/Demobilization	work order	\$1,215.30
19	Debris Clearing & Stockpiling	Cubic Yard	\$10.55
Items 20 through 21 are for Escarpment Leveling			
20	Mobilization/Demobilization	work order	\$562.64
21	Escarpment Leveling	Linear Foot	\$1.55
Items 22 through 23 are for Beach Tilling			
22	Mobilization/Demobilization	work order	\$3,401.00
23	Beach Tilling	Acre	\$503.25

The bidder must bid on all items in Group II to be considered for award. Award of Group II will be made to up to 5 qualified vendors providing the lowest most responsive bid for the group.

INSTRUCTIONS

Bids must be received no later than the date and time stated in the Advertisement. Bids received after that time & date will not be considered.

RFB2020-3192
EMERGENCY DUNE RESTORATION
BID FORM

This form must be returned with bid. Bids on any other form will not be accepted.

Ferreira Construction Southern Division Co., Inc.

Company Name

13000 SE Flora Avenue

Street Address

Hobe Sound, FL 33455

City, State, Zip

(772) 286-5123

Telephone

John Ciabattari


Name of Authorized Representative (Print)

Vice President

Title

jcibattari@ferreiraconstruction.com

E-mail Address


Authorized Signature