

February 13, 2025

Meeting Agenda and Notice

Coastal Advisory Committee (CAC)
Thursday, February 13, 2025– 1:00 p.m.
Collier County Board Chambers
Collier County Government Center
3299 Tamiami Trail East, Third Floor, Naples, FL

Sunshine Law on Agenda Questions

2025 CAC MEETING DATES

I. Call to Order

II. Pledge of Allegiance

III. Roll Call

IV. Changes and Approval of Agenda

V. Public Comments

VI. Approval of CAC Minutes

December 12, 2024.

VII. Staff Reports

Extended Revenue Report

VIII. New Business

1. ES - City of Naples Outfall Project

- Outfall Presentation

2. ES -2024 South Naples Emergency Berm

- DRAFT Construction Agreement

3. ES -APTIM CO#1 - Park Shore

- Chang Order #1 - APTIM

4. ES -Earth Tech CO#2 - Park Shore

- Change Order #2 - Earth Tech

IX. Old Business

- Protecting Beach Dunes - Dune Fencing
- Tigertail Restoration Letter
- Sunshine State Law - Colleen Greene

X. Announcements

XI. Committee Member Discussion

XII. Next Meeting Date/Location

March 13, 2025 at 1:00 p.m.

XIII. Adjournment

All interested parties are invited to attend, and to register to speak and to submit their objections, if any, in writing, to the board prior to the meeting if applicable.

For more information, please contact Andrew Miller at (239) 252-2922.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Collier County Facilities Management Department located at 3301 East Tamiami Trail, Naples, FL 34112, (239) 252-8380.

Public comments will be limited to 3 minutes unless the Chairman grants permission for additional time.

Collier County Ordinance No. 99-22 requires that all lobbyists shall, before engaging in any lobbying activities (including, but not limited to, addressing the Board of County Commissioners) before the Board of County Commissioners and its advisory boards, register with the Clerk to the Board at the Board Minutes and Records Department.

COLLIER COUNTY
COASTAL ADVISORY COMMITTEE (CAC)
Thursday, December 12, 2024 – 1:00 p.m.
Collier County Board Chambers
Collier County Government Center
3299 Tamiami Trail East, 3rd Floor, Naples, FL

Chairman Joe Burke, City of Naples
Linda Penniman, City of Naples
Bob Raymond, Unincorporated Collier County
Erik Brecknitz, City of Marco Island
Steve Kozler, City of Naples
Dave Trecker, Unincorporated Collier County
Robert Roth, City of Marco Island
Dr. Judith Hushon, City of Naples
Jim Burke, Unincorporated Collier County (absent)

ALSO, PRESENT

Andy Miller, Coastal Zone Management
Colleen Greene, Managing Assistant County Attorney

Any person who decides to appeal a decision of This Board you will need a record of the proceedings pertaining thereto and therefore may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, Neither Collier County nor This Board shall be responsible for providing this record.

1. **CALL TO ORDER**
Chairman Burke
Called the meeting to order
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **CHANGES AND APPROVAL OF AGENDA**
Motion was made to approve the Agenda
Seconded
Motion passed unanimously
5. **PUBLIC COMMENTS**
None
6. **APPROVAL OF CAC MINUTES NOV. 12, 2024**

Steve Kozler asked for correction of roll call in minutes to include himself.

Robert Roth had some comments and corrections for the minutes.

Dave Trecker made the motion to approve

Linda Penniman seconded

Motion passed unanimously

7. **STAFF REPORTS**

Andy Miller - Extended Revenue Report

Printed material packed presented.

8. **NEW BUSINESS**

1. ES – Wiggins Pass Permit Modification

• Work Order – Wiggins Pass Permit Modification

Andy Miller presenting

Recommendation to approve a work order with Humiston & Moore Engineers to provide professional services for the application of a modification to the USA CE permit number AJ 2004 07621 LPMGJ MJD to allow dredge sand to be placed on Delnor Wiggins State Park under the current Library Services Contract 18-7432 CZ for time and materials at \$21,245.00, authorize the Chair to execute the work order and necessary budget amendments and find that this promotes tourism.

Erik Brecknitz made the motion to approve

Dave Trecker seconded

Motion passed unanimously

9. **OLD BUSINESS**

Linda Penniman

is when we do our erosion studies and the results of those.

Andy Miller

Typically, we do that in January or February every year but in October we executed emergency purchase orders. Humiston and Moore is servicing the beaches as they would in January and February but is doing it early.

Linda Penniman

What document set forth the January and February surveying?

Andy Miller

I will find out for you.

Erik Brecknitz

Why haven't we received approval on the application on dredging Collier Creek.

Andy Miller

I have been in communication with the Army Corps of Engineers in Ft. Myers and I expect some information in 2025. APTIM is our Engineer for Collier Creek.

Robert Roth

What is the status of the emergency berm planting?

Andy Miller

We started 2-3 weeks ago, and almost all of the plantings have been done. We are waiting for a funding approval to the Park Shore and south of the Pier beaches.

Chairman Burke

How long will it take?

Andy Miller

The Naples planting should finish in a couple of weeks.

Linda Penniman

Are we still engaged in doing water quality studies?

Robert Roth

The subcommittee has not met in over a year and a half and it needs new members. I'm willing to stay on as Chairman.

Dr. Judith Hushon and Linda Penniman volunteered to be on the subcommittee.

A meeting will be coordinated through Andy Miller.

Linda Penniman

Is there anything that can hold the sand on the beaches like snow fencing, etc.

Andy Miller

I will look into the system that goes in the water near the shore.

Bob Roth

In Cape Cod they use sand fences that zig zag, but they do not have hurricanes.

Linda Penniman

I would appreciate Andy checking into that.

Chairman Burke

I did distribute information that had a lot of useful design information on the application.

Linda Penniman

What about bags of oyster shells?

Andy Miller

The material placed on beach is a permitting issue.

Linda Penniman

I've seen them using bags on Naples Bay. This issue of erosion control is part of what this Committee is charged with.

Dr. Judith Hushon

Last week the Conservancy filmed different methods of control.

Chairman Burke

I could work with Andy on a list of technologies.

Linda Penniman

The Committee's purview is also to monitor water quality.

Discussion amongst Committee members concluded that other departments were testing water quality from Marco Island and Naples on a regular basis.

10. ANNOUCEMENTS

None

11. COMMITTEE MEMBER DISCUSSION

Invitation to Colleen Greene's Sunshine Law presentation

Colleen Greene

I will attach an outline to the agenda for the next meeting.

Andy Miller

Please spread the word that starting Jan. 6th the Park Shore renourishment begins with many trucks of sand for possibly 6 weeks.

Robert Roth

When is the main renourishment program for Marco Island?

Andy Miller

It is scheduled for next fiscal year. The engineers will survey.

12. NEXT MEETING DATE/LOCATION

January 9, 2025, at 1:00 p.m.

13. ADJOURNMENT

There being no further business for the good of The County, the Coastal Advisory Committee meeting was adjourned at 1:45 p.m.

COLLIER COUNTY
Coastal Advisory Committee

Chairman Joe Burke

The Minutes were approved by _____
Chairman Joe Burke

as presented _____

or amended _____

FY 25 TDT Collections Report						
31-Jan-2025						
Fund Reporting	Fund	Adopted Budget	Updated Annual Forecast	Budgeted YTD	YTD Actual	Variance to Budgeted YTD
Beach Park Facilities	1100	1,357,700	1,449,621	274,519	366,479	91,961
TDC Promotion	1101	13,643,700	14,702,837	2,758,671	3,435,854	677,182
Non-County Museums	1103	724,300	773,338	146,449	195,253	48,804
TDC Admin	1104	-	-	0	-	-
Beach Renourishment	1105	14,782,800	15,783,651	2,988,990	3,989,644	1,000,654
Disaster Recovery	1106	-	-	0	-	-
County Museums	1107	2,000,000	2,000,000	404,388	786,396	382,009
TDC Capital	1108	5,415,500	5,782,150	1,094,980	1,461,968	366,987
	Gross Budget	37,924,000	40,491,597	7,667,997	10,235,595	2,567,597
	Less 5% Rev Res	(1,896,200)	6.77%		% Over/(Under) Bud	33.5%
	Net Budget	36,027,800				

Month Reported	Actual	Cum YTD	% Budget Collected to Date	% Variance FY24 Collections	% Variance FY23 Collections	% Variance FY22 Collections
Nov	2,137,562	2,137,562	5.64%	-16.72%	-9.20%	-5.03%
Dec	3,465,253	5,602,815	14.77%	5.83%	30.93%	19.12%
Jan	4,632,779	10,235,595	26.99%	5.02%	24.82%	3.04%
Feb	-	10,235,595	26.99%	n/a	n/a	n/a
Mar	-	10,235,595	26.99%	n/a	n/a	n/a
Apr	-	10,235,595	26.99%	n/a	n/a	n/a
May	-	10,235,595	26.99%	n/a	n/a	n/a
June	-	10,235,595	26.99%	n/a	n/a	n/a
July	-	10,235,595	26.99%	n/a	n/a	n/a
Aug	-	10,235,595	26.99%	n/a	n/a	n/a
Sept	-	10,235,595	26.99%	n/a	n/a	n/a
Oct	-	10,235,595	26.99%	n/a	n/a	n/a
Total	10,235,595	10,235,595	YTD	-0.16%	17.49%	6.01%

40,491,597

Budget Comparison						
	5 Yr History-Cum	5 Yr History-Monthly	Budgeted Collections	Actual Collections	Budget to Actual Variance	Updated Forecast
Nov	4.8%	4.8%	1,827,211	2,137,562	310,352	2,137,562
Dec	11.0%	6.2%	2,338,559	3,465,253	1,126,694	3,465,253
Jan	20.2%	9.2%	3,502,227	4,632,779	1,130,552	4,632,779
Feb	33.1%	12.8%	4,869,752	-	-	4,869,752
Mar	47.3%	14.2%	5,397,019	-	-	5,397,019
Apr	64.3%	17.0%	6,460,316	-	-	6,460,316
May	73.0%	8.7%	3,303,306	-	-	3,303,306
June	79.1%	6.1%	2,299,023	-	-	2,299,023
July	84.7%	5.6%	2,134,934	-	-	2,134,934
Aug	90.7%	6.0%	2,277,930	-	-	2,277,930
Sept	95.5%	4.8%	1,816,973	-	-	1,816,973
Oct	100.0%	4.5%	1,696,749	-	-	1,696,749
Total	100.0%	100.0%	37,924,000	10,235,595	2,567,597	40,491,597

% over/(under) budget 33.5% 6.77%



EXECUTIVE SUMMARY

Recommendation to accept the report from the City of Naples Tourism Impact Study for the Stormwater Outfall Pipe Removal and make a finding that this action promotes tourism.

OBJECTIVE: Recommend acceptance of the City of Naples Tourism Impact Study for the Stormwater Outfall Pipe Removal Project and the finding that this project provides a positive impact on tourist activities.

CONSIDERATIONS: The Tourist Development Council (TDC) provides recommendations on the usage of TDT funds, including Beach Renourishment Projects (Fund 1105). For capital improvement projects Section 125.0104(5)(a)(6)(e) Fla Stat. requires that “an independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.”

At the May 21, 2024 TDC meeting (Agenda item 7.A.1.) the TDC approved a grant request from the City of Naples for professional services provided by Adept Public Relations, LLC to conduct a Tourism Impact Study for the Naples Gulf of Mexico Beach Stormwater Outfall Pipe Removal project in the amount of \$44,879. At the July 9, 2024, BCC meeting (Agenda item 16.B.5), the Board approved the reimbursement request of \$44,879 for the study by Adept Public Relations.

The City of Naples is presenting the findings from the study by Adept Public Relations, LLC. The City of Naples will return at a subsequent meeting with a detailed project funding request.

ADVISORY BOARD RECOMMENDATION: The Coastal Advisory Committee will review this item on January 9, 2025.

FISCAL IMPACT: There is no additional fiscal impact with this item.

GROWTH MANAGEMENT IMPACT: There is no impact to the Growth Management Plan related to this action.

LEGAL CONSIDERATION: This item is approved as to form and legality and requires majority vote for approval. – CMG

RECOMMENDATION: To accept the report from the City of Naples Tourism Impact Study for the Stormwater Outfall Pipe Removal and make a finding that this action promotes tourism.

SUBMITTED BY: John Melleky, Arts and Culture Manager, Tourism

ATTACHMENTS:

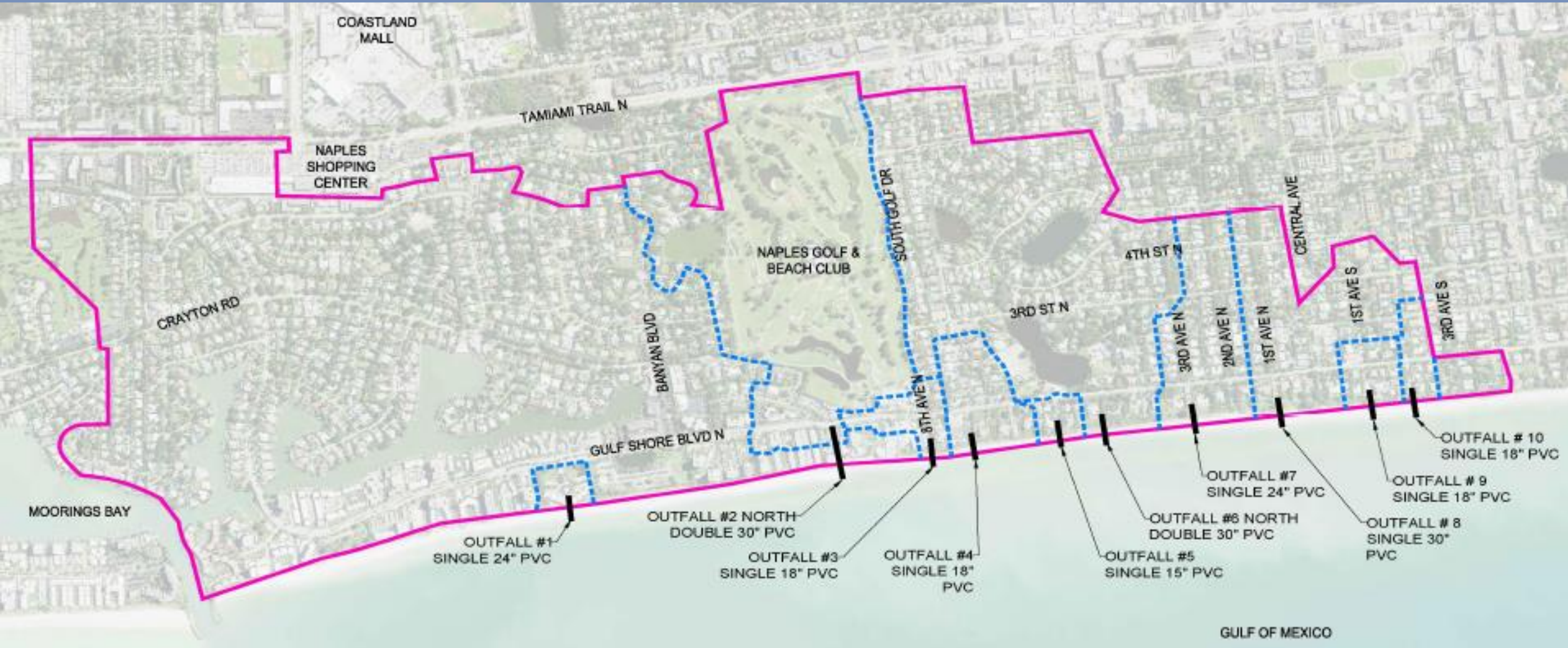
1. City of Naples Independent Tourism Impact Study
2. City of Naples Presentation



City of Naples

Naples Gulf of Mexico Beach
Stormwater Outfall Pipe Removal &
Water Quality Project
Coastal Advisory Committee(CAC)
Meeting
February 13, 2025

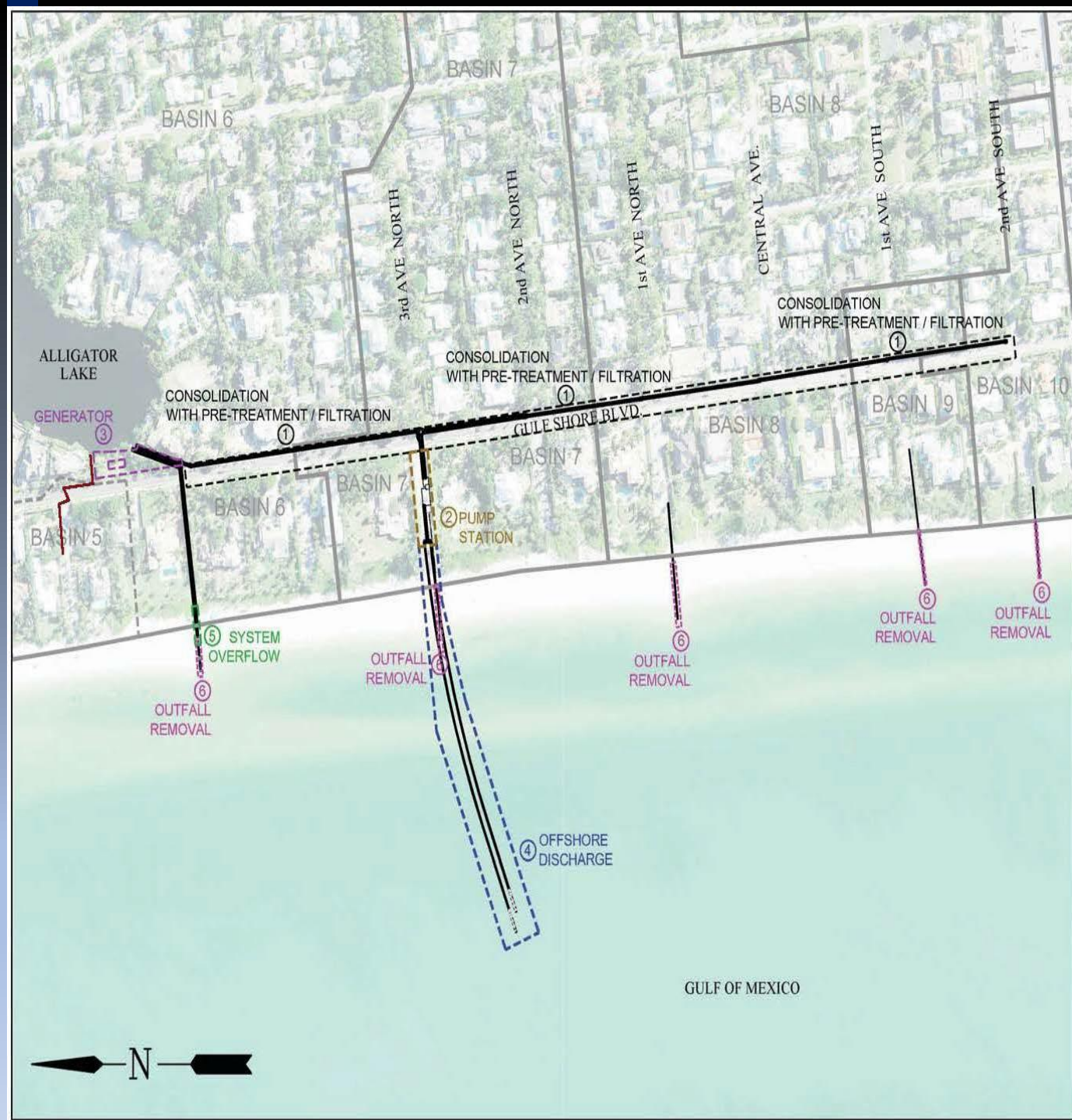
Stormwater Outfalls on Naples Beach



Outfalls: North Basin #2, #3, #4, South Basin #6, #7, #8, #9, #10 (City-8)

System Description

- Two (2) Pump Stations located at 8th Ave. N. and 3rd Ave. N. with (2) offshore directional drilled discharge lines per location reaching 1,500 feet offshore into the Gulf of Mexico
- Two (2) Diffusion System(s)
- Approx. (78) New Curb Inlet Catch Basins
- Installation of approx. 6,000 feet of Stormwater Pipe varying in size from 24 to 54 inches
- Treatment through Stormwater BMP's





Our Progress

- On April 29, 2024, the City of Naples initiated its Grant Application for TDC Funding.
- NTP was issued to Adept Public Relations on May 6, 2024, to initiate the impact study for further consideration.
- It was requested for the City to attend the May 21, 2024, TDC meeting to consider the project for possible funding.
- BBC recommended to approve reimbursement on July 9, 2024 (Item 16.B.5.), for the Tourism Impact Study completed by Adept.
- On August 8th, 2024, the City submitted its complete Grant Application for the \$10M.



Stormwater Project Benefits/Tourism Impacts Include:

- Removing all (8) unsafe and deteriorating Outfalls from the Naples Beaches (aesthetically pleasing)
- Improve Water Quality that exceeds the State's Minimum Standards (attract more beach goers)
- Provide Flood Protection (increase foot traffic)
- Increase the City's Resiliency within the work area of GSNB
- Increase the Storm Event level of Service from a 5-year storm event to a 25-year storm event (positive economic growth and stability)

Positive Impacts on Tourist Activities

- Attract more foot traffic to City beaches, parks, roads, and sidewalks within the project area.
- Boost to the local Naples economy from additional tourism spending.
- The removal of the outfalls will remedy the concern of many not knowing what is coming out of the outfalls and attract more beach goers/tourism within Naples.
- Perception of clean, safe and aesthetically pleasing beaches will increase the marketability of Naples and Collier County.
- Findings support that improving water quality, flood protection and increased resiliency will promote tourism in the Naples footprint.
- Overall, this project will have a positive impact on tourism and tourism related business/activities.



In closing, the City's Tourism Impact Study reveals that the project will not only improve Water Quality but boost tourism. The City of Naples respectfully requests the Tourism Development Council to approve funding in the amount of \$10M for the Naples Gulf of Mexico Beach Stormwater Outfall Pipe Removal & Water Quality Project.



EXECUTIVE SUMMARY

Recommendation to award Invitation to Bid (“ITB”) No. 24-8323 in the amount of \$1,178,500.00 to Earth Tech Enterprises, Inc. for the Collier County South Naples Emergency Berm truck haul & construction project, authorize the Chairman to sign the attached Agreement, and make a finding that this item promotes tourism. (Project 50280)

OBJECTIVE: To move forward with the completion of the final reach of County’s emergency berm construction in South Naples.

CONSIDERATIONS: On September 28, 2022, Hurricane Ian and its associated storm surge caused major damage to Collier County beaches, destroying much of the dunes and vegetation at the landward edge of the beach. The loss of the dunes left already damaged beachfront properties vulnerable to flooding from future tropical storms and winter cold fronts.

The last remaining 1.8 miles of the nearly 14 mile of the Collier Emergency Berm project in South Naples is scheduled to be constructed in April of 2025.

On December 13, 2024, the Procurement Services Division issued ITB No. 24-8323, “Collier 2024 South Naples Emergency Berm Truck Haul & Construction” Project, to two thousand five hundred eighty-five (2,585) vendors. The County posted the bid for thirty-one days and the County received two bids by the January 13, 2025, deadline as summarized below.

RESPONDENTS:					
Company Name	City	County	ST	Base Bid	Responsive/ Responsible
Earth Tech Enterprises, Inc.	Fort Myers	Lee	FL	\$1,178,500.00	Yes/Yes
Capling Leveling, Inc.	Labelle	Hendry	FL	\$1,391,916.58	Yes/Yes

Staff reviewed both bids and found the bidders responsive and responsible, with Earth Tech Enterprises, Inc. (“Earth Tech”) being the lowest responsive and responsible bidder. Earth Tech has been doing business in Florida since 2000 and has worked successfully on many County projects.

Staff and the engineering consultant, Aptim Environmental & Infrastructure, LLC (“APTIM”), determined Earth Tech’s low bid is fair and reasonable and recommends awarding Earth Tech the attached Agreement. APTIM evaluated references and found them acceptable to determine the Earth Tech’s experience on work of a similar magnitude judged within the last five years, its skill and business standing, and its ability to conduct the work as completely and timely as required under the terms of the Agreement. Earth Tech’s bid is approximately 38% *below* APTIM’s \$1,886,892.20 opinion of probable cost. Staff concluded that bidding was competitive and representative of market conditions. The bid tabulation, engineer’s letter of recommendation (“DELORA”), the Notice of Recommended Award (“NORA”), and Agreement are attached.

This item is consistent with the Infrastructure and Asset Management element of Collier County’s Strategic Plan by preparing for the impacts of natural disasters on our critical infrastructure and natural resources.

GROWTH MANAGEMENT IMPACT: This item is consistent with the Conservation and Coastal Management Element of the County’s Growth Management Plan.

ADVISORY COMMITTEE RECOMMENDATIONS: This item will be presented to the Coastal Advisory Committee (CAC) on February 13, 2025 and the Tourist Development Council (TDC) on

February 18, 2025.

LEGAL CONSIDERATIONS: This item is approved as to form and legality and requires majority vote for Board approval. —SRT

FISCAL IMPACT: Funding is available in TDC Beach Renourishment Fund (1105) within Hurricane Ian Project (50280), with potential for reimbursement from FEMA. The source of funding is tourist development taxes. The County will seek FEMA reimbursement of 90% of the costs associated with the construction of the emergency berm plus an additional 5% share from the State of Florida Emergency Management Services.

Additional funding is available through the Florida Department of Environmental Protection (FDEP) grant 23C03. FDEP cost-share funding will be requested if eligible at a future date to reimburse Collier County for a portion of the completed work.

RECOMMENDATION: To award ITB No. 24-8323, in the amount of \$1,178,500.00, to Earth Tech Enterprises, Inc. for the Collier County South Naples Emergency Berm truck haul & construction project, approve all necessary budget amendments, authorize the Chairman to sign the attached Agreement, and make a finding that this item promotes tourism. (Project 50280)

Prepared By: Larry Humphries Project Manager II., Coastal Zone Management, Capital Project Planning, Impact Fees, and Program Management Division

CONSTRUCTION AGREEMENT

THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, ("County" or "Owner") hereby contracts with **Earth Tech Enterprises, Inc.** ("Contractor") of **6180 Federal Court, Fort Myers, Florida, 33905**, a **Florida Profit Corporation**, authorized to do business in the State of Florida, to perform all work ("Work") in connection with **Collier 2024 South Naples Emergency Berm Truck Haul & Construction**, Invitation to Bid No. **#24-8323** ("Project"), as said Work is set forth in the Plans and Specifications prepared by **Aptim Environmental & Infrastructure, LLC**, the Engineer and/or Architect of Record ("Design Professional") and other Contract Documents hereafter specified.

Owner and Contractor, for the consideration herein set forth, agree as follows:

Section 1. Contract Documents.

A. The Contract Documents consist of this Agreement, the Exhibits described in Section 6 hereof, the Legal Advertisement, the Bidding Documents and any duly executed and issued addenda, Change Orders, Work Directive Changes, Field Orders, and amendments relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents including the Agreement sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement" and sometimes as the "Contract"). A copy of the Contract Documents shall be maintained by Contractor at the Project site at all times during the performance of the Work.

B. Owner shall furnish to the Contractor one reproducible set of the Contract Documents and the appropriate number of sets of the Construction Documents, signed and sealed by the Design Professional, as are reasonably necessary for permitting.

Section 2. Scope of Work.

Contractor agrees to furnish and pay for all management, supervision, financing, labor, materials, tools, fuel, supplies, utilities, equipment and services of every kind and type necessary to diligently, timely, and fully perform and complete in a good and workmanlike manner the Work required by the Contract Documents.

Section 3. Contract Amount.

In consideration of the faithful performance by Contractor of the covenants in this Agreement to the full satisfaction and acceptance of Owner, Owner agrees to pay, or cause to be paid, to Contractor the following amount (herein "Contract Amount"), in accordance with the terms of this Agreement: **One Million, One Hundred Seventy-Eight Thousand, Five Hundred Dollars (\$1,178,500.00)**.

Section 4. Bonds.

A. If applicable, the Contractor shall provide Performance and Payment Bonds, in the form prescribed in Exhibit B-1 and B-2, in the amount of 100% of the Contract Amount, plus any approved increase to the contract amount, the costs of which are to be paid by Contractor. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in

the State of Florida and otherwise acceptable to Owner; provided, however, the surety shall meet the requirements of the Department of the Treasury Fiscal Service, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies" circular. This circular may be accessed via the web at <https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html>. Should the Contract Amount be less than \$500,000, the requirements of Section 287.0935, F.S. shall govern the rating and classification of the surety.

B. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute at its cost and expense another bond and surety, both of which shall be subject to the Owner's approval.

Section 5. Contract Time and Liquidated Damages.

A. Time of Performance.

Time is of the essence in the performance of the Work under this Agreement. The "Commencement Date" shall be established in the written Notice to Proceed to be issued by the Project Manager, as hereinafter defined. Contractor shall commence the Work within five (5) calendar days from the Commencement Date. No Work shall be performed at the Project site prior to the Commencement Date. Any Work performed by Contractor prior to the Commencement Date shall be at the sole risk of Contractor. Contractor shall achieve Substantial Completion within **Thirty (30)** calendar days from the Commencement Date (herein "Contract Time"). The date of Substantial Completion of the Work (or designated portions thereof) is the date certified by the Design Professional when construction is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy or utilize the Work (or designated portions thereof) for the use for which it is intended, as more particularly defined herein at Section 16, Defined Terms. Contractor shall achieve Final Completion within **Thirty (30)** calendar days after the date the Punch List is delivered to the Contractor. Final Completion shall occur when the Agreement is completed in its entirety, is accepted by the Owner as complete and is so stated by the Owner as completed. As used herein and throughout the Contract Documents, the phrase "Project Manager" refers to the Owner's duly authorized representative and shall mean the Department Administrator or Division Director, as applicable, acting directly or through duly authorized representatives.

B. Liquidated Damages in General.

Owner and Contractor recognize that, since time is of the essence for this Agreement, Owner will suffer financial loss if Contractor fails to achieve Substantial Completion within the time specified above, as said time may be adjusted as provided for herein. In such event, the total amount of Owner's damages, will be difficult, if not impossible, to definitely ascertain and quantify. Should Contractor fail to achieve Substantial Completion within the number of calendar days established herein, Owner shall be entitled to assess, as liquidated damages, but not as a penalty, **One Thousand, Six Hundred Eighty-Five Dollars (\$1,685.00)** for each calendar day thereafter until Substantial Completion is achieved. Further, in the event Substantial Completion is reached, but the Contractor fails to reach Final Completion within the required time period, Owner shall also be entitled to assess, and Contractor shall be liable for all actual damages incurred by Owner as a result of Contractor failing to timely achieve Final Completion. The Project shall be deemed to be substantially completed on the date specified by the Project Manager (or at his/her direction, the Design Professional) as memorialized in the Certificate of Substantial Completion issued pursuant to the terms hereof, and as more particularly defined herein at Section 16, Defined Terms. Contractor hereby expressly waives and relinquishes any right which it may have to seek

to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the Owner's actual damages at the time of contracting if Contractor fails to Substantially or Finally Complete the Work within the required time periods.

C. Computation of Time Periods.

When any period of time is referenced by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday, or legal holiday.

D. Determination of Number of Days of Default.

For all contracts, the Owner will count default days in calendar days.

E. Right of Collection.

The Owner has the right to apply any amounts due Contractor under this Agreement or any other agreement between Owner and Contractor, as payment on such liquidated damages due under this Agreement in Owner's sole discretion. Notwithstanding anything herein to the contrary, Owner retains its right to liquidated damages due under this Agreement even if Contractor, at Owner's election and in its sole discretion, is allowed to continue and to finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.

F. Completion of Work by Owner.

In the event Contractor defaults on any of its obligations under the Agreement and Owner elects to complete the Work, in whole or in part, through another contractor or its own forces, the Contractor and its surety shall continue to be liable for the liquidated damages under the Agreement until Owner achieves Substantial and Final Completion of the Work, as more particularly defined herein at Section 16, Defined Terms. Owner will not charge liquidated damages for any delay in achieving Substantial or Final Completion as a result of any unreasonable action or delay on the part of the Owner.

G. Final Acceptance by Owner.

The Owner shall consider the Agreement complete when the Contractor has completed in its entirety all of the Work and the Owner has accepted all of the Work and notified the Contractor in writing that the Work is complete. Once the Owner has approved and accepted the Work, Contractor shall be entitled to final payment in accordance with the terms of the Contract Documents.

H. Recovery of Damages Suffered by Third Parties.

Contractor shall be liable to Owner to the extent Owner incurs damages from a third party as a result of Contractor's failure to fulfill all of its obligations under the Contract Documents. Owner's recovery of any delay related damages under this Agreement through the liquidated damages does not preclude Owner from recovering from Contractor any other non-delay related damages that may be owed to it arising out of or relating to this Agreement.

Section 6. Exhibits Incorporated.

Exhibits Incorporated: The following documents are expressly agreed upon, attached hereto, and made a part of this Agreement for Solicitation #24-8323 Collier 2024 South Naples Emergency Berm Truck Haul & Construction.

- Exhibit A-1: Contractor's Bid Schedule
- Exhibit A-2: Contractor's Bid Submittal Forms and Addendums
- Exhibit A-3: Contractor's List of Key Personnel Assigned to the Project
- Exhibit B-1: Payment Bond Form Not Applicable
- Exhibit B-2: Performance Bond Form Not Applicable
- Exhibit B-3: Insurance Requirements
- Exhibit C: Release and Affidavit Form
- Exhibit D-1: Contractor Application for Payment Form
- Exhibit D-2: Schedule of Values
- Exhibit D-3: Stored Materials Record
- Exhibit E-1: Change Order Form
- Exhibit E-2: Work Directive Form
- Exhibit F-1: Certificate of Substantial Completion Form
- Exhibit F-2: Certificate of Final Completion
- Exhibit F-3: Punch List Form
- Exhibit G-1: Final Payment Checklist
- Exhibit G-2: Warranty
- Exhibit H: General Terms and Conditions
- Exhibit I-1: Supplemental Terms and Conditions Applicable Not Applicable
- Exhibit I-2: Affidavit Regarding Labor and Services

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement for Solicitation #24-8323 Collier 2024 South Naples Emergency Berm Truck Haul & Construction. The complete contract documents, including Addendum with attachments, are available on the County's on-line bidding system, which the parties agree comprise the final integrated agreement executed by the parties.

Sections corresponding to any checked box () expressly apply to the terms of this Agreement and are available through the County's on-line bidding.

- Exhibit J: Technical Specifications
- Exhibit K: Permits
- Exhibit L: Standard Details
- Exhibit M: Plans and Specifications prepared by: **Aptim Environment & Infrastructure, LLC**
- Exhibit N: Environmental Health and Safety Requirements for Construction Projects

Section 7. Notices

A. All notices required or made pursuant to this Agreement by the Contractor to the Owner shall be deemed duly served if delivered by U.S. Mail or E-mail, addressed to the following:

Collier County Board of County Commissioners, FL
 c/o Transportation Engineering Division
 2885 Horseshoe Drive South
 Naples, FL 34104
 Attn: Larry Humphries, Project Manager II
 Phone: 239-252-4245

Email: Larry.Humphries@colliercountyfl.gov

B. All notices required or made pursuant to this Agreement by Owner to Contractor shall be made in writing and shall be deemed duly served if delivered by U.S. Mail, or E-mail, addressed to the following:

Earth Tech Enterprises, Inc.
6180 Federal Court
Fort Myers, FL 33905
Attn: Benjamin M. Figley
Phone: 239-774-1223
Email: cg@earthtechenterprises.com

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

Section 8. PUBLIC ENTITY CRIMES.

8.1 By its execution of this Contract, Construction Contractor acknowledges that it has been informed by Owner of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

Section 9. Modification.

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

Section 10. Successors and Assigns.

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

Section 11. Governing Law.

The Agreement shall be interpreted under, and its performance governed by the laws of the State of Florida.

Section 12. No Waiver.

The failure of the Owner to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

Section 13. Entire Agreement.

Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated, and superseded by the Agreement.

Section 14. Severability.

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

Section 15. Change Order Authorization.

The Project Manager shall have the authority on behalf of the Owner to execute all Change Orders and Work Directive Changes to the Agreement to the extent provided for under the Owner's Procurement Ordinance, as amended, and the terms of the Contract Documents.

Section 16. Construction.

- (i) Any doubtful or ambiguous language contained in this Agreement shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "fortius contra proferentum" (pursuant to which ambiguities in a contractual term which appears on its face to have been inserted for the benefit of one of the parties shall be construed against the benefited party) shall not be applied to the construction of this Agreement.
- (ii) Defined Terms: The following Defined Terms used in the Agreement shall be understood to be defined as expressly set forth below. Other terms referenced in the Agreement shall be understood as they may separately be defined herein or if not so defined shall be understood consistent with their natural and ordinary meaning.
 - (a) "Application for Payment" shall mean the form provided by the Owner that is to be used by the Contractor in requesting a progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.
 - (b) "Construction Project" shall mean a Project, funded by Owner funds that involves the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any real property owned or under the control of the Owner, which Work is being performed under a Construction Contract.
 - (c) "Construction Services" shall mean all labor and materials to be provided by Contractor in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. Construction Services also means Work.
 - (d) "Contract" or "Contract Documents" shall refer to those documents described in Section 1, subsection A of the Agreement.

- (e) "Defective" shall mean an adjective which, when modifying the Work, refers to Work that is unsatisfactory, faulty, deficient or otherwise does not conform to the Contract Documents.
- (f) "Department" shall mean the Department or Division initiating and managing the Project on behalf of the Owner.
- (g) "Director" shall mean the Director or Administrator of the Department or Division initiating and managing the Project on behalf of the Owner.
- (h) "Final Acceptance" shall mean acceptance of the Work by the Owner as evidenced by the signature of the Project Manager or Design Professional upon the Certificate of Final Completion form, Exhibit F-2. Final Acceptance shall be deemed to have taken place only if and when such signature is affixed to such certificate. The Certificate of Final Completion shall be signed only after the Project Manager has assurance by tests, inspection, or otherwise that all of the provisions of the Contract Documents have been carried out, including completion of the Punch List form, Exhibit F-3.
- (i) "Professional" or "Design Professional" shall mean the professional architectural/engineering firm designated to perform the design, Construction Engineering and Inspection ("CEI") services, by an existing agreement, or resident in-house Owner engineering services for the Work. At times, Owner staff may perform the design for the Work in-house and shall be considered the Professional in relation to the Work or a particular portion of the Work.
- (j) "Project" shall mean the total construction, of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
- (k) "Project Manager" shall mean an individual employed by the Owner and assigned to manage and administer the Project which is the subject of the Contract Documents.
- (l) "Proper Invoice" shall mean an invoice that conforms with all statutory requirements and all requirements specified in the Contract Documents.
- (m) "Punch List" shall mean the approved list of incomplete and/or deficient Work that shall be completed by the Contractor after Substantial Completion but before the Final Acceptance can be certified by the Project Manager. The Punch List enumerates the items required to render complete, satisfactory and acceptable all Work by the Contractor. The Punch List is developed by the Contractor, Owner and Professional (if any) in accordance with the provisions of the Contract and within the time frames required therein. The Punch List essentially includes items of a minor nature; major items must be completed before Substantial Completion and cannot be considered to be Punch List work.
- (n) "Schedule of Values" shall mean a schedule showing all activities of the Work subdivided into component parts in sufficient detail to serve as the basis for measuring quantities in place and/or calculating amounts for progress payments during construction. The Schedule of Values shall be satisfactory in form and substance to the Project Manager.

- (o) "Substantial Completion" shall mean the status of completion of the Work which, in the opinion of the Project Manager as evidenced by a definitive Certificate of Substantial Completion, is complete in accordance with the Contract Documents, except for minor outstanding items listed on the Punch List. Substantial Completion includes, but is not limited to, the following occurring: (1) the Work can be safely utilized for the purposes for which it was intended; (2) all regulatory agency requirements are satisfied, including occupancy permits, operating certificates and similar releases, (3) all operational testing has successfully occurred; (4) all required training has successfully occurred; (5) all close-out documents (such as as-built drawings, certifications, warranties, guaranties, test reports, test logs, operational manuals, etc.) have been provided by the Contractor and accepted by the Owner, and permit acceptance by permitting agencies, if applicable, see Exhibit F-1.
- (p) "Work" shall mean the Work to be performed under this Agreement and shall consist of furnishing all tools, equipment, materials, supplies, and manufactured articles and for furnishing all transportation and services, including fuel, power, water, and essential communications, and for the performance of all labor, work, or other operations required for the fulfillment of the Agreement in strict accordance with the Specifications, schedules, Drawings, and other Contract Documents as herein defined, all of which are made a part hereof, and including such detailed sketches as may be furnished by the Professional from time to time during construction in explanation of said Contract Documents. The Work shall be complete, and all work, materials, and services not expressly shown or called for in the Contract Documents, which may be necessary for the complete and proper construction of the Work in good faith, shall be performed, furnished, and installed by the Contractor as though originally so specified or shown, at no increase in cost to the Owner.
- (q) "Written Directive" shall mean a written directive and also referred to as work directive, as required by in Exhibit H, Section 10.1, in the form that appears in Exhibit E-2 that is issued to a Contractor from Owner in instances where the parties cannot agree on price and/or costs associated with work arising from differing, unforeseen or emergency site conditions and the work in question is part of the "critical path" of the contract schedule. A written directive should ultimately be followed up with an agreed upon Change Order. A verbal Work Directive may only be issued in extraordinary emergencies when necessary to protect and promote the public interest, which shall be followed up with a written Work Directive within five (5) business days.

Section 17. Order of Precedence

In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Construction Agreement and the General Terms and Conditions. To the extent any conflict in the terms of the Contract Documents including the Owner's Board approved Executive Summary cannot be resolved by application of the Supplemental Conditions, if any, or the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict or costly obligation under the Contract Documents upon the Contractor at Owner's discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below.

TWO WITNESSES:

FIRST WITNESS

Print Name

SECOND WITNESS

Print Name

CONTRACTOR:

Earth Tech Enterprises, Inc.

By: _____

Print Name and Title

Date: _____

ATTEST:

Crystal K. Kinzel, Clerk of Courts
& Comptroller

OWNER:

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY FLORIDA

BY: _____

BY: Burt L. Saunders, Chairman

Date: _____

Approved as to Form and Legality:

County Attorney

Print Name



EXHIBIT A-1: CONTRACTOR'S BID SCHEDULE

(FOLLOWING THIS PAGE)

EXHIBIT A-2: CONTRACTOR'S BID SUBMITTAL FORMS AND ADDENDUM

(FOLLOWING THIS PAGE)

EXHIBIT A-3: CONTRACTOR'S KEY PERSONNEL ASSIGNED TO THE PROJECT

<u>Name</u>	<u>Personnel Category</u>
Christopher Gehring	Construction Superintendent
Sophie Luyckx	Project Manager

EXHIBIT B-1: PUBLIC PAYMENT BOND

(Following This Page)

EXHIBIT B-2: PUBLIC PERFORMANCE BOND

(Following This Page)

EXHIBIT B-3: INSURANCE REQUIREMENTS

(Following This Page)

EXHIBIT C
RELEASE AND AFFIDAVIT FORM

(Template Form Following This Page)

EXHIBIT D-1
CONTRACTOR APPLICATION FOR PAYMENT FORM

(Template Form Following This Page)

EXHIBIT D-2
SCHEDULE OF VALUES

(Template Form Following This Page)

EXHIBIT D-3
STORED MATERIALS

(Template Form Following This Page)

EXHIBIT E-1: CHANGE ORDER

(Template Form Following This Page)

EXHIBIT E-2:
WORK DIRECTIVE FORM

(Template Form Following This Page)

EXHIBIT F-1
CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

(Template Form Following This Page)

EXHIBIT F-2
CERTIFICATE OF FINAL COMPLETION FORM

(Template Form Following This Page)

EXHIBIT F-3
PUNCH LIST FORM

(Template Form Following This Page)

EXHIBIT G-1
FINAL PAYMENT CHECKLIST

(Template Form Following This Page)

EXHIBIT G-2
WARRANTY

(Template Form Following This Page)

EXHIBIT H: GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS.

1.1 It is the intent of the Contract Documents to describe a functionally complete Project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization, or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in effect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2 If before or during the performance of the Work Contractor discovers a conflict, error or discrepancy in the Contract Documents, Contractor immediately shall report same to the Project Manager in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Project Manager; said interpretation or clarification from the Project Manager may require Contractor to consult directly with Design Professional or some other third party, as directed by Project Manager. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing any portion of the Work.

1.3 Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications or other Contract Document provisions, Contractor shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Contractor, as determined by the Project Manager. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

2. INVESTIGATION AND UTILITIES.

2.1 Subject to Section 2.3 below, Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the project area as a whole; topography and ground surface conditions; nature and quantity of the surface materials to be encountered; subsurface conditions; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Contractor to acquaint itself with any applicable conditions shall not relieve Contractor from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Contractor shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Sub-Section 2.2 as the "Utilities". Contractor shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Contractor shall schedule and coordinate its Work around any such relocation or temporary service interruption. Contractor shall be responsible for properly shoring, supporting, and protecting all Utilities at all times during the course of the Work. The Contractor is responsible for coordinating all other utility work so as to not interfere with the prosecution of the Work (except those utilities to be coordinated by the Owner as may be expressly described elsewhere in the Contract Documents).

2.3 Notwithstanding anything in the Contract Documents to the contrary, if conditions are encountered at the Project site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, and which reasonably should not have been discovered by Contractor as part of its scope of site investigative services required pursuant to the terms of the Contract Documents, then Contractor shall provide Owner with prompt written notice thereof before conditions are disturbed and in no event later than three (3) calendar days after first observance of such conditions. Owner and Design Professional shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will acknowledge and agree to an equitable adjustment to Contractor's compensation or time for performance, or both, for such Work. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or not of an unusual nature or should have been discovered by Contractor as part of its investigative services, and that no change in the terms of the Agreement is justified, Owner shall so notify Contractor in writing, stating its reasons. Claims by Contractor in opposition to such determination by Owner must be made within seven (7) calendar days after Contractor's receipt of Owner's written determination notice. If Owner and Contractor cannot agree on an adjustment to Contractor's cost or time of performance, the dispute resolution procedure set forth in the Contract Documents shall be complied with by the parties.

3. SCHEDULE.

3.1 The Contractor, within ten (10) calendar days after the Board's award of the Agreement, shall prepare and submit to Project Manager, for their review and approval, a progress schedule for the Project (herein "Progress Schedule"). The Progress Schedule shall relate to all Work required by the Contract Documents and shall utilize the Critical Path method of scheduling and shall provide for expeditious and practicable execution of the Work within the Contract Time. The Progress Schedule shall indicate the dates for starting and completing the various stages of the Work.

3.2 The Progress Schedule shall be updated monthly by the Contractor. All monthly updates to the Progress Schedule shall be subject to the Project Manager's review and approval. Contractor shall submit the updates to the Progress Schedule with its monthly Applications for Payment noted below. The Project Manager's review and approval of the submitted Progress Schedule updates shall be a condition precedent to the Owner's obligation to pay Contractor.

3.3 All work under this Agreement shall be performed in accordance with the requirements of all Collier County Noise Ordinances then in effect. Unless otherwise specified, work will generally be

limited to the hours of 7 a.m. to 7 p.m., Monday through Saturday. No work shall be performed outside the specified hours without the prior approval of the Project Manager.

4. PROGRESS PAYMENTS.

4.1 At least ten (10) days prior to submitting the monthly Application for Payment, the Contractor shall submit to the Project Manager a final Schedule of Values. The Schedule of Values shall be satisfactory in form and substance to the Project Manager and shall subdivide the Work into component parts in sufficient detail to serve as the basis for measuring quantities in place and calculating amounts for the Contractor's monthly progress payments during construction. Further, it shall include the list of its Subcontractors and materialmen submitted with its Bid showing the work and materials involved and the dollar amount of each subcontract and purchase order. Contractor acknowledges and agrees that any modifications to the list of Subcontractors submitted with Contractor's Bid and any subsequently identified Subcontractors are subject to Owner's prior written approval.

Unsupported or unreasonable allocation of the Contract Price to any one activity shall be justification for rejection of the Schedule of Values. The Contractor shall not submit an unbalanced Schedule of Values which provides for overpayment to the Contractor on activities that would be performed first. The Schedule of Values shall be revised and resubmitted until acceptable to the Project Manager. Once the schedule has been accepted by the Project Manager, the Owner reserves the right (at its option) throughout the Contract to require that the Contractor honor a particular price contained in the Schedule of Values, if the activity pertaining to it is being deleted or modified. Upon approval of the Schedule of Values by the Project Manager, it shall be incorporated into the form of Application for Payment attached to the Agreement as Exhibit D and shall be used as the basis for the Contractor's monthly Applications for Payment. The schedule shall be updated and submitted each month along with a completed copy of the Application for Payment form signed by the Contractor's authorized representative.

4.2 The first Application for Payment shall be submitted no earlier than thirty (30) days after the Commencement Date, and monthly thereafter, but not more often than once a month or prior to substantial completion being met. Notwithstanding anything herein to the contrary, if approved by Owner in its sole discretion, Contractor may submit its invoice for any required Payment and Performance Bonds prior to the first Application of Payment provided that Contractor has furnished Owner certified copies of the receipts evidencing the premium paid by Contractor for the bonds.

4.3 Unless expressly approved by Owner in advance and in writing, said approval at Owner's sole discretion, Owner is not required to make any payment for materials or equipment that have not been incorporated into the Project. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the Owner in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which shall be subject to the Owner's satisfaction. Thereafter, with each Application for Payment, Contractor also shall complete and submit to Owner as part of its Application for Payment, the Stored Materials Record form attached hereto and made a part hereof as Exhibit D-3.

4.4 Contractor shall submit its monthly Application for Payment to the Project Manager or his or her designee, as directed by Owner (which designee may include the Design Professional). Within twenty (20) business days after the date of each Application for Payment is stamped as received, and within the timeframes set forth in Section 218.735 F.S., the Project Manager, or Design Professional, shall either: (1) Indicate its approval of the requested payment; (2) indicate its approval of only a portion of the requested payment, stating in writing its reasons therefor; or (3) return the Application for Payment to the Contractor indicating, in writing, the reason for refusing to approve payment. Payments of proper invoices shall be processed in accordance with Section 218.735, F.S. and the terms of the Contract Documents.

4.5 In the event of a total denial by Owner and return of the Application for Payment by the Project Manager, the Contractor may make the necessary corrections and re-submit the Application for Payment. The Owner shall, within ten (10) business days after the Application for Payment is stamped and received and after Project Manager approval of an Application for Payment, pay the Contractor the amounts so approved.

4.6 Owner shall withhold retainage on the gross amount of each monthly progress payment in the amount of five percent (5%), as permitted by Section 255.078, Florida Statutes. The foregoing does not prohibit Owner from withholding retainage at a rate less than five percent (5%) of each monthly progress payment as otherwise allowable under Section 255.078, Florida Statutes. Any reduction in retainage below the maximum amount set forth in Section 255.078, Florida Statutes shall be at the sole discretion of the Owner. Such retainage shall be accumulated and not released to Contractor until final payment is due unless otherwise agreed to by the Owner in accordance with Florida Statute 255.078. Any interest earned on retainage shall accrue to the benefit of the Owner.

4.7 Monthly payments to Contractor shall in no way imply approval or acceptance of Contractor's Work.

4.8 Each Application for Payment, subsequent to the first pay application, shall be accompanied by a Release and Affidavit, in the form attached as Exhibit C, acknowledging Contractor's receipt of payment in full for all materials, labor, equipment and other bills that are then due and payable by Owner with respect to the current Application for Payment. Further, to the extent directed by Owner and in Owner's sole discretion, Contractor shall also submit a Release and Affidavit from each Subcontractor, sub-subcontractor, or supplier in the form attached as Exhibit C acknowledging that each Subcontractor, sub-subcontractor, or supplier has been paid in full through the previous month's Application for Payment. The Owner shall not be required to make payment until and unless these affidavits are furnished by Contractor.

4.9 Contractor agrees and understands that funding limitations exist and that the expenditure of funds must be spread over the duration of the Project at regular intervals based on the Contract Amount and Progress Schedule.

4.10 Notwithstanding anything in the Contract Documents to the contrary, Contractor acknowledges and agrees that in the event of a dispute concerning payments for Work performed under this Agreement, Contractor shall continue to perform the Work required of it under this Agreement pending resolution of the dispute provided that Owner continues to pay Contractor all amounts that Owner does not dispute are due and payable.

4.11 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-

payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this agreement.

4.12 The Owner may, at its discretion, use VISA/MASTER card credit network as a payment vehicle for goods and/or services purchased as a part of this contract. The Owner may not accept any additional surcharges (credit card transaction fees) as a result of using the Owner's credit card for transactions relating to this agreement.

5. PAYMENTS WITHHELD.

5.1 The Project Manager may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections that reveal non-compliance with the Contract Documents. The Project Manager may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of:

(a) Defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Contractor; or (g) any other material breach of the Contract Documents by Contractor.

5.2 If any conditions described in 5.1. are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense. Provided however, in the event of an emergency, Owner shall not be required to provide Contractor any written notice prior to rectifying the situation at Contractor's expense. Owner also may offset against any sums due Contractor the amount of any liquidated or non-liquidated obligations of Contractor to Owner, whether relating to or arising out of this Agreement or any other agreement between Contractor and Owner.

5.3 In instances where the Contractor may owe debts (including, but not limited to taxes or other fees) to Collier County and the contractor has not satisfied nor made arrangement to satisfy these debts, the County reserves the right to off-set the amount owed to the County by applying the amount owed to the vendor or contractor for services performed or for materials delivered in association with a contract.

5.4 If a subcontractor is a related entity to the Contractor, then the Contractor shall not mark-up the subcontractor's fees. A related entity shall be defined as any Parent or Subsidiary of the Company and any business, corporation, partnership, limited liability company or other entity in which the Company or a Parent or a Subsidiary of the Company holds any ownership interest, directly or indirectly.

6. FINAL PAYMENT.

6.1 Owner shall make Final Payment to Contractor in accordance with Section 218.735, F.S. and the terms of the Contract Documents after the Work is finally inspected and accepted by Project Manager as set forth with Section 20.1 herein, provided that Contractor first, and as an explicit condition precedent to the accrual of Contractor's right to Final Payment, shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit form attached as Exhibit C, as well as, a duly executed copy of the Surety's consent to Final Payment and such other

documentation that may be required by the Contract Documents and the Owner. Prior to release of Final Payment and final retainage, the Contractor's Representative and the Project Manager shall jointly complete the Final Acceptance and Final Payment Checklist, a representative copy of which is attached to this Agreement as Exhibit G.

6.2 Contractor's acceptance of final payment shall constitute a full waiver of any and all claims by Contractor against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing in accordance with the requirements of the Contract Documents and identified by Contractor as unsettled in its final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Design Professional or Project Manager at the time of final inspection.

7. SUBMITTALS AND SUBSTITUTIONS.

7.1 Contractor shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Contractor shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

7.2 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Owner if sufficient information is submitted by Contractor to allow the Owner to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Owner from anyone other than Contractor and all such requests must be submitted by Contractor to Project Manager within thirty (30) calendar days after Notice to Proceed is received by Contractor, unless otherwise mutually agreed in writing by Owner and Contractor.

7.3 If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Project Manager for acceptance thereof, certifying that the proposed substitute shall adequately perform the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager in evaluating the proposed substitute. The Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

7.4 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if Contractor submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager shall be the same as those provided herein for substitute materials and equipment.

7.5 The Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute and, if need be, to consult with the Design Professional. No substitute will be ordered, installed or utilized without the Project Manager's prior written acceptance which shall be evidenced by a Change Order, a Work Directive Change, a Field Order or an approved Shop Drawing. The Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Project Manager will record time required by the Project Manager and the Project Manager's consultants in evaluating substitutions proposed by Contractor and making changes in the Contract Documents occasioned thereby. Whether or not the Owner accepts a proposed substitute, Contractor shall reimburse Owner for the charges of the Design Professional and the Design Professional's consultants for evaluating each proposed substitute.

8. DAILY REPORTS, SIGNED AND SEALED AS-BUILTS AND MEETINGS.

8.1 Unless waived in writing by Owner, Contractor shall complete and submit to Project Manager on a weekly basis a daily log of the Contractor's work for the preceding week in a format approved by the Project Manager. The daily log shall document all activities of Contractor at the Project site including, but not limited to, the following:

8.1.1 Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;

8.1.2 Soil conditions which adversely affect the Work;

8.1.3 The hours of operation by Contractor's and Sub-Contractor's personnel;

8.1.4 The number of Contractor's and Sub-Contractor's personnel present and working at the Project site, by subcontract and trade;

8.1.5 All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);

8.1.6 Description of Work being performed at the Project site;

8.1.7 Any unusual or special occurrences at the Project site;

8.1.8 Materials received at the Project site;

8.1.9 A list of all visitors to the Project

8.1.10 Any problems that might impact either the cost or quality of the Work or the time of performance.

The daily log shall not constitute nor take the place of any notice required to be given by Contractor to Owner pursuant to the Contract Documents.

8.2 Contractor shall maintain in a safe place at the Project site one record copy of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, Change Orders, Work Directive Changes and Field Orders, as well as all written interpretations and clarifications issued by the Design Professional, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit, and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean, and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the Project Manager or Design Professional for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to Project Manager by Contractor for Owner.

8.3 Contractor shall keep all records and supporting documentation, which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, or such longer period as may be required by law, whichever is later, pursuant to Florida Public Records Law Chapter 119 and comply with specifically those contractual requirements in 119.0701(2)(a)-(b) as follows:

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:

**Division of Communications, Government and Public Affairs
3299 Tamiami Trail East, Suite 102
Naples, FL 34112-5746
Telephone: (239) 252-8999
Email: PublicRecordRequest@colliercountyfl.gov**

The Contractor must specifically comply with the Florida Public Records Law to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
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 contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, 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 contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

9. CONTRACT TIME AND TIME EXTENSIONS.

9.1 Contractor shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission by Contractor. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents, and the coordination of Owner's suppliers and contractors as set forth in Paragraph 12.2. herein.

9.2 Should Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Contractor, and not due to its fault or neglect, including but not restricted to acts of Nature or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes or lockouts, Contractor shall notify the Owner in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Contractor may have had to request a time extension.

9.3 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which Owner may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from Owner. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against Owner will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion.

9.4 In no event shall any approval by Owner authorizing Contractor to continue performing Work under this Agreement or any payment issued by Owner to Contractor be deemed a waiver of any right or claim Owner may have against Contractor for delay damages hereunder.

10. CHANGES IN THE WORK.

10.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of Owner in the form of a Work Directive, Exhibit E-2, and Owner shall not be liable to the Contractor for any increased compensation without such

written order. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Any alleged changes must be approved by Owner in writing prior to starting such items. Owner will not be responsible for the costs of any changes commenced without Owner's express prior written approval. Failure to obtain such prior written approval for any changes will be deemed: (i) a waiver of any claim by Contractor for such items and (ii) an admission by Contractor that such items are in fact not a change but rather are part of the Work required of Contractor hereunder.

10.2 A Change Order, in the form attached as Exhibit E to this Agreement, shall be issued and executed promptly after an agreement is reached between Contractor and Owner concerning the requested changes. Contractor shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount and Contract Time shall be adjusted in the Change Order in the manner as Owner and Contractor shall mutually agree.

10.3 If Owner and Contractor are unable to agree on a Change Order for the requested change, Contractor shall, nevertheless, promptly perform the change as directed by Owner in a written Work Directive. In that event, the Contract Amount and Contract Time shall be adjusted as directed by Owner. If Contractor disagrees with the Owner's adjustment determination, Contractor must make a claim pursuant to Section 11 of these General Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

10.4 In the event a requested change results in an increase to the Contract Amount, the amount of the increase shall be limited to the Contractor's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Contractor for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Contractor and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above. No markup shall be placed on sales tax, shipping or subcontractor markup.

10.5 Owner, or any duly authorized agents or representatives of the County, shall have the right to conduct an audit of Contractor's books and records to verify the accuracy of the Contractor's claim with respect to Contractor's costs associated with any Payment Application, Change Order or Work Directive Change.

10.6 The Project Manager shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the Contractor.

10.7 Any modifications to this Contract shall be in compliance with the County Procurement Ordinance, as amended and the terms of the Contract Documents in effect at the time such modifications are authorized.

11. CLAIMS AND DISPUTES.

11.1 Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and

matters in question between Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

11.2 Claims by the Contractor shall be made in writing to the Project Manager within forty-eight (48) hours from when the Contractor knew or should have known of the event giving rise to such Claim or else the Contractor shall be deemed to have waived the Claim. Written supporting data shall be submitted to the Project Manager within fifteen (15) calendar days after the occurrence of the event, unless the Owner grants additional time in writing, or else the Contractor shall be deemed to have waived the Claim. All Claims shall be priced in accordance with the provisions of Subsection 10.4.

11.3 The Contractor shall proceed diligently with its performance as directed by the Owner, regardless of any pending Claim, action, suit, or administrative proceeding, unless otherwise agreed to by the Owner in writing. Owner shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

12. OTHER WORK.

12.1 Owner may perform other work related to the Project at the site by Owner's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work. If Contractor believes that such performance will involve additional expense to Contractor or require additional time, Contractor shall send written notice of that fact to Owner and Design Professional within forty-eight (48) hours of being notified of the other work. If the Contractor fails to send the above required forty-eight (48) hour notice, the Contractor will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

12.2 Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or if Owner is performing the additional work with Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Project Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

12.3 If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Project Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work.

13. INDEMNIFICATION AND INSURANCE.

13.1 To the maximum extent permitted by Florida law, the Contractor shall defend, indemnify, and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses

and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement.

13.2 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, Owner, and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Owner or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

13.3 Contractor shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in the Insurance and Bonding Requirements form Exhibit B-3 to the Agreement. Further, the Contractor shall at all times comply with all of the terms, conditions, requirements and obligations set forth under Exhibit B-3.

14. COMPLIANCE WITH LAWS.

14.1 Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Project Manager in writing. To the extent any law, rule, regulation, code, statute, or ordinance requires the inclusion of certain terms in this Agreement in order for this Agreement to be enforceable, such terms shall be deemed included in this Agreement. Notwithstanding anything in the Contract Documents to the contrary, it is understood and agreed that in the event of a change in any applicable laws, ordinances, rules or regulations subsequent to the date this Agreement was executed that increases the Contractor's time or cost of performance of the Work, Contractor is entitled to a Change Order for such increases, except to the extent Contractor knew or should have known of such changes prior to the date of this Agreement.

14.2 By executing and entering into this agreement, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this agreement and the County shall have the discretion to unilaterally terminate this agreement immediately.

14.3 Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States, including the requirements set forth in Florida Statute, §448.095.

The Employment Eligibility Verification System (E-Verify) operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility of workers in the United States; it is not a substitute for any other employment eligibility verification requirements. The program will be used for Collier County formal Invitations to Bid (ITB) and Request for Proposals (RFP) including professional services and construction services.

Contractors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, at the time of the submission of the Contractor's/bidder's proposal. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company. Contractors are also required to provide the Collier County Procurement Services Division an executed affidavit certifying they shall comply with the E-Verify Program. The affidavit is attached to the solicitation documents. **If the Bidder/Contractor does not comply with providing both the acceptable E-Verify evidence and the executed affidavit the bidder's / Contractor's proposal may be deemed non-responsive.**

Additionally, Contractors shall require all subcontracted Contractors to use the E-Verify system for all purchases not covered under the "Exceptions to the program" clause above.

For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>. It shall be the Contractor's responsibility to familiarize themselves with all rules and regulations governing this program.

Contractor acknowledges, and without exception or stipulation, any firm(s) receiving an award shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended and with the provisions contained within this affidavit. Failure by the awarded firm(s) to comply with the laws referenced herein or the provisions of this affidavit shall constitute a breach of the award agreement and the County shall have the discretion to unilaterally terminate said agreement immediately.

15. CLEANUP AND PROTECTIONS.

15.1 Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project site clean and ready for occupancy by Owner.

15.2 Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Contractor from damage during the prosecution of the Work. Subject to the Section 2.3 above, any such improvements so damaged shall be restored by Contractor to the condition equal to that existing at the time of Contractor's commencement of the Work.

16. ASSIGNMENT.

16.1 Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the Owner's consent, shall be void. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward Owner.

17. PERMITS, LICENSES AND TAXES.

17.1 Pursuant to Section 218.80, F.S., Owner will pay for all Collier County permits and fees, including license fees, permit fees, impact fees or inspection fees applicable to the Work through an internal budget transfer(s). Contractor is not responsible for paying for permits issued by Collier County, but Contractor is responsible for acquiring all permits. Owner may require the Contractor to deliver internal budget transfer documents to applicable Collier County agencies when the Contractor is acquiring permits. Owner will not be obligated to pay for any permits obtained by Subcontractors.

17.2 All permits, fees and licenses necessary for the prosecution of the Work which are not issued by Collier County shall be acquired and paid for by the Contractor.

17.3 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

18. TERMINATION FOR DEFAULT.

18.1 Contractor shall be considered in material default of the Agreement and such default shall be considered cause for Owner to terminate the Agreement, in whole or in part, as further set forth in this Section, if Contractor: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the Project Manager or as provided for in the approved Progress Schedule; or (3) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (4) discontinues the prosecution of the Work; or (5) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (6) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (7) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (8) makes an assignment for the benefit of creditors; or (9) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (10) materially breaches any other provision of the Contract Documents.

18.2 Owner shall notify Contractor in writing of Contractor's default(s). If Owner determines that Contractor has not remedied and cured the default(s) within seven (7) calendar days following receipt by Contractor of said written notice or such longer period of time as may be consented to by Owner in writing and in its sole discretion, then Owner, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Contractor's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Contractor, take assignments of any of Contractor's subcontracts and purchase orders, and complete all or any portion of Contractor's Work by whatever means, method or agency which Owner, in its sole discretion, may choose.

18.3 If Owner deems any of the foregoing remedies necessary, Contractor agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All moneys expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including Design Professional and attorneys' fees) or damages incurred by Owner incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Contractor agrees to pay promptly to Owner on demand the full amount of such excess, including costs of collection, attorneys' fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the Owner to complete the Work, such excess

shall be paid to the Contractor. The amount to be paid to the Contractor or Owner, as the case may be, shall be approved by the Project Manager, upon application, and this obligation for payment shall survive termination of the Agreement.

18.4 The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by Owner in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefore or re-letting the Work, and in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

18.5 If, after notice of termination of Contractor's right to proceed pursuant to this Section, it is determined for any reason that Contractor was not in default, or that its default was excusable, or that Owner is not entitled to the remedies against Contractor provided herein, then the termination will be deemed a termination for convenience and Contractor's remedies against Owner shall be the same as and limited to those afforded Contractor under Section 19 below.

18.6 In the event (i) Owner fails to make any undisputed payment to Contractor within thirty (30) days after such payment is due or Owner otherwise persistently fails to fulfill some material obligation owed by Owner to Contractor under this Agreement, and (ii) Owner has failed to cure such default within fourteen (14) days of receiving written notice of same from Contractor, then Contractor may stop its performance under this Agreement until such default is cured, after giving Owner a second fourteen (14) days written notice of Contractor's intention to stop performance under the Agreement. If the Work is so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the Contractor or its Subcontractors or their agents or employees or any other persons performing portions of the Work under contract with the Contractor or any Subcontractor, the Contractor may terminate this Agreement by giving written notice to Owner of Contractor's intent to terminate this Agreement. If Owner does not cure its default within fourteen (14) days after receipt of Contractor's written notice, Contractor may, upon fourteen (14) additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work performed through the termination date, but in no event shall Contractor be entitled to payment for Work not performed or any other damages from Owner.

19. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION.

19.1 Owner shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Contractor. In the event of such termination for convenience, Contractor's recovery against Owner shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Contractor shall not be entitled to any other or further recovery against Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

19.2 Owner shall have the right to suspend all or any portions of the Work upon giving Contractor not less than two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Contractor's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Contractor be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds six (6) months, the Contractor shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

20. COMPLETION.

Substantial Completion and Development of the Punch List

20.1 Substantial Completion is as defined in the Defined Terms section of this Agreement. When the Contractor believes Substantial Completion has been achieved, it shall certify in writing to the Project Manager that the Project is Substantially Complete in accordance with the Contract Documents and request the Project Manager to inspect the Work and to issue a Certificate of Substantial Completion. Prior to making such a request the Contractor must:

- a) Complete all Work necessary for the safe, proper and complete use or operation of the Project as intended, including: all regulatory agency requirements are satisfied, including occupancy permits; operating certificates and similar releases; all operational testing has successfully occurred; all required training has successfully occurred; all close-out documents (such as as-built drawings, certifications, warranties, guaranties, test reports test logs, operational manuals, etc.) have been provided by Contractor and accepted by Owner.
- b) Prepare a Contractor-generated punch list (i.e., a list of all items required to render the Project complete, satisfactory, and acceptable, for submission with the request for inspection and issuance of a certificate of Substantial Completion), which shall include and list separately the estimated cost to complete each remaining unfinished item included on the list with an explanation as to the basis for those costs, substantiated by the Schedule of Values, subject to the Owner's final review and approval as stated below.
- c) Upon receipt of the request from the Contractor, the Project Manager, assisted by the Professional, if any, and other Owner personnel, as appropriate, shall review the request, the Work and the Contractor-generated Punch List to determine whether the Work is ready for Substantial Completion inspection. If this review fails to support Substantial Completion inspection, the Project Manager shall so notify the Contractor citing the reasons for rejection. If the Project Manager and Professional (if any) determine the Work is ready for Substantial Completion inspection, the following procedures will be followed:
 1. The Project Manager will, within a reasonable time, schedule, and conduct inspection(s) of the Work with the Professional (if any), other Owner personnel as required, and the Contractor for the purpose of formally reviewing the status of completion of the Work, the readiness of the Project for use and the Contractor-generated Punch List. A copy of the Contractor-generated punch list will be provided to all participants and any additional items noted during the inspection will be added to the list. The Project Manager, the Professional, their representatives and other Owner representatives will review the Work and the Contractor-generated punch list to assure all deficiencies are noted on a final document (Exhibit F-3 Punch List Form). The Punch List must include all items required to render the Project complete, satisfactory and acceptable. If Project Manager and Contractor disagree on whether an item belongs on the Punch List, the Project Manager has the final say on whether the item is included or not. The Punch List shall be finalized and issued to the Contractor by the Owner within the time frames indicated below.

2. If upon completion of the inspection(s) the Owner does not consider the Project Substantially Complete, the Project Manager will notify the Contractor in writing giving reasons why the Project is not Substantially Complete.
3. If, upon completion of the inspection(s), the Owner considers the Project Substantially Complete, the Project Manager shall prepare a Certificate of Substantial Completion to establish the date for Substantial Completion as the date of the completed inspection(s). The Certificate of Substantial Completion shall be approved by the Owner upon the signature of both the Project Manager and the Professional and shall be issued to the Contractor. The Certificate shall fix the date of Substantial Completion.
4. Substantial Completion cannot occur until all conditions necessary for safe and proper use, occupancy, maintenance, and operations are in place.

20.2 Time Frames for Issuance of the Punch List

- (a) The Owner shall issue the Punch List to the Contractor within the time frames described below, provided that the Contractor has completed its obligations in providing a proper contractor-generated Punch List prior to the Substantial Completion inspection.
- (b) For construction estimated to cost less than ten million dollars (\$10,000,000.00), the Punch List must be finalized within thirty (30) Days after the Substantial Completion date.
- (c) For construction projects estimated to cost more than ten million dollars (\$10,000,000.00), the Punch List must be finalized and issued within forty-five (45) Days after the Substantial Completion date.
- (d) For construction projects involving more than one building or structure or multiple phases, the Punch List must be prepared for each building, structure or phase within thirty (30) Days of the Substantial Completion date of a particular building, structure or phase if it is estimated to cost less than ten million dollars (\$10,000,000.00) or within forty-five (45) Days if it is estimated to cost more than ten million dollars (\$10,000,000.00).
- (e) If the development of the Punch List takes the full amount of time designated (or a portion thereof) and includes a tentative punch-list based upon the above dollar amount thresholds, the delivery of the Punch List of items shall be delivered by the Owner no later than five (5) business days thereafter. Within twenty (20) business days after the delivery of the Punch List to the Contractor, the Owner must pay the Contractor the remaining contract balance owed, that includes all retainage previously withheld by Owner less an amount equal to 150 percent (150%) of the estimated cost to complete the items on the Punch List. At the same time the Owner delivers the Punch List Contractor shall submit a payment application requesting that Owner pay the Contractor the remaining contract balance owed including all retainage previously held by Owner less an

amount equal to 150 percent (150%) of the estimated cost to complete the items on the Punch List.

- (f) The failure to include any corrective work or pending items not yet completed on the Punch List does not alter the responsibility of Contractor to complete all the construction services purchased pursuant to the Contract Documents.
- (g) Owner shall have the right to exclude Contractor from the Work and Project site (or designated portion thereof) after the date of Substantial Completion, but Owner shall allow Contractor reasonable access to complete or correct items on the Punch List. The Project Manager, shall coordinate with the Contractor the return of any surplus assets, including materials, supplies, and equipment.

20.3 Completion of Punch List Work and Release of Remaining Contract Balance

- (a) Upon completion of the Punch List Work, the Contractor shall certify in writing to the Project Manager that all Punch List Work has been completed in accordance with the Contract Documents and request the Project Manager to inspect the Work and to approve Punch List completion. If, in the Project Manager's opinion, the Work is not ready for such inspection, the Project Manager will so inform the Contractor, giving reasons for such opinion. If the Project Manager is satisfied that an inspection is warranted, the Project Manager will, within a reasonable time, schedule and conduct inspection(s) of the facility with representatives of the Owner's user department, the Professional (if any), and the Contractor, for the purpose of formally reviewing the completion of Punch List Work. If the Project Manager and the Contractor disagree on whether an item remains incomplete, the Project Manager has the final say on whether the item is complete or not.
- (b) If, upon completion of the inspection(s) the Owner does not consider the Punch List Work complete, the Project Manager will notify the Contractor in writing giving specific reasons why the Punch List Work is not complete.
- (c) Upon completion of all items on the Punch List, the Contractor may submit a Payment Request for the remaining amount withheld by the Owner. If a good-faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the Contract Documents, the Owner may continue to withhold an amount not to exceed one hundred and fifty percent (150%) of the total costs to complete such items. This remaining balance of retainage may be requested by the Contractor in its Application for Final Payment after Final Acceptance of the Work by Owner (Exhibit F-2 Certificate of Final Completion).
- (d) All items that require correction under the Contract Documents and that are identified after the preparation and delivery of the Punch List shall remain the obligation of the Contractor.
- (e) Warranty Items may not affect the Final Payment of retainage pursuant to Section 218.735(7)(f), Florida Statutes.

- (f) If the Owner fails to comply with its responsibilities to assist in developing the Punch List within the time frame applicable to the Project (as described above), the Contractor may submit a request for all remaining retainage withheld by the Owner. The Owner need not pay or process any payment request for retainage if Contractor has, in whole or part, failed to cooperate with the Owner in development of the Punch List or failed to perform its contractual responsibilities with regard to development of the Punch List. Additionally, the Owner does not have to pay or release any amounts that are the subject of a good-faith dispute, the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the Owner or Contractor.

20.4 Final Completion

- (a) Upon written notice from the Contractor that the Project is complete, the Project Manager shall schedule a final inspection with the Contractor, the Design Professional, and any other personnel requested by the Project Manager. The Project Manager shall notify the Contractor in writing of any Work this inspection reveals to be defective, or otherwise not in accordance with the Contract Documents. The Contractor shall immediately take such action as may be necessary to remedy such defects and bring the Project into full compliance with the Contract Documents and then request another inspection.
- (b) Final Completion of the Work shall be achieved by the Contractor when all the Work required under the Contract Documents has been satisfactorily completed, including all Punch List work, and specifically as noted in the Specifications section.
- (c) After the Project Manager has determined that all Work has been completed, the Project Manager will issue a Certificate of Final Completion Exhibit F-2 for the Work.

20.5 Application for Final Payment

After the Certificate of Final Completion, Exhibit F-2 for the Work has been issued by the Project Manager, the Contractor may make Application for Final Payment following the procedure for progress payments. As an explicit condition precedent to the accrual of Contractor's right to Final Payment, Contractor shall have furnished Owner with a properly executed and notarized copy of the Release and Affidavit form attached as Exhibit C, as well as a duly executed copy of the Surety's consent to Final Payment and such other documentation that may be required by the Contract Documents, including but not limited to:

- (1) Receipt of Contractor's Final Application for Payment.
- (2) The Release and Affidavit in the form attached as Exhibit C.
- (3) Consent of surety to Final Payment.
- (4) Receipt of the Final Payment Check list, Exhibit G-1.
- (5) If required by Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by Owner.

Prior to release of Final Payment and final retainage, the Contractor's Representative and the Project Manager shall jointly complete the Final Payment Checklist, a representative copy of which is attached to this Agreement as Exhibit G-1.

20.6 Approval of Final Payment

- (a) If, on the basis of the Project Manager's observations and review of Work during Construction, final inspection, and review of the Application for Final Payment (all as required by the Contract Documents), the Project Manager is satisfied that the Work has been completed and the Contractor has fulfilled all of its obligations under the Contract Documents, the Project Manager will, within ten (10) days after receipt of the Application for Final Payment, indicate in writing that the entire remaining balance is found to be due and payable to the Contractor and approve payment. Otherwise, the Project Manager will return the Application to the Contractor, indicating in writing the reason for refusing to approve for Final Payment, in which case the Contractor will make the necessary corrections and resubmit the Application. Owner reserves the right to inspect the Work and make an independent determination as to the Work's acceptability, even though the Design Professional may have issued its recommendations.
- (b) Contractor's acceptance of Final Payment shall constitute a full waiver of any and all claims by Contractor against Owner arising out of this Agreement or otherwise relating to the Project, except those previously made in writing in accordance with the requirements of the Contract Documents and identified by Contractor as unsettled in its final Application for Payment. Neither the acceptance of the Work nor payment by Owner shall be deemed to be a waiver of Owner's right to enforce any obligations of Contractor hereunder or to the recovery of damages for defective Work not discovered by the Design Professional or Project Manager at the time of final inspection.
- (c) The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or Final Payment, the issuance of a Certificate of Substantial Completion, any payment by the Owner to the Contractor under the Contract Documents, any use or occupancy of the Project or any part thereof by the Owner, the issuance of a Final Completion, any act of acceptance by the Owner, any failure to do so, nor any correction of defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

21. **WARRANTY.**

21.1 Contractor shall obtain and assign to Owner all express warranties given to Contractor or any subcontractors by any subcontractor or material men supplying materials, equipment or fixtures to be incorporated into the Project. Contractor warrants to Owner that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Contractor further warrants to Owner that all materials and equipment furnished under the Contract

Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after Substantial Completion, any Work is found to be defective or not in conformance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner. Contractor shall also be responsible for and pay for replacement or repair of adjacent materials or Work which may be damaged as a result of such replacement or repair. Further, in the event of an emergency, Owner may commence to correct any defective Work, without prior notice to Contractor, at Contractor's expense. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law.

21.2 No later than 30 days prior to expiration of the warranty, the Project Manager, or another representative of the Owner, shall conduct an inspection of the warranted work to verify compliance with the requirements of the Agreement. The Contractor's Representative shall be present at the time of inspection and shall take remedial actions to correct any deficiencies noted in the inspection. Failure of the Contractor to correct the cited deficiencies shall be grounds for the Owner to disqualify the Contractor from future bid opportunities with the Owner, in addition to any other rights and remedies available to Owner.

22 TESTS AND INSPECTIONS.

22.1 Owner, Design Professional, their respective representatives, agents and employees, and governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Contractor shall provide proper, safe conditions for such access. Contractor shall provide Project Manager with timely notice of readiness of the Work for all required inspections, tests or approvals.

22.2 If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish Project Manager the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Project Manager.

22.3 Contractor is responsible, without reimbursement from Owner, for re-inspection fees and costs; to the extent such re-inspections are due to the fault or neglect of Contractor.

22.4 If any Work that is to be inspected, tested or approved is covered without written concurrence from the Project Manager, such work must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover the same and Project Manager has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to written directions from Project Manager, such Work must, if requested by Project Manager, be uncovered for Project Manager's observation, and be replaced at Contractor's sole expense.

22.5 The Owner shall charge to Contractor and may deduct from any payments due Contractor all engineering and inspection expenses incurred by Owner in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday, or holidays.

22.6 Neither observations nor other actions by the Project Manager or Design Professional nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

23. DEFECTIVE WORK.

23.1 Work not conforming to the requirements of the Contract Documents or any warranties made or assigned by Contractor to Owner shall be deemed defective Work. If required by Project Manager, Contractor shall, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or if the defective Work has been rejected by Project Manager, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect, and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner harmless for same.

23.2 If the Project Manager considers it necessary or advisable that covered Work be observed by Design Professional or inspected or tested by others and such Work is not otherwise required to be inspected or tested, Contractor, at Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or tests as Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals), and Owner shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Amount and/or an extension to the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

23.3 If any portion of the Work is defective, or if Contractor fails to supply sufficient skilled workers, suitable materials or equipment or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Project Manager may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of Project Manager to stop the Work shall be exercised, if at all, solely for Owner's benefit and nothing herein shall be construed as obligating the Project Manager to exercise this right for the benefit of Design Engineer, Contractor, or any other person.

23.4 Should the Owner determine, at its sole opinion, it is in the Owner's best interest to accept defective Work, the Owner may do so. Contractor shall bear all direct, indirect, and consequential costs attributable to the Owner's evaluation of and determination to accept defective Work. If such determination is rendered prior to Final Payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents, and reflecting an appropriate decrease in the Contract Amount. If the Owner accepts such defective Work after Final Payment, Contractor shall promptly pay Owner an appropriate amount to adequately compensate Owner for its acceptance of the defective Work.

23.5 If Contractor fails, within a reasonable time after the written notice from Project Manager, to correct defective Work or to remove and replace rejected defective Work as required by Project Manager or Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any of the provisions of the Contract Documents, Owner may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. Provided, however, Owner shall not be required to give notice to Contractor in the event

of an emergency. To the extent necessary to complete corrective and remedial action, Owner may exclude Contractor from any or all of the Project site, take possession of all or any part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Design Professional and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable Owner to exercise the rights and remedies under this paragraph. All direct, indirect, and consequential costs of Owner in exercising such rights and remedies shall be charged against Contractor, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect, and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

24. SUPERVISION AND SUPERINTENDENTS.

24.1 Contractor shall plan, organize, supervise, schedule, monitor, direct and control the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall be subject to Owner's approval and not be replaced without prior written notice to Project Manager except under extraordinary circumstances. The superintendent shall be employed by the Contractor and be the Contractor's representative at the Project site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. Owner shall have the right to direct Contractor to remove and replace its Project superintendent, with or without cause. Attached to the Agreement as Exhibit A-3 is a list identifying Contractor's Project Superintendent and all of Contractor's key personnel who are assigned to the Project; such identified personnel shall not be removed without Owner's prior written approval, and if so removed must be immediately replaced with a person acceptable to Owner.

24.2 Contractor shall have a competent superintendent on the project at all times whenever Contractor's work crews, or work crews of other parties authorized by the Project Manager are engaged in any activity whatsoever associated with the Project. Should the Contractor fail to comply with the above condition, the Project Manager shall, at his discretion, deduct from the Contractor's monthly pay estimate, sufficient moneys to account for the Owner's loss of adequate project supervision, not as a penalty, but as liquidated damages, separate from the liquidated damages described in Section 5.B, for services not rendered.

25. PROTECTION OF WORK.

25.1 Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor or any one for whom Contractor is legally liable for is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Contractor shall be charged with the same, and any moneys necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

25.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

25.3 Contractor shall not disturb any benchmark established by the Owner or Design Professional with respect to the Project. If Contractor, or its subcontractors, agents, or anyone for whom Contractor is legally liable, disturbs the Owner or Design Professional's benchmarks, Contractor shall immediately notify Project Manager and Design Professional. The Owner or Design Professional shall re-establish the benchmarks and Contractor shall be liable for all costs incurred by Owner associated therewith.

26. EMERGENCIES.

26.1 In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from Owner or Design Professional is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Project Manager written notice within forty-eight (48) hours after Contractor knew or should have known of the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Project Manager determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

27. USE OF PREMISES.

27.1 Contractor shall maintain all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

28. SAFETY.

28.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

28.1.1 All employees on or about the project site and other persons and/or organizations who may be affected thereby;

28.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and

28.1.3 Other property on Project site or adjacent thereto, including trees, shrubs, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation, or replacement in the Contract Documents.

28.2 Contractor shall comply with all applicable codes, laws, ordinances, rules, and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, or replacement of their property. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by Owner has occurred.

All new electrical installations shall incorporate NFPA 70E Short Circuit Protective Device Coordination and Arc Flash Studies where relevant as determined by the engineer.

All electrical installations shall be labeled with appropriate NFPA 70E arc flash boundary and PPE Protective labels.

28.3. Contractor shall designate a responsible representative located on a full-time basis at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

28.4 Alcohol, drugs and all illegal substances are strictly prohibited on any Owner property. All employees of Contractor, as well as those of all subcontractors and those of any other person or entity for whom Contractor is legally liable (collectively referred to herein as "Employees"), shall not possess or be under the influence of any such substances while on any Owner property. Further, Employees shall not bring on to any Owner property any gun, rifle or other firearm, or explosives of any kind.

28.5 Contractor acknowledges that the Work may be progressing on a Project site which is located upon or adjacent to an existing Owner facility. In such event, Contractor shall comply with the following:

28.5.1 All Owner facilities are smoke free. Smoking is strictly prohibited;

28.5.2 All Employees shall be provided an identification badge by Contractor. Such identification badge must be prominently displayed on the outside of the Employees' clothing at all times. All Employees working at the Project site must log in and out with the Contractor each day;

28.5.3 Contractor shall strictly limit its operations to the designated work areas and shall not permit any Employees to enter any other portions of Owner's property without Owner's expressed prior written consent;

28.5.4 All Employees are prohibited from distributing any papers or other materials upon Owner's property, and are strictly prohibited from using any of Owner's telephones or other office equipment;

28.5.5 All Employees shall at all times comply with the OSHA regulations with respect to dress and conduct at the Project site. Further, all Employees shall comply with the dress, conduct

and facility regulations issued by Owner's officials onsite, as said regulations may be changed from time to time;

28.5.6 All Employees shall enter and leave Owner's facilities only through the ingress and egress points identified in the site utilization plan approved by Owner or as otherwise designated, from time to time, by Owner in writing;

28.5.7 When requested, Contractor shall cooperate with any ongoing Owner investigation involving personal injury, economic loss or damage to Owner's facilities or personal property therein;

28.5.8 The Employees may not solicit, distribute, or sell products while on Owner's property. Friends, family members or other visitors of the Employees are not permitted on Owner's property; and

28.5.9 At all times, Contractor shall adhere to Owner's safety and security regulations, and shall comply with all security requirements at Owner's facilities, as said regulations and requirements may be modified or changed by Owner from time to time.

29. PROJECT MEETINGS.

Prior to the commencement of Work, the Contractor shall attend a pre-construction conference with the Project Manager, Design Professional, and others as appropriate to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution of the Work, the Contractor shall attend any and all meetings convened by the Project Manager with respect to the Project, when directed to do so by Project Manager or Design Professional. The Contractor shall have its subcontractors and suppliers attend all such meetings (including the pre-construction conference) as may be directed by the Project Manager.

30. VENDOR PERFORMANCE EVALUATION.

Owner has implemented a Vendor Performance Evaluation System for all contracts awarded in excess of \$25,000. To this end, vendors will be evaluated on their performance upon completion/termination of this Agreement.

31. MAINTENANCE OF TRAFFIC POLICY.

For all projects that are conducted within a Collier County Right-of-Way, the Contractor shall provide and erect Traffic Control Devices as prescribed in the current edition of the Manual On Uniform Traffic Control Devices (MUTCD), where applicable on local roadways and as prescribed in the Florida Department of Transportation's Design Standards (DS), where applicable on state roadways. These projects shall also comply with Collier County's Maintenance of Traffic Policy, #5807, incorporated herein by reference. Copies are available through Risk Management and/or Procurement Services Division and is available on-line at colliergov.net/purchasing.

The Contractor will be responsible for obtaining copies of all required manuals, MUTCD, FDOT Roadway & Traffic Design Standards Indexes, or other related documents, so to become familiar with their requirements. Strict adherence to the requirements of the Maintenance of Traffic ("MOT") policy will be enforced under this Contract.

All costs associated with the Maintenance of Traffic shall be included on the line item on the bid page. If MOT is required, MOT is to be provided within ten (10) days of receipt of Notice to Proceed.

32. SALES TAX SAVINGS AND DIRECT PURCHASE.

32.1 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. No markup shall be applied to sales tax. Additionally, as directed by Owner and at no additional cost to Owner, Contractor shall comply with and fully implement the sales tax savings program with respect to the Work, as set forth in section 32.2 below.

32.2 Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and may wish to generate sales tax savings for the Project, Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work ("Direct Purchase"). Contractor shall prepare purchase orders to vendors selected by Contractor, for execution by Owner, on forms provided by Owner. Contractor shall allow two weeks for execution of all such purchase orders by Owner. Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order to maximize cost savings for the Project. Adjustments to the Contract Amount will be made by appropriate Change Orders for the amounts of each Owner Direct Purchase, plus the saved sales taxes. A Change Order shall be processed promptly after each Direct Purchase, or group of similar or related Direct Purchases, unless otherwise mutually agreed upon between Owner and Contractor. With respect to all Direct Purchases by Owner, Contractor shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all Direct Purchases. Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that all Direct Purchases shall be included within and covered by Contractor's warranty to Owner to the same extent as all other warranties provided by Contractor pursuant to the terms of the Contract Documents. In the event Owner makes a demand against Contractor with respect to any Direct Purchase and Contractor wishes to make claim against the manufacturer or supplier of such Direct Purchase, upon request from Contractor Owner shall assign to Contractor any and all warranties and Contract rights Owner may have from any manufacturer or supplier of any such Direct Purchase by Owner.

32.3 Bidder represents and warrants that it is aware of its statutory responsibilities for sales tax under Chapter 212, Florida Statutes, and for its responsibilities for Federal excise taxes.

33. SUBCONTRACTS.

33.1 Contractor shall review the design and shall determine how it desires to divide the sequence of construction activities. Contractor will determine the breakdown and composition of bid packages for award of subcontracts, based on the current Project Milestone Schedule, and shall supply a copy of that breakdown and composition to Owner and Design Professional for their review and approval prior to submitting its first Application for Payment. Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and costs.

33.2 A Subcontractor is any person or entity who is performing, furnishing, supplying, or providing any portion of the Work pursuant to a contract with Contractor. Contractor shall be solely responsible for and have control over the Subcontractors. Contractor shall negotiate all Change Orders, Work Directive Changes, Field Orders and Requests for Proposal, with all affected Subcontractors and

shall review the costs of those proposals and advise Owner and Design Professional of their validity and reasonableness, acting in Owner's best interest, prior to requesting approval of any Change Order from Owner. All Subcontractors performing any portion of the Work on this Project must be "qualified" as defined in Collier County Ordinance 2013-69, meaning a person or entity that has the capability in all respects to perform fully the Agreement requirements with respect to its portion of the Work and has the integrity and reliability to assure good faith performance.

33.3 In addition to those Subcontractors identified in Contractor's bid that were approved by Owner, Contractor also shall identify any other Subcontractors, including their addresses, licensing information and phone numbers, it intends to utilize for the Project prior to entering into any subcontract or purchase order and prior to the Subcontractor commencing any work on the Project. The list identifying each Subcontractor cannot be modified, changed, or amended without prior written approval from Owner. Any and all Subcontractor work to be self-performed by Contractor must be approved in writing by Owner in its sole discretion prior to commencement of such work. Contractor shall continuously update that Subcontractor list, so that it remains current and accurate throughout the entire performance of the Work.

33.4 Contractor shall not enter into a subcontract or purchase order with any Subcontractor, if Owner reasonably objects to that Subcontractor. Contractor shall not be required to contract with anyone it reasonably objects to. Contractor shall keep on file a copy of the license for every Subcontractor and sub-subcontractor performing any portion of the Work, as well as maintain a log of all such licenses. All subcontracts and purchase orders between Contractor and its Subcontractors shall be in writing and are subject to Owner's approval. Further, unless expressly waived in writing by Owner, all subcontracts and purchase orders shall (1) require each Subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor, (2) provide for the assignment of the subcontract or purchase order from Contractor to Owner at the election of Owner upon termination of Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract or purchase order, (4) provide that Owner, Collier County Government, will be an additional insured on all liability insurance policies required to be provided by the Subcontractor except workman's compensation and business automobile policies, (5) assign all warranties directly to Owner, and (6) identify Owner as an intended third-party beneficiary of the subcontract or purchase order. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound. Each Subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

33.5 Each Subcontractor performing work at the Project Site must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in its subcontract or purchase order. In addition, the Subcontractor shall assign and name a qualified employee for scheduling direction for its portion of the Work. The supervisory employees of the Subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The Subcontractor shall include a resume of experience for each employee identified by it to supervise and schedule its work.

33.6 Unless otherwise expressly waived by Owner in writing, all subcontracts and purchase orders shall provide:

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

33.6.2 In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit.

33.6.3 The subcontract or purchase order, as applicable, shall require the Subcontractor to expressly agree that the foregoing constitute its sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation. Further, Contractor shall require all Subcontractors to similarly incorporate the terms of this Section 33.6 into their sub-subcontracts and purchase orders.

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

34. CONSTRUCTION SERVICES.

34.1 Contractor shall maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including, but not limited to, the following administrative records:

- 34.1.1 Subcontracts and Purchase Orders
- 34.1.2 Subcontractor Licenses
- 34.1.3 Shop Drawing Submittal/Approval Logs
- 34.1.4 Equipment Purchase/Delivery Logs
- 34.1.5 Contract Drawings and Specifications with Addenda
- 34.1.6 Warranties and Guarantees
- 34.1.7 Cost Accounting Records
- 34.1.8 Labor Costs
- 34.1.9 Material Costs
- 34.1.10 Equipment Costs
- 34.1.11 Cost Proposal Request
- 34.1.12 Payment Request Records
- 34.1.13 Meeting Minutes
- 34.1.14 Cost-Estimates
- 34.1.15 Bulletin Quotations
- 34.1.16 Lab Test Reports
- 34.1.17 Insurance Certificates and Bonds
- 34.1.18 Contract Changes
- 34.1.19 Permits
- 34.1.20 Material Purchase Delivery Logs
- 34.1.21 Technical Standards
- 34.1.22 Design Handbooks
- 34.1.23 "As-Built" Marked Prints
- 34.1.24 Operating & Maintenance Instruction

34.1.25	Daily Progress Reports
34.1.26	Monthly Progress Reports
34.1.27	Correspondence Files
34.1.28	Transmittal Records
34.1.29	Inspection Reports
34.1.30	Punch Lists
34.1.31	PMIS Schedule and Updates
34.1.32	Suspense (Tickler) Files of Outstanding Requirements

The Project files and records shall be available at all times to Owner and Design Professional or their designees for reference, review or copying.

34.2 Contractor Presentations

At the discretion of the County, the Contractor may be required to provide a brief update on the Project to the Collier County Board of County Commissioners, "Board", up to two (2) times per contract term. Presentations shall be made in a properly advertised Public Meeting on a schedule to be determined by the County Manager or his designee. Prior to the scheduled presentation date, the Contractor shall meet with appropriate County staff to discuss the presentation requirements and format. Presentations may include, but not be limited to, the following information: Original contract amount, project schedule, project completion date and any changes to the aforementioned since Notice to Proceed was issued.

35. SECURITY.

The Contractor is required to comply with County Ordinance 2004-52, as amended. Background checks are valid for five (5) years and the Contractor shall be responsible for all associated costs. If required, Contractor shall be responsible for the costs of providing background checks by the Collier County Facilities Management Division for all employees that shall provide services to the County under this Agreement. This may include, but not be limited to, checking federal, state and local law enforcement records, including a state and FBI fingerprint check, credit reports, education, residence and employment verifications and other related records. Contractor shall be required to maintain records on each employee and make them available to the County for at least four (4) years.

All of Contractor's employees and subcontractors must wear Collier County Government Identification badges at all times while performing services on County facilities and properties. Contractor ID badges are valid for one (1) year from the date of issuance and can be renewed each year at no cost to the Contractor during the time period in which their background check is valid, as discussed below. All technicians shall have on their shirts the name of the contractor's business.

The Contractor shall immediately notify the Collier County Facilities Management Division via e-mail (DL-FMOPS@colliercountyfl.gov) whenever an employee assigned to Collier County separates from their employment. This notification is critical to ensure the continued security of Collier County facilities and systems. Failure to notify within four (4) hours of separation may result in a deduction of \$500 per incident.

CCSO requires separate fingerprinting prior to work being performed in any of their locations. This will be coordinated upon award of the contract. If there are additional fees for this process, the Contractor is responsible for all costs.

36. VENUE.

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

37. VALUE ENGINEERING.

All projects with an estimated cost of \$10 million or more shall be reviewed for consideration of a Value Engineering (VE) study conducted during project development. A "project" shall be defined as the collective contracts, which may include but not be limited to: design, construction, and construction, engineering and inspection (CEI) services. Additionally, any project with an estimated construction value of \$2 million or more may be reviewed for VE at the discretion of the County.

38. ABOVEGROUND/UNDERGROUND TANKS.

38.1 The contractor shall ensure compliance with all NFPA regulations: specifically 110 & 30/30A; FDEP chapter 62 regulations: specifically 761, 762, 777, and 780; 376 & 403 Florida Statutes; and STI, UL, PEI, ASME, NACE, NLP, NIST & API referenced standards pertaining to the storage of hazardous materials and petroleum products.

38.2 The contractor shall notify the Solid & Hazardous Waste Management Department (SHWMD) prior to the installation, removal, or maintenance of any storage tank, including day tanks for generators, storing / will be storing petroleum products or hazardous materials. The contractor shall provide a 10 day and 48-hour notice to SHWMD 239-252-2508 prior to commencement.

The contractor shall provide the plans pertaining to the storage tank systems containing hazardous materials / petroleum products to the SHWMD prior to plans submittal to a permitting entity and then SHWMD must approve the plans prior to contractor's submittal for permitting.

39. STANDARDS OF CONDUCT: PROJECT MANAGER, SUPERVISOR, EMPLOYEES.

The Contractor shall employ people to work on Owner's projects who are neat, clean, well-groomed and courteous. Subject to the Americans with Disabilities Act, Contractor shall supply competent employees who are physically capable of performing their employment duties. The Owner may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on Owner's projects is not in the best interest of the County.

40. DISPUTE RESOLUTION.

A. Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by Owner's staff person who would make the presentation of any settlement reached during negotiations to Owner for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by Owner's staff person or designee who would make the presentation of any settlement reached at mediation to Owner's Board for approval. Should either party fail to

submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Section 44.102, Fla. Stat.

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

EXHIBIT I-1: SUPPLEMENTAL TERMS AND CONDITIONS

Attached hereto, following this page

Not Applicable

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**FEDERAL EMERGENCY MANAGEMENT AGENCY
PUBLIC ASSISTANCE**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (County) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the County, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's 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 section 1225 of the Disaster Recovery Act of 2018, the 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.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

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. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the County, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the County.

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.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

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.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

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

Procurement of Recovered Materials (§200.323) (Over \$10,000): 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. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

[Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): 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."

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the County with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(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 (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 (1) of this section, in the sum of \$27 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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County or FEMA 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 (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and 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 (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 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 County and understands and agrees that the 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 (over \$150,000): 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 County and understands and agrees that the 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.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

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

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The County and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The County shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/County/permittee/engineering consultant.** The County's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the County's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The County shall provide access to any location or facility on which County is performing work, or storing or staging equipment, materials or documents.
- ii. The County shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The County shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the County, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The County shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

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.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the County for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the County and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The County may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

COLLIER COUNTY

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name

SAM.gov Unique Entity ID (UEI) Number

Title

CAGE Number

Firm

Street Address, City, State, Zip

Signature

EXHIBIT I
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

COLLIER COUNTY						
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT						
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.						
A. PRIME VENDOR/CONTRACTOR INFORMATION						
PRIME NAME		PRIME FEID NUMBER		CONTRACT DOLLAR AMOUNT		
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN	Y N	IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION? Y N CONSULTATION? Y N OTHER? Y N		
		DBE?	Y N			
		MBE?	Y N			
		WBE?	Y N			
		SDB SA?	Y N			
IS THIS SUBMISSION A REVISION?		Y N	IF YES, REVISION NUMBER _____			
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION						
DBE	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS
	VETERAN					
TOTALS:						
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR						
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER		
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER		
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.						
ETHNICITY		CODE				
Black American		BA				
Hispanic American		HA				
Native American		NA				
Subcont. Asian American		SAA				
Asian-Pacific American		APA				
Non-Minority Women		NMW				
Other: not of any other group listed		O				
D. SECTION TO BE COMPLETED BY COLLIER COUNTY						
DEPARTMENT NAME		COLLIER CONTRACT # (IFB/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT		
ACCEPTED BY:					DATE	

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

EXHIBIT I-2: AFFIDAVIT REGARDING LABOR AND SERVICES

(Following This Page)

AFFIDAVIT REGARDING LABOR AND SERVICES

Effective July 1, 2024, pursuant to § 787.06(13), Florida Statutes, when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services.

Nongovernmental Entity's Name:	
Address:	
Phone Number:	
Authorized Representative's Name:	
Authorized Representative's Title:	
Email Address:	

AFFIDAVIT

I, _____ (Name of Authorized Representative), as authorized representative attest that _____ (Name of Nongovernmental Entity) does not use coercion for labor or services as defined in § 787.06, Florida Statutes.

Under penalty of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

 (Signature of authorized representative) Date

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me, by means of physical presence or online notarization this _____ day of _____, 20____, by _____ (Name of Affiant), who produced their _____ as identification or are personally known to me.

 Notary Public

 Commission Expires

Personally Known OR Produced Identification

Type of Identification Produced: _____

EXECUTIVE SUMMARY

Recommendation to approve Change Order No. 1, adding \$33,702.40 and 137 days to the Work Order under library contract 18-7432-CZ with APTIM Environmental & Infrastructure, LLC for the Park Shore Beach Renourishment; and make a finding that this item promotes tourism (Project 90067).

OBJECTIVE: To process a change order for additional design and construction observation for the 2024 truck haul beach renourishment project at Park Shore, increasing the Work Order from \$102,117.70 to \$135,820.10 and from 270 days to 407 days.

CONSIDERATIONS: On May 14, 2024 (Item 16.B.2), the Board approved a Work Order under library contract 18-7432-CZ with APTIM Environmental & Infrastructure, LLC (APTIM) for the Park Shore Beach Renourishment in the amount of \$102,117.70. Over the summer / fall of 2024, Hurricanes Debby, Helene, and Milton caused extensive erosion, significantly changing the existing conditions from that used for design and bidding of the project. The initial contract plans called for the importing of 167,700 tons of sand to fill Park Shore beach. Surveys conducted just prior to the start of construction indicated that an additional 144,300 tons of sand, totaling 312,000 tons, would be needed to meet the County design standards.

APTIM is required to re-design the project based on the modified existing conditions and must remain on the project as Engineer of Record throughout the additional hauling period for the increased volume of sand hauling and placement. The original intent for APTIM's work was to begin hauling and placement at the beginning of November 2024. Since hauling and placement started in January 2025, the extra 137 days will provide enough time for APTIM to certify and close-out the project.

This item is consistent with the Quality of Place Objectives of the County's Strategic Plan.

FISCAL IMPACT: Change Order #1 extends the time and the overall amount of the work order by \$33,702.40. The additional funding is available with the TDC Beach Renourishment Fund (1105), Project 90067. The source of funding is tourist development taxes.

FDEP cost-share funding will be requested if eligible at a future date to reimburse Collier County for a portion of the completed work.

GROWTH MANAGEMENT IMPACT: This item is consistent with the Conservation and Coastal Management Element of the Growth Management Plan.

ADVISORY COMMITTEE RECOMMENDATIONS: This item will be presented to the Coastal Advisory Committee (CAC) on February 13, 2025, and the Tourist Development Council (TDC) on February 18, 2025.

LEGAL CONSIDERATIONS: This item is approved as to for and legality and requires majority vote for approval. – CMG

RECOMMENDATION: To approve Change Order No. 1 adding \$33,702.40 and 137 days to the Work Order under library contract 18-7432-CZ with APTIM Environmental & Infrastructure, LLC for the Park Shore Beach Renourishment; and make a finding that this item promotes tourism (Project 90067).

Prepared By: Andrew Miller, P.E., Coastal Zone Management, Capital Project Planning, Impact Fees and Program Management Division



Procurement Services Change Order Form

Contract#	CO#	PO#	Project #:
Project Name:			
Contractor/Consultant Name:			

Select One: Contract Modification (Construction or Project Specific) Work Order Modification

Project Manager Name:	Division Name:
-----------------------	----------------

Original Contract/Work Order Amount		Original BCC Approval Date; Agenda Item #
Current BCC Approved Amount		Last BCC Approval Date; Agenda Item #
Current Contract/Work Order Amount		SAP Contract Expiration Date (MASTER)
Dollar Amount of this Change		Total % Change from Original Amount
Revised Contract/Work Order Total		% Change from Current BCC Approved Amount
Total Cumulative Changes		% Change from Current Amount

Notice to Proceed Date		Original NTP # of Days		Original Final Completion Date		Last Final Approved Date	
------------------------	--	------------------------	--	--------------------------------	--	--------------------------	--

# of Days Added		Revised Final Date (includes this change)		Current Substantial Completion Date (if applicable)	
-----------------	--	---	--	---	--

Provide responses after each question in box below (Responses should be **brief and specific**). Attach additional information and/or documentation from the Design Professional and/or Contractor, if needed, with your submission of this Change Order and complete summary on next page. **Check all that apply to this Change Order request:** Add Time; Add funds; Use of Allowance; Modify/Delete existing Task(s); Add new Task(s); Reallocate funds; Other (must be explained in detail below)



Procurement Services Change Order Form

Contract#	CO#	PO#	Project #:
Project Name:			
Contractor/Consultant Name:			

Acceptance of this Change Order shall constitute a modification to contract / work order identified above and will be subject to all the same terms and conditions as contained in the contract / work order indicated above, as fully as if the same were stated in this acceptance. The adjustment, if any, to the Contract shall constitute a full and final settlement of any and all claims of the Contractor / Vendor / Consultant / Design Professional arising out of or related to the change set forth herein, including claims for impact and delay costs.

Contractor/Consultant/Design Professional signature below must be from an authorized person/officer/director of the Company or listed as the qualified licensed Professional "Project Coordinator" or Design/Engineer Professional under the agreement. Signature authority of person signing will be verified through the contract OR through the Florida Department of State, Division of Corporations (Sunbiz) website (<https://dos.myflorida.com/sunbiz/search/>). If the person signing is not listed, we will require signature authority by one of the listed officers/directors of the company giving that person signature authority.

Prepared by: _____ Date: _____
 Signature- **Division Project Manager**

 Printed Name

Accepted by: _____ Date: _____
 Signature- **Design/Engineer Professional** (if applicable)

 Printed Name/Title/Company Name

Accepted by: _____ Date: _____
 Signature- **Contractor/Consultant/Vendor**

 Printed Name/Title/ Company Name

Approved by: _____ Date: _____
 Signature- **Division Manager or Designee (Optional)**

 Printed Name

Approved by: _____ Date: _____
 Signature- **Division Director or Designee (Optional)**

 Printed Name

Approved by: _____ Date: _____
 Signature- **Division Administrator or Designee (Optional)**

 Printed Name



Procurement Services Change Order Form

Contract#	CO#	PO#	Project #:
Project Name:			
Contractor/Consultant Name:			

FOR PROCURMENT USE ONLY

FY ____ CHO Request #

Approved by: _____
Signature-Procurement Professional Signature/Date

Approved by: _____
Signature-Procurement Manager/Director (OPTIONAL)

APPROVAL TYPE:

- Administrative
 Administrative-BCC Report
 BCC Stand-Alone ES (BCC Approval Required)

BCC APPROVAL

ATTEST:

Crystal K. Kinzel, Clerk of the Circuit Court
and Comptroller

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: _____

By: _____

Dated: _____

_____, Chairman

Date: _____

(SEAL)

Agenda # _____

Approved as to Form and Legality:

Deputy County Attorney

Print Name



APTIM
6401 Congress Avenue, Suite 140
Boca Raton, FL 33487
Tel: +1 561 391 8102
www.aptim.com

January 22, 2025

Andy Miller
Collier County Coastal Zone Management
2685 S. Horseshoe Drive, Unit 103
Naples, FL 34104

Re: Engineering Services for Park Shore Renourishment (Contract No. 18-7432-CZ) – Change Order No. 1

Dear Andy:

This letter is in response to Collier County's (County) request for a change order to the proposal for Aptim Environmental & Infrastructure, LLC (APTIM) to support the County in conducting beach renourishment activities on Park Shore (R44-T54) beaches. This change order allows APTIM to continue to perform professional services as the Engineer of Record for the construction event due to the increase in volume required due to the passage of Hurricanes Helene and Milton, which has doubled the construction schedule.

Included as Exhibits are: the Scope of Work (Exhibit A), Fee Proposal (Exhibit B), and the Rate Schedule (Exhibit C). APTIM proposes to provide these services on a lump sum basis with a cost of \$33,702.40 under the terms and conditions of the existing Contract No. 18-7432-CZ and as amended May 7, 2020. Barring any unforeseen circumstances, all work will now be completed within 407 days of receiving the Notice to Proceed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole S. Sharp".

Nicole S. Sharp, P.E.
Director, Coastal Sciences & Engineering
Aptim Environmental & Infrastructure, LLC

cc: James Austin, P.E., APTIM
Steve Keehn, P.E., APTIM



Exhibit A
Scope of Work

**EXHIBIT A
SCOPE OF WORK
PARK SHORE RENOURISHMENT
COLLIER COUNTY, FL
JANUARY 2025**

Introduction

This is a scope of work for Aptim Environmental & Infrastructure, LLC (APTIM) to provide the engineering services described below to support the County for conducting a truck haul beach renourishment project on Park Shore (R44-R54) beaches as additional work then what was originally proposed in the original scope of work. Due to impacts from Hurricanes Helene and Milton, additional volume was required to address erosion within the fill template. The work will require an extension of the end date for an additional 42 days in order to allow for the construction of the additional volume.

3. Engineer of Record

As the Engineer of Record, APTIM will conduct pre-, during- and post-construction tasks necessary for certification of the project. An APTIM engineer will attend the pre-construction conference and update the construction profiles using the Contractor's pre-placement surveys. During construction, APTIM will support the County's inspection efforts and perform weekly site visits to inspect the work and attend weekly construction meetings. It is assumed that there will be up to 16 weeks of active hauling during construction. APTIM will prepare a QA/QC check list, delineating the County, contractor, inspector and APTIM duties as a guideline for during construction coordination.

APTIM will prepare a post-construction certification to meet permit requirements, based largely on surveys, weight tickets, daily reports and observations made by the contractor and County inspectors. APTIM will also provide a construction and as-built summary based on the contractor's as-built drawings. It is assumed that the annual physical monitoring survey and engineering report will be contracted by the County under separate work order. The third party's annual monitoring report will serve as the post-construction report and may include APTIM's as-built summary as an appendix.

APTIM will review the contractor's pay applications, reconcile and/or review the pay volumes/tonnage based on mine records, weights tickets collected at the beach and physical surveys.

Summary

This work will be performed on a lump sum (LS) basis with an additional cost of \$33,702.40 as outlined in the attached fee spreadsheet. The overall time of the contract to complete design, construction administration, and Engineer of Record signoff will now be within 407 days of receipt of the Notice to Proceed.

Assumptions

- Dune restoration and dune vegetation are not part of this work assignment.

- County inspectors will collect weight tickets, observe delivered sand quality and beach construction, and reconcile sand mine records with weight tickets collected at the beach.
- The County or a third party will perform and prepare reports on the following tasks:
 - 2024 Physical Monitoring
 - Turbidity Monitoring
 - Biological Monitoring and Hardbottom Edge Surveys
 - Submerged Aquatic Vegetation Surveys
 - Marine Turtle Monitoring and Related FWC Coordination
 - Shorebird Monitoring



Exhibit B
Fee Proposal

EXHIBIT B
ESTIMATED FEE PROPOSAL FOR
Park Shore Renourishment
Collier County

January 21, 2025

Task Item	Cost	LABOR COSTS									TRAVEL COSTS		
		Senior Project Manager (Hours)	Engineer (Hours)	Senior Marine Biologist/ Hydrogeologist (Hours)	Marine Biologist/ Hydrogeologist (Hours)	Senior GIS Specialist (Hours)	CADD Technician (Hours)	Senior Scientist/ Geologist (Hours)	Scientist/ Geologist (Hours)	Clerical/ Administrative (Hours)	Mileage	Tolls	Meals
1 Design, Construction Plans & Specifications	\$0.00												
2 Bidding Assistance & Notice to Proceed	\$0.00												
3 Engineer of Record	\$33,702.40	77	108	6	3		18				1,320	6	6
	Total Hours =	77	108	6	3	0	18	0	0	0	1,320	6	6
	Rate =	\$203	\$130	\$145	\$120	\$155	\$107	\$153	\$115	\$73	\$0.445	\$12.00	\$36.00
	Cost =	\$15,631	\$14,040	\$870	\$360	\$0	\$1,926	\$0	\$0	\$0	\$587.40	\$72.00	\$216.00
LUMP SUM TOTAL		\$33,702.40											



Exhibit C
Rate Schedule

* * * * *

SCHEDULE B-ATTACHMENT 1
RATE SCHEDULE

Title	Hourly Rate
Principal	\$231
Senior Project Manager	\$203
Project Manager	\$160
Senior Engineer	\$177
Engineer	\$130
Senior Inspector	\$126
Inspector	\$93
Senior Planner	\$150
Planner	\$120
Senior Designer	\$140
Designer	\$105
Environmental Specialist	\$120
Senior Environmental Specialist	\$167
Scientist/Geologist	\$115
Senior Scientist/Geologist	\$153
Marine Biologist/Hydrogeologist	\$120
Senior Marine Biologist/Hydrogeologist	\$145
Senior GIS Specialist	\$155
GIS Specialist	\$115
Clerical/Administrative	\$73
Senior Technician	\$103
Technician	\$83
Surveyor and Mapper	\$125
CADD Technician	\$107
Survey Crew - 2 man	\$145
Survey Crew - 3 man	\$180
Survey Crew - 4 man	\$215
Senior Architect	\$160
Architect	\$125

The above hourly rates are applicable to Time and Materials task(s) only. The above list may not be all inclusive. Hourly rates for additional categories required to provide particular project services shall be mutually agreed upon by the County and firm, in writing, on a project by project basis, as needed, and will be set forth in the Work Order agreed upon by the parties.

Grant Funded: The above rates are for purposes of providing estimate(s), as required by the grantor agency.

* * * * *

EXECUTIVE SUMMARY

Recommendation to approve Change Order No. 2 for contract No. 24-8292 with Earth Tech Enterprises, Inc. for the Park Shore Beach Renourishment, increasing the contract amount by \$2,739,153, applying the Allowance of \$254,000.00 and adding 30 days to the contract time; approve necessary budget amendment; and make a finding that this item promotes tourism (Project 90067).

OBJECTIVE: To process a change order for construction contract 24-8292 for the 2024 truck haul beach renourishment project at Park Shore, increasing the contract amount by \$2,739,153, applying the Allowance of \$254,000.00 and adding 30 days.

CONSIDERATIONS: On December 10, 2024 (Item 16.B.14), the Board approved contract 24-8292 Park Shore Beach Renourishment with Earth Tech Enterprises, Inc. in the amount of \$3,817,530. Over the summer /fall of 2024, Hurricanes Debby, Helene, and Milton caused extensive erosion, significantly changing the existing conditions from that used for design and bidding of the project.

The initial contract plans called for 167,700 tons of sand to fill Park Shore beach. Surveys conducted just prior to the start of construction indicated that an additional 144,300 tons of sand, totaling 312,000 tons, would be needed to meet the County design standards.

After sand hauling had begun on January 6, 2025, staff immediately met with the contractor and sand supplier and verified that the additional sand would be available for placement, and that the contractor could perform the extra work with additional time to the contract time. A Work Directive was issued in the field and followed up in writing on January 9, 2025, so that the contractor could continue the project uninterrupted while incorporating the volume change to the design beach fill section for the project. The contractor agreed to import and place the additional sand at the original unit price bid for the project.

Other lump sum work items affected by the increased time and work are increased on a pro-rata per/ton basis at a ratio of $312/167.7$, or 1.857. These work items are tasks that are performed on a daily basis as long as sand hauling continues and until all 312,000 tons are delivered.

The contract includes an Allowance of \$254,000 which will be used to partially cover the additional expenses.

A summary of the changes identified in the work directive is shown below:

- Modify the bid quantity for item 2, “Horizon Way Access: Transport, Fill Placement, Grading, and Sand” from 167,700 Tons to 312,000 Tons
- Adjust price for item 2 based on the adjusted volume at the original unit price of \$18.90/TN, or $312,000 \times \$18.90 = \$5,896,800$
- Adjust Lump Sum price for items 3, 4, and 5 on a pro-rata basis at a ratio of $(312,000 / 167,700)$

Item #		Unit	Unit Cost	Quantity	Original Contract Amount	Revised Quantity	Revised Contract Amount	Increase
2	Horizon Way Access: Transport, Fill Placement, Grading, and Sand Analysis	TN	\$18.90	167,700	\$3,169,530	312,000	\$5,896,800	\$2,727,270
3	Turbidity Monitoring	LS	\$22,000	1	\$22,000	Pro-rata 312/167.7	\$40,930	\$18,930
4	Surveys	LS	\$175,000	1	\$175,000	Pro-rata 312/167.7	\$325,581	\$150,581
5	Maintenance of Traffic (MOT) and Weight Ticket Tracking	LS	\$112,000	1	\$112,000	Pro-rata 312/167.7	\$208,372	\$96,372
	Total							\$2,993,153

Not included in the above contract costs is the cost for additional volume of sand from Stewart Materials. At \$11.00 per ton, the additional sand cost is \$1,587,300.

This item is consistent with the Quality of Place Objectives of the County's Strategic Plan.

FISCAL IMPACT: Change Order #2 increases the overall contract by \$2,739,153. A budget amendment is required in the amount of \$4,600,000 to reallocate funding from reserves within TDC Beach Renourishment Fund (1105) to Park Shore Beach Maintenance Project No. 90067. The budget amendment includes the amounts need for construction (\$2,739,153), and additional sand (\$1,860,847). The source of funding is Tourist Development Tax.

FDEP cost-share funding will be requested if eligible at a future date to reimburse Collier County for a portion of the completed work.

GROWTH MANAGEMENT IMPACT: This item is consistent with the Conservation and Coastal Management Element of the Growth Management Plan.

ADVISORY COMMITTEE RECOMMENDATIONS: This item will be presented to the Coastal Advisory Committee (CAC) on February 13, 2025, and the Tourist Development Council (TDC) on February 18, 2025.

LEGAL CONSIDERATIONS: This item is approved as to form and legality and requires majority vote for approval. – CMG

RECOMMENDATION: To approve Change Order No. 2 for contract No. 24-8292 with Earth Tech Enterprises, Inc. for the Park Shore Beach Renourishment, increasing the contract amount by \$2,739,153, applying the Allowance of \$254,000.00 and adding 30 days to the contract time, approve necessary budget amendment; and make a finding that this item promotes tourism (Project 90067).

Prepared By: Andrew Miller, P.E., Coastal Zone Management, Capital Project Planning, Impact Fees and Program Management Division



Procurement Services Change Order Form

Contract# 24-8292 CO# 2 PO# 4500236559 Project #: 90067

Project Name: 2024 Park Shore Renourishment

Contractor/Consultant Name: Earth Tech Enterprises, Inc.

Select One: Contract Modification (Construction or Project Specific) Work Order Modification

Project Manager Name: Division Name:

Original Contract/Work Order Amount	\$3,817,530.00	12/10/2024 16.B.14	Original BCC Approval Date; Agenda Item #
Current BCC Approved Amount	\$3,817,530.00	12/10/2024 16.B.14	Last BCC Approval Date; Agenda Item #
Current Contract/Work Order Amount	\$3,817,530.00	3/18/2025	SAP Contract Expiration Date (MASTER)
Dollar Amount of this Change	\$2,739,153.00	71.75%	Total % Change from Original Amount
Revised Contract/Work Order Total	\$6,556,683.00	71.75%	% Change from Current BCC Approved Amount
Total Cumulative Changes	\$2,739,153.00	71.75%	% Change from Current Amount

Notice to Proceed Date: Original NTP # of Days: Original Final Completion Date: Last Final Approved Date:

of Days Added: Revised Final Date (includes this change): Current Substantial Completion Date (if applicable):

Provide responses after each question in box below (Responses should be **brief and specific**). Attach additional information and/or documentation from the Design Professional and/or Contractor, if needed, with your submission of this Change Order and complete summary on next page. **Check all that apply to this Change Order request:** Add Time; Add funds; Use of Allowance; Modify/Delete existing Task(s); Add new Task(s); Reallocate funds; Other (must be explained in detail below)

- 1.) This Change Order will add 30 days and \$2,739,153.00 as well as using the Allowance of \$254,000.00 to address increased sand quantity needed to replace sand lost due to erosion of the beach by Hurricanes Debby, Helene, and Milton.
- 2.) N/A
- 3.) This change was not included in the contract because the storms occurred during the summer while design documents were being prepared based on surveys from January 2024.
- 4.) If the change is not processed, the public beach will not be renourished adequately to meet the County design standard, placing the upland structures at risk for future storms and erosion.



Contract# 24-8292	CO# 2	PO# 4500236559	Project #: 90067
Project Name: 2024 Park Shore Renourishment			
Contractor/Consultant Name: Earth Tech Enterprises, Inc.			

Change Order/Amendment Summary							
(If additional spaces needed, attached a separate Summary page to this amendment request)							
CO#	AMD#	Description	COST		TIME		Justification
			Additive (+)	Deductive (-)	Days Added	Total New Time	
1		add additional time to continue renourishment			15	90	project sand volume increased due to previous storm season
2		add additional time and use \$254,000 funds to continue renourishment	\$2,739,153.00		30	120	Increased volume is necessary to provide County design standard beach width


Check here if additional summary page/s are attached to this Change Order




Contract# 24-8292	CO# 2	PO# 4500236559	Project #: 90067
Project Name: 2024 Park Shore Renourishment			
Contractor/Consultant Name: Earth Tech Enterprises, Inc.			

Acceptance of this Change Order shall constitute a modification to contract / work order identified above and will be subject to all the same terms and conditions as contained in the contract / work order indicated above, as fully as if the same were stated in this acceptance. The adjustment, if any, to the Contract shall constitute a full and final settlement of any and all claims of the Contractor / Vendor / Consultant / Design Professional arising out of or related to the change set forth herein, including claims for impact and delay costs.

Contractor/Consultant/Design Professional signature below must be from an authorized person/officer/director of the Company or listed as the qualified licensed Professional "Project Coordinator" or Design/Engineer Professional under the agreement. Signature authority of person signing will be verified through the contract OR through the Florida Department of State, Division of Corporations (Sunbiz) website (<https://dos.myflorida.com/sunbiz/search/>). If the person signing is not listed, we will require signature authority by one of the listed officers/directors of the company giving that person signature authority.

Prepared by: MillerAndrew  Digitally signed by MillerAndrew
Date: 2025.02.10 13:11:48 -05'00' Date: _____
Signature- **Division Project Manager**

Printed Name

Accepted by: Sharp, Nicole  Digitally signed by Sharp, Nicole
Date: 2025.02.07 14:24:57 -05'00' Date: 2/7/25
Signature- **Design/Engineer Professional** (if applicable)
Nicole Sharp, Director, APTIM


Printed Name/Title/Company Name

Accepted by: _____ Date: _____
Signature- **Contractor/Consultant/Vendor**

Printed Name/Title/ Company Name

Approved by: _____ Date: _____
Signature- **Division Manager or Designee (Optional)**

Printed Name

Approved by: AhmadJay  Digitally signed by AhmadJay
Date: 2025.02.10 13:19:53 -05'00' Date: _____
Signature- **Division Director or Designee (Optional)**

Printed Name

Approved by: _____ Date: _____
Signature- **Division Administrator or Designee (Optional)**

Printed Name



Procurement Services Change Order Form

Contract#	CO#	PO#	Project #:
Project Name:			
Contractor/Consultant Name:			

FOR PROCURMENT USE ONLY

FY ____ CHO Request #

Approved by: _____
Signature-Procurement Professional Signature/Date

Approved by: _____
Signature-Procurement Manager/Director (OPTIONAL)

APPROVAL TYPE:

- Administrative
 Administrative-BCC Report
 BCC Stand-Alone ES (BCC Approval Required)

BCC APPROVAL

ATTEST:

Crystal K. Kinzel, Clerk of the Circuit Court
and Comptroller

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: _____

By: _____

Dated: _____

_____, Chairman

Date: _____

(SEAL)

Agenda # _____

Approved as to Form and Legality:

Deputy County Attorney

Print Name

Christine Arnold

From: Andrew Miller
Sent: Thursday, February 6, 2025 4:55 PM
To: Christopher Darco; Christine Arnold; Maria Becerra
Cc: Jay Ahmad
Subject: FW: Explanation of lump sum item increase

Here's ET's explanation of the cost increase associated with the Lump Sum items for survey, turbidity monitoring, and maintenance of traffic. I agree with their logic.

Andrew Miller P.E.
Manager - Coastal Management Program
Transportation Engineering

Office: [239-252-2922](tel:239-252-2922)

Andrew.Miller@colliercountyfl.gov



From: Chris Gehring <cg@earthtechenterprises.com>
Sent: Thursday, February 6, 2025 4:49 PM
To: Andrew Miller <Andrew.Miller@colliercountyfl.gov>
Cc: Christopher Darco <Christopher.Darco@colliercountyfl.gov>; Ben Figley <Ben@earthtechenterprises.com>
Subject: Explanation of lump sum item increase

EXTERNAL EMAIL: This email is from an external source. Confirm this is a trusted sender and use extreme caution when opening attachments or clicking links.

Gentlemen. All bid tab items for the additional sand volume on park Shore Beach project Have been increased proportionately with the sand volume increase. These lump sum items are all tasks that are performed daily. The import sand is limited to a 4500 ton per day average. Therefore, there is no opportunity to increase production and shorten the contract time. All items and days are directly tied to the tonnage import of 4500 per day. For example, if the sand volume increases 50% the survey item and M.O.T item will increase 50% along with all other bid tab items. Excluding Mobilization which remained at the original price since we are already on the project. If you need additional explanation, feel free to reach out directly to me

Thank you,

Chris Gehring
President



EARTH TECH
ENTERPRISES
6180 Federal Court
Fort Myers, Florida
cg@earthtechenterprises.com
EarthTechEnterprises.com

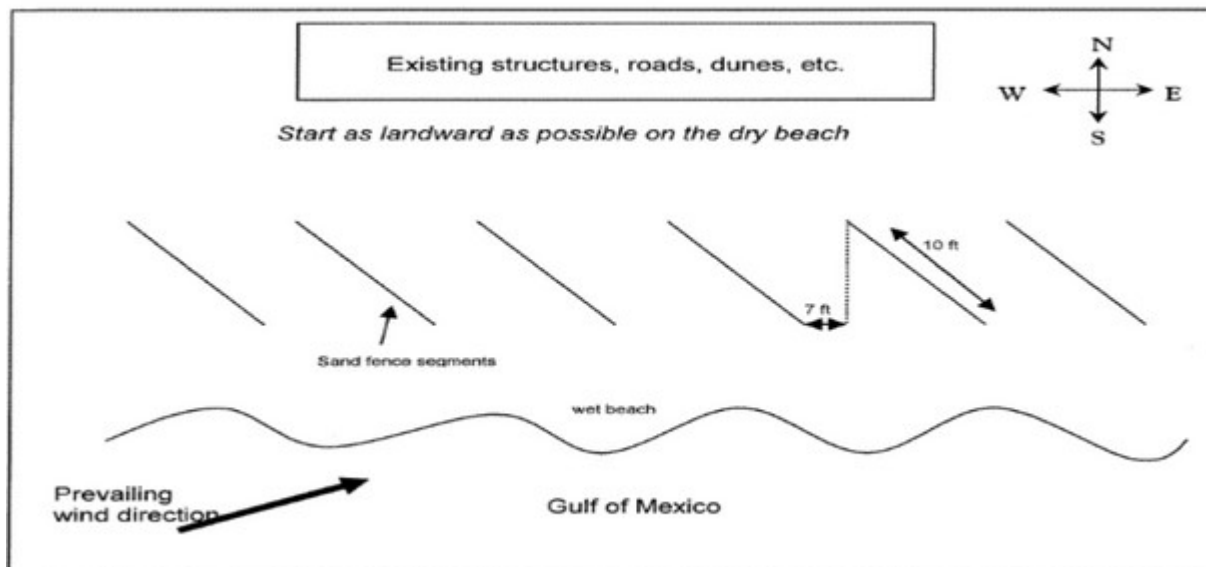
Under Florida Law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by telephone or in writing.

The following white paper was prepared by Joseph Burke as a high level evaluation of potential use of sand fencing for dune sand accretion and protection from pedestrian traffic. Dune barriers are also reviewed.

SAND FENCING

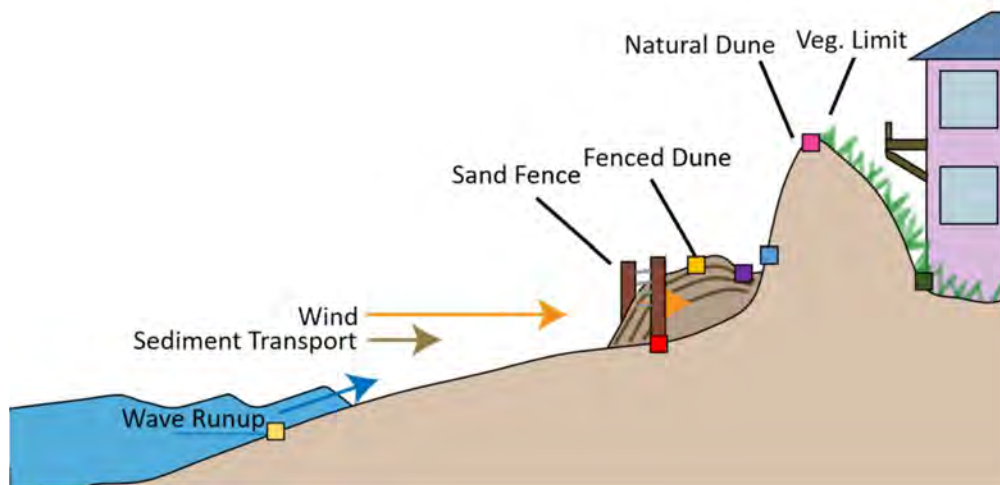
Sand Fence Technical Requirements

- Sand fencing on a beach or dune can assist in building a new foredune or fill in gaps in dune ridges. The fence reduces local wind speed and traps sand, with different fence configurations creating different dune forms and heights.
- FDEP requires sand fence to be constructed according to the attached FDEP guidelines including the following:
 - Sand fences may only be installed on the open beach and on or seaward of the frontal dune or dune bluff in locations where they are expected to be both effective in trapping sand and to meet CCCL regulatory requirements. Installation in these sites must be as far landward as practicable and follow the Sea Turtle Protection Measures contained within these guidelines.
 - Sand fences must be of low impact, breakaway construction and biodegradable materials when possible, including the use of untreated wood and have a 40% open space (void) to 60% solid ratio or a maximum of 50% open space between slats for most effective sand trapping. Posts are recommended to be 3-inch diameter round, untreated wood poles embedded a minimum of 3-feet deep.
 - Sand fences must be located as far landward on the sea turtle nesting beach as is possible. The landward most fence post is to be installed no closer than 5 ft. to a seawall, revetment or dune scarp to avoid trapping nesting sea turtles landward of the sand fence.
 - Sand Fence to be installed as shown below



- FDEP requires permits and approvals for sand fence and FWC review for fences longer than 500 ft, or fences constructed parallel to the shore or use of alternate designs.
- A NOAA study completed in 2020 in Bogue Banks NC on the effectiveness of sand fencing on natural dunes concluded *"Sand fencing on a beach or dune can help trap sands and assist in building a new foredune in front of a natural dune, to provide additional protection against coastal erosion and flooding (Figure 1). However, a [recent NCCOS-supported study](#) demonstrates that sand fencing in the foredune may not always be the best singular management action. While sand fences can trap sand and increase dune width at the base of the fence, they can also prevent sand deposition to the natural dune behind the fence, reducing vertical growth of the natural dune. This study highlights the complexity of the nearshore beach and dune system."*

Figure 1 Sand Fenced Dune



Wind Transportation of Sand

There are three primary methods of wind driven beach sand transportation.

- Suspension – the wind is strong enough to suspend sand particles in the air and laterally transport sand along the wind direction
- Saltation – the wind is strong enough to lift the sand particles but not suspend they fall in a short distance (bumping along the ground)
- Creep – wind slowly moves sand along the ground surface – no lifting of sand particles.

Sand Fence Effectiveness

- Most effective for suspension transportation where dune is already established.
- Moderately effective over time for Saltation and Creep when no dune exists
- Sand fence is ineffective in retaining small particle sizes such as dust.

Wind Speed & Direction Requirements

- Wind is the primary motive force in movement of the sand.
- Wind speed, direction and duration is therefore a critical variable in the effectiveness of sand fencing.
- The wind variable can be determined using a wind rose. A wind rose is a diagram which illustrates the wind direction and speed based upon historical local weather data.
- In addition to Wind; sand particle size (d50), weight of sand particle, presence of water in or on sand, obstructions and other variables affect the volume of sand which can be transported in each method.
- In performing a sample calculation and making various assumption using the method developed by USACE Engineering Manual 1100-2-1100 Wind Blown Sediment Transport and a typical poorly graded medium sand (d50=0.026 cm at density=2.65), a wind speed of ~16 mph was required to transport beach sand under suspension. This calculation can be refined with actual technical information on the variables assumed in the sample calculation.

Naples Pier Wind Information Example

The following wind information is historical data for the Naples Pier, note this weather station is reportedly no longer operating post Ian. The Figure 2 data shows from April through August the primary wind direction is mostly from the west. During the other months the wind direction is primarily from a northerly direction. Average wind speeds and wind gusts during the primary westerly wind direction are below the wind speed required to transport sand in suspension. April which is statistically one of the higher wind months has an average wind speed of 9 mph and average gusts of 13 mph. Figure 3 shows the wind rose and statistically the likelihood of wind speeds exceeding the averages reported in Figure 2. For April there is ~20% chance of wind speeds in the 8 to 25 mph.

FIGURE 2

Monthly wind speed statistics and directions for Naples Pier

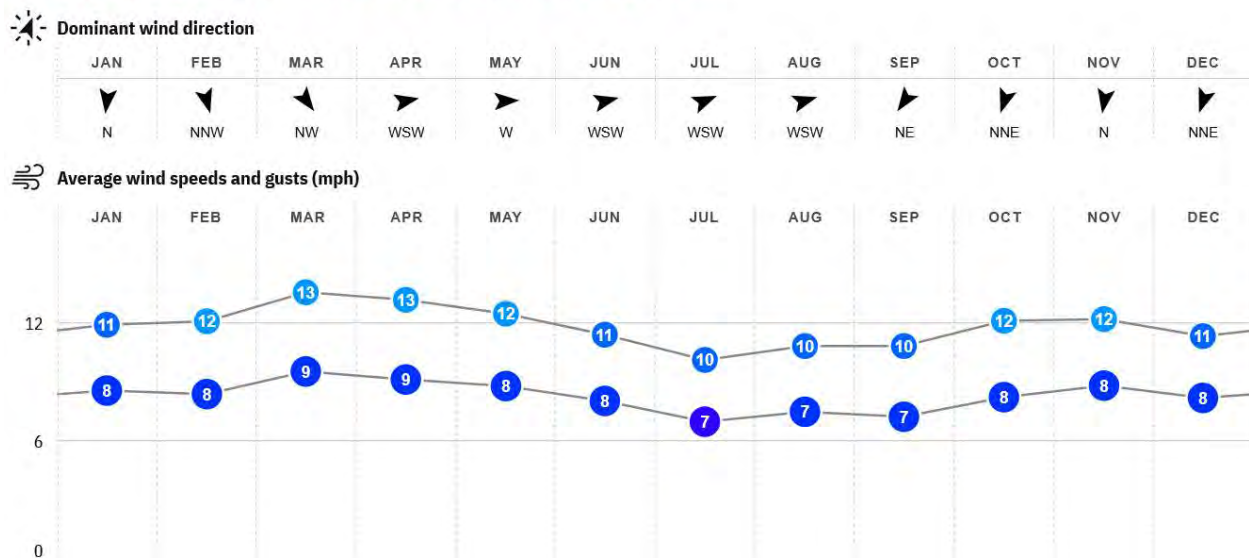
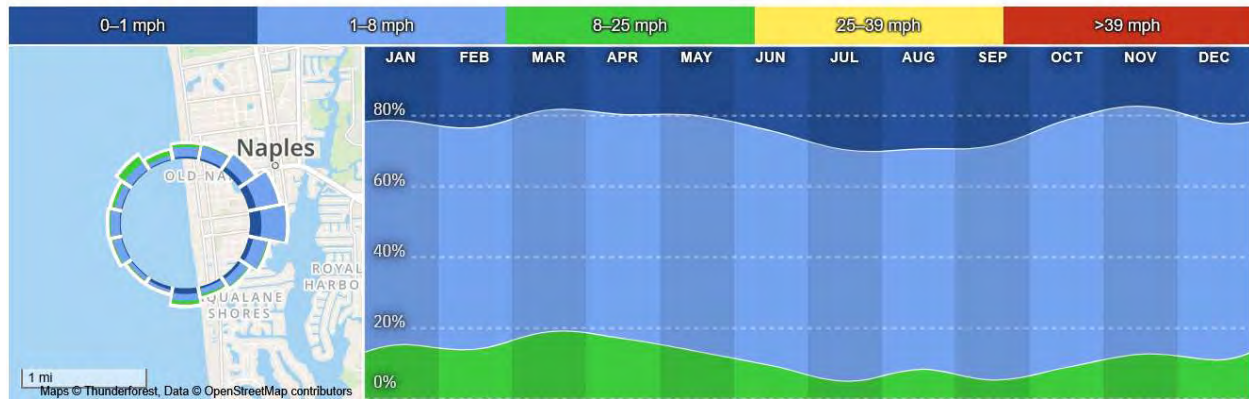


FIGURE 3

Monthly wind direction and strength distribution



Sand Fence Approvals & Community Impacts

- Sand fences would require permitting and approval from State & Local agencies including input from local interest groups, (landowners, nature trusts, fishing associations and recreational users).
- Existing beach restoration easements do NOT include installing structures of any kind (300+ individual easements) – new easements would be required.
- Current understanding is the optimum placement of fencing would require the fence to be removed during turtle nesting season (May 1 to October 31). The Logistics of bi-annual set up and removal of fence would be a challenge.
- Sand fences can limit public access to the dunes and beach, and can be visually intrusive. Fencing may accumulate blown litter or strand line debris, while damaged fences may interfere with the amenity use of the beach.
- Access routes to popular public beaches would need to be defined by the fencing at regular intervals along the dune face. Poorly planned access routes will encourage the public to damage fences in order to create their own paths. Educational displays at car parking areas and/or along footpaths should be used to explain dune management and encourage public interest and support for protecting the dune and sand fence.

Sand Fence Use Preliminary Conclusion

The following preliminary conclusions are based on the reviewed technical references, local regulatory/environmental requirements and , using historic wind data from the Naples Pier.

- It appears that the majority of sand movement along the beach is water driven not wind driven.
- The existing dune would collect wind driven sand via saltation and/or creep.
- The costs vs benefit of the sand volume recovered vs cost of having a temporary sand fence placement during tourist season is unlikely to have a reasonable ROI to current dune and beach maintenance practices (beach renourishment maintenance projects).

DUNE BARRIERS

Purpose: A constructed pedestrian barrier to rerouted foot traffic from trampling newly installed beach dune plants or eroding sand dunes. It is placed along the dune and along footpaths through the dune.

Requirements: FDEP regulates construction of dune barriers within the CCCL (Coastal Construction Control Line). In many areas the CCCL extends onto private property. We can assume all work would be within the CCCL and require FDEP permit and approval.

Design: FDEP permits Post and Rope fence constructed to state of Florida CCCL specifications, see attached.



Dune Barrier Approvals & Community Impacts

- Long term dune barriers would require permitting and approval from State & Local agencies including input from local interest groups, (landowners, nature trusts, fishing associations and recreational users).
- Dune barriers would need to adhere to the FDEP guidelines for sea turtle nesting.
- Existing beach restoration easements do NOT include installing structures of any kind (300+ individual easements) – new easements would be required.
- Access routes to popular public beaches would need to be defined by the dune barriers at regular intervals along the dune face. Poorly planned access routes will encourage the public to damage or by pass rope barriers in order to create their own paths. Educational displays at car parking areas and/or along footpaths should be used to explain dune management and encourage public interest and support for protecting the dune.

Dune Barrier Use Preliminary Conclusion

The following preliminary conclusions are based on the reviewed technical references and local regulatory/environmental requirements.

- Barriers would be most effective at high pedestrian traffic areas.
- New easements would be required for barriers based on specific locations.
- Permits, approvals and funding would need to be obtained.
- Barriers may need to be adjust or removed/replaced during beach renourishment projects.

Attachments

FDEP CCCL Sand Fence Guidelines

FDEP CCCL Post & Rope Guidelines



CCCL Sand Fence Guidelines

The state of Florida requires permits for sand fences and other coastal construction seaward of the coastal construction control line (CCCL) under section 161.053, Florida Statutes, of the Beach and Shore Preservation Act and the CCCL Rule Chapters 62B-33 and 62B-34, Florida Administrative Code.



Figure 1: Sand fences installed to state of Florida specifications for the Mexico Beach dune restoration project built after Hurricane Michael. These sand collection fences have enlarged the new dune by trapping sand from the beach. Installation of sand fences in combination with planting vegetation has been a successful dune restoration method.

General Sand Fence Requirements

- A permit from the Department of Environmental Protection (DEP) is required prior to the installation of any sand fence seaward of a CCCL. Go to www.FloridaDEP.gov/CCCL for permit assistance and to learn [How to determine if your property is seaward of the CCCL using 'Map Direct'](#).
- Sand fences may only be installed on the open beach and on or seaward of the frontal dune or dune bluff in locations where they are expected to be both effective in trapping sand and to meet CCCL regulatory requirements. Installation in these sites must be as far landward as practicable and follow the Sea Turtle Protection Measures contained within these guidelines.
- Dune plant growth is necessary to stabilize sand accumulated by sand fences according to dune restoration [research](#) conducted on Santa Rosa Island following Hurricane Opal.
- Sand fences must be of low impact, breakaway construction and biodegradable materials when possible, including the use of untreated wood and have a 40% open space (void) to 60% solid ratio or a maximum of 50% open space between slats for most effective sand trapping. Posts are recommended to be 3-inch diameter round, untreated wood poles embedded a minimum of 3-feet deep.
- Construction must follow the General Permit Conditions of CCCL [Rule](#) 62B-33.0155, Fla. Admin. Code. Fences are to be installed in a way that does not alter dune topography, damage beach-dune vegetation, drive vehicles or other equipment across dunes, disturb marked sea turtle nests or known nest locations, obstruct public access or damage adjacent properties. No trespass is authorized.
- Disturbance of the beach or dune ground surface must be smoothed out to pre-project conditions. Native dune plants damaged during construction must be replaced and approved by DEP. Damaged sand fences must be repaired or removed.

Sand fence questions? email cccl@dep.state.fl.us, call 850/245-2094 or look up a CCCL field inspector at www.FloridaDEP.gov/CCCL.

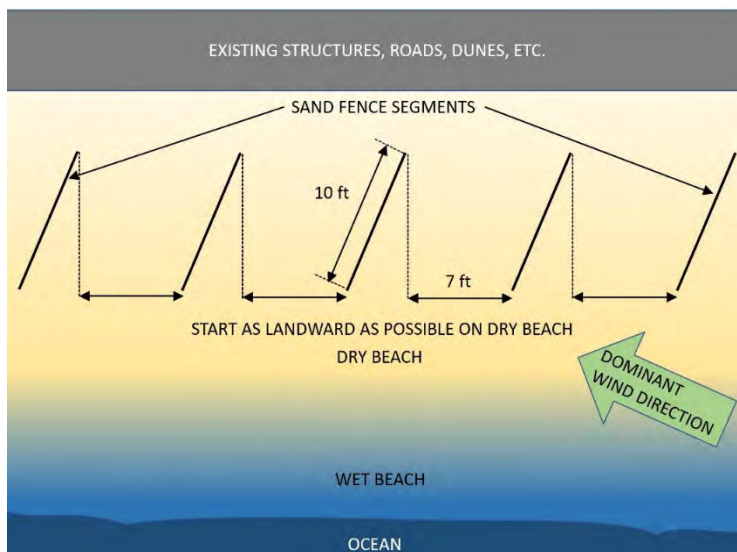
Sea Turtle Protection Measures

The Florida Fish and Wildlife Conservation Commission (FWC), Imperiled Species Management Section provides sea turtle protection measures for sand fence permits issued by DEP and has posted helpful sea turtle conservation information at <https://myfwc.com/wildlifehabitats/wildlife/sea-turtle/>. FWC provides consultation and specific sea turtle protection measures for DEP coastal construction permits for sand fence projects that:

- Extend more than 500 linear feet along the shoreline.
- Use sand fence designs, materials, or installation methods other than those specified in the conditions listed below.
- Are proposed on sandy beaches in Brevard through Miami-Dade counties along Florida's southeast beaches, Manatee through Collier counties of southwest Florida, or Monroe County.

Sand fence projects less than 500 linear feet, using conventional designs and materials, and not located in the above counties are subject to these sea turtle protection measures added to standard CCCL field permit conditions:

- Sand fences must be located as far landward on the sea turtle nesting beach as is possible. The landwardmost fence post is to be installed no closer than 5 ft. to a seawall, revetment or dune scarp to avoid trapping nesting sea turtles landward of the sand fence.
- Sand fences located seaward of the crest of the frontal dune or a seawall are to be arranged as follows and described in the Figure 2 sand fence diagram:
 - Sand fences must be separated into individual fence segments (spurs) and not installed in a continuous fenceline along the beach.
 - Individual fences (spurs) are not to exceed 10 ft. in length and 4 ft. in height.
 - Spurs need to be aligned diagonally facing the dominant wind direction and spaced at least 7 ft. apart along the project area (see diagram below).



- Only one row of fences is allowed within sea turtle nesting habitat.
- Operating, transporting or storing equipment or materials is not allowed seaward of a frontal dune or rigid coastal structure during sea turtle nesting season. In Brevard, Indian River, St. Lucie, Martin, Palm Beach and Broward counties the sea turtle nesting season is March 1 through October 31. In all other counties, the sea turtle nesting season is May 1 through October 31.
- FWC staff can assist with considerations of other coastal wildlife potentially affected by sand fence projects, such as gopher tortoises, beach nesting shorebirds and beach mice. Contact FWC sea turtle program staff at 850/922-4330 or marineturtle@myfwc.com.

Sand fence questions? email cccl@dep.state.fl.us, call 850/245-2094 or look up a CCCL field inspector at www.FloridaDEP.gov/CCCL.



CCCL Post and Rope Guidelines

The state of Florida requires permits for post and rope barriers and other structures or activities seaward of the coastal construction control line (CCCL) under section 161.053, Florida Statutes, of the Beach and Shore Preservation Act and the CCCL Rule Chapter 62B-33, Florida Administrative Code (F.A.C).



Figure 1: Post and rope fence constructed to state of Florida CCCL specifications. This pedestrian barrier rerouted foot traffic that was trampling newly installed beach dune plants and creating footpaths through the dune. **Post and rope barriers are not to be run out onto the sandy beach and block lateral beach access.**

General Post and Rope Requirements

- A permit from the Department of Environmental Protection (DEP) is required prior to the installation of any post and rope structure or series of upright posts connected with line and serving as a barrier or fence seaward of a CCCL. Go to www.FloridaDEP.gov/CCCL for permit assistance and to learn [How to determine if your property is seaward of the CCCL using 'Map Direct'](#).
- Applicants for CCCL permits to install post and rope structures must own or control the property on which the structure is placed or have the property owner's approval to place the structure.
- Post and rope structures are installed immediately adjacent to dune vegetation in locations where they are expected to be both effective as pedestrian barriers and to meet CCCL regulatory requirements. Installation in these structures must be as far landward as practicable and follow the Sea Turtle Protection Measures contained within these guidelines.
- Post and rope must be of low impact, breakaway construction and use biodegradable materials when possible. Posts are recommended to be small diameter (3-inch to 4-inch), round, untreated wood poles embedded in sand a minimum of 2-feet (ft.) deep. Posts shall not be encased in concrete.
- Structures are to be installed in a way that does not alter dune topography, damage beach-dune vegetation, drive vehicles or other equipment across dunes, disturb marked sea turtle nests or known nest locations, obstruct public beach access (both to and along the beach) or damage adjacent properties. No trespass is authorized.
- Disturbance of the beach or dune ground surface caused during construction must be smoothed out to pre-project conditions. Native dune plants damaged during construction must be replaced and approved by DEP. Damaged post and rope structures must be repaired or removed.

*coastal construction questions? email cccl@dep.state.fl.us, call 850/245-2094
or look up a CCCL field inspector at www.FloridaDEP.gov/CCCL*

CCCL Post and Rope Guidelines (p. 2)

Sea Turtle Protection Measures

The Florida Fish and Wildlife Conservation Commission (FWC), Imperiled Species Management Section specifies sea turtle protection measures for post and rope permits issued by DEP and offers helpful sea turtle conservation information at <https://myfwc.com/wildlifehabitats/wildlife/sea-turtle/>. FWC staff provide consultation and specific sea turtle protection measures for DEP coastal construction permits for coastal construction projects.

CCCL post and rope permits are conditioned to provide the following sea turtle protection measures in addition to the standard permit conditions contained in coastal construction rule 62B-33.0155, F.A.C:

- Construction activities within sea turtle nesting habitat, including the entire sandy beach and frontal dune, must be minimized. Impacts to nesting habitat can be minimized by only installing post and rope barriers along pedestrian paths through the dunes and using signs to reduce foot traffic across the dune.
- Structures must be located as far landward on the sea turtle nesting beach as is possible. No posts are to be installed closer than 5 ft. to a seawall, revetment or dune scarp to avoid trapping nesting sea turtles between the post and the upland structure.
- Post and rope structures located on or seaward of a frontal dune or seaward of a seawall are to be arranged as follows and described in the Figure 2 diagram:
 - Posts must be spaced at least 7 ft. apart.
 - Ropes between posts must be tight and droop no closer than 3 feet above the ground.
- Operating, transporting or storing equipment or materials is not allowed seaward of a frontal dune or rigid coastal structure during sea turtle nesting season. In Brevard, Indian River, St. Lucie, Martin, Palm Beach and Broward counties the sea turtle nesting season is March 1 through October 31. In all other counties, the sea turtle nesting season is May 1 through October 31.

FWC staff can assist with conservation measures for other coastal wildlife, such as gopher tortoises, beach nesting shorebirds and beach mice potentially affected by post and rope installation projects. Contact FWC sea turtle program staff at 850/922-4330 or marineturtle@myfwc.com.

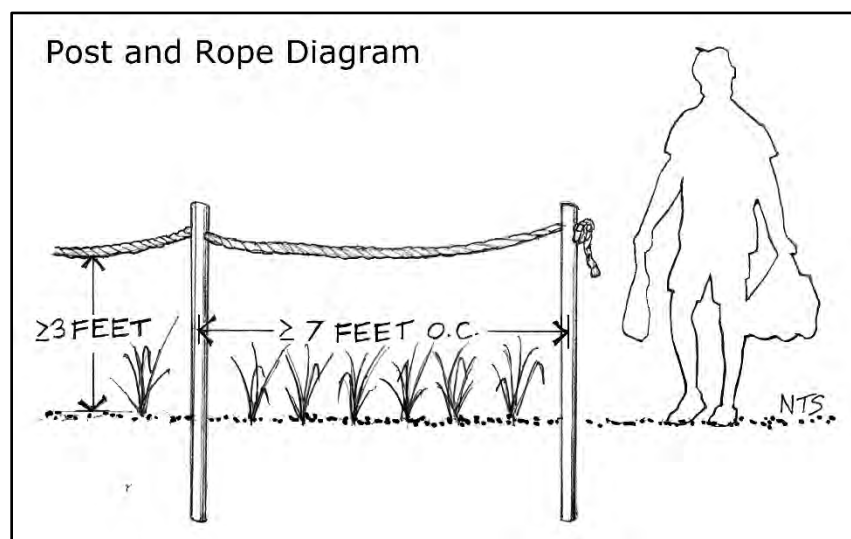


Figure 2: Post and rope fence diagram. Small diameter untreated wood posts are to be installed a minimum of 7-ft. apart and the rope or line strung tight between posts so that the sag in the line is at least 36-inches above the ground. Wood posts are embedded a minimum of 2-feet into the sand and not encased in concrete.

TO: Collier County Florida Commissioners

FROM: The Coastal Advisory Committee

SUBJECT: Need for additional protection or new dunes and dune plantings

DATE: January 9, 2025

The Coastal Advisory Committee has a duty to oversee the health of the Collier county beaches. It has recently come to our attention that the new dunes and dune plantings are not being adequately protected from access by the public. In many locations people are walking through the new plantings to reach the beach or to recreate.

We, therefore, request that an additional protection of a rope barrier on the gulf side of the dune be added to the protection scheme. Historically such rope protections existed in a number of areas such as Clam Pass Park and our new dunes and their plantings could benefit from such an addition. In a few locations, such as Lowdermilk Park, these same rope barriers are needed on the landward side of the dune as well.

We understand that signage requesting no activity on the dunes is being added, but it is currently being ignored.

Finally, the location of the 8 palapas at Lowdermilk Park is inappropriate for the health of the dune. They are currently located in the middle of the new dune and they need to be relocated toward the Gulf.

Please direct staff to undertake the additional rope barriers and other necessary actions to ensure that Collier Beaches are protected.

January 14, 2025

To: Members of Collier County Coastal Advisory Committee

From: Andrew Tyler, PhD, N. Collier Boulevard, Marco Island

Re: Funding for Tigertail lagoon 'Ecological restoration' on Marco Island

Ladies and Gentlemen;

I believe you have served on the CAC for some time, so you have all heard from me previously on this subject. The purpose to this letter is to request that you recommend to the Commission that they rescind any future funding for the so-called "Ecological Restoration" project at Tigertail lagoon on Marco Island.

As far as the project's status, you might recall that construction work at the lagoon yielded an approximately 4-mile-long berm constructed along the spit that lies between Marco Island the Gulf and the lagoon. It should come as no surprise to learn that this berm totally collapsed under the influence of storms over the 18-month period following its completion. Note that Marco Island was NOT impacted by a 'direct hit' from any of the hurricanes, and we were fortunate to suffer no more than a passing brush with any storm. And yet these impacts were sufficient to destroy a berm that was supposed to offer resiliency. Much of the sand that had been trucked in was either washed out to sea, or into the mangroves growing on the hideaway Beach (HB) side of the lagoon. A consequence of this is that most of the mangroves facing the lagoon have died, essentially suffocated by burial of their roots by intruding sand.

Coming forward, the lagoon is now under 'maintenance', and the nature of this work has been withheld from residents. It emerges that an entirely new berm is being constructed, whose purpose is to widen the lagoon to approximately twice its original width. This is no repair; it is an entirely new structure, and one not described in the original enabling permit from FDEP. I am including images

of the devastation I witnessed this Sunday, January 12 below, and I am happy to share additional images should you wish to see them.

As far as this Committee is concerned, the question might be: “Has the County’s money invested in this project served to benefit the County’s Park at Tigertail Beach”? You will recall that this was the justification for extending County funds to the project, and, in my view, should continue to be the primary consideration. I submit to you that the funding to date has emphatically NOT benefitted the park. The beach used by the majority of visitors is totally unrelated to the “restoration” area, and visitors continue to use the same stretch of beach they always have. The southern section of the lagoon is clogged with sand, more than it ever was. The park still has no concessionaire, and the work performed is highly unlikely to attract any candidates as clients of the County.

I’m sure you are all aware that the flow of ‘bed tax’ money into County coffers is down, since tourism is facing a number of challenges. In fact, the TDC recommended to the Commission a near doubling County’s Park of advertising expenditure, requesting an additional \$ 5.45 Million, and this was approved by the Commission on November 12, 2024.

<https://www.gulfshorebusiness.com/collier-doubles-tourism-marketing-efforts/>

It's reasonable to ask “is the Tigertail lagoon project competitive against other challenges in a time of reduced resources?”. For example, according to the county web site, Barefoot beach has still not fully recovered from Hurricane Ian’s impacts 28 months ago.

<https://www.collierparks.com/newsalert/barefoot-beach-preserve-update>

I realize you might say that the prioritization is a matter for the Commission. Fair enough, but your collective expertise in prioritizing the projects that fall under your purview is surely a reasonable ask for a Commission wrestling with many broader matters as well?

I'm aware that some members of the Committee have vested interests in the project, and still others live in communities that have benefitted from other projects funded with TDC funds previously. But at this time, I submit that there are far more deserving cases than this effort to control the Gulf with a sand berm. It cannot hold; the new berm is already showing signs of degradation, (see picture 3 below) and no doubt you are all familiar with Einstein's definition of insanity. Please recommend against further waste of precious resources on this ridiculous project. If any of you would care to take a guided walking tour of the construction site to see for yourself, let me know. Sundays only, the beach is closed for construction equipment on other days.

Respectfully yours,

Andrew Tyler, Ph D., Marco Island

Two pages of Photographs follow, recorded Sunday, January 12, 2025.



Dead and dying mangroves, a consequence of sand intrusion following berm collapse. Also, see following picture, on the left.



Terminus of the former lagoon, now isolated from the Gulf.



New Berm, where there was previously a Loggerhead turtle nesting beach.



This used to be a nesting ground for State-threatened Black Skimmers and endangered Least Terns. Now it has been 'environmentally restored'!

**Sunshine Law & Public Records Law
County Attorney Office Presentation**

Sunshine Law, Section 286.011, Florida Statutes

Advisory Board Members must be aware of the significance of the Florida Sunshine Law and Public Records Law. The primary rule for you to remember is to not discuss or engage in written correspondence with another Advisory Board Member regarding anything that may foreseeably come before your Advisory Board outside of a publicly noticed meeting. Remember any discussion on Advisory Board business must take place in the Sunshine with all elements of the Sunshine Law strictly followed. Thank you for your service and commitment to Collier County!

History:

Florida's Government-in-the-Sunshine Law was enacted in 1967. Today, the Sunshine Law regarding open government can be found in [Chapter 286](#) of the Florida Statutes. These statutes establish a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.

Applicability:

The Sunshine Law is applicable to the Collier County Board of County Commissioners and all Collier County Advisory Boards. The Sunshine Law applies to all decision-making committees. The Sunshine Law does not apply to County Staff unless Staff is a member of the Advisory Board.

The Sunshine Law is “applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.” Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973).

Sunshine Law Requirements:

There are three basic requirements of the Sunshine Law found in Section 286.011, Fla. Stat.:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meeting must be taken.

(1) Open to the public. The meeting must be open to the public. No person can be excluded absent extenuating circumstances. The location must be accessible, of sufficient size for turnout, the facility may not discriminate based on a protected class, and the meeting must occur within Collier County.

The public shall be given a reasonable opportunity to be heard on a proposition before a board or commission including an Advisory Board. The Board may establish policies to maintain orderly conduct and proper decorum and may establish time limits similar to those established by the Board of County Commissioners.

(2) Reasonable notice of the meeting must be given. Reasonable is defined to mean no less than 72 hours.

(3) Written minutes of the meeting are required and must be taken and made available promptly. Sound recordings may be used in addition to written minutes but not as a substitute. The minutes (including drafts) are public records. The minutes must record the votes (no “secret ballots”).

The Sunshine Law applies when two or more members of a governing board (such as the BCC) **discuss a matter that may foreseeably come before the governing board.**

Collier County Advisory Board members must strictly adhere to all aspects of the Sunshine Law.

Top Five Reminders!

1. No pre and post meeting discussions;
2. No private conversations on the dais;
3. Avoid texting on the dais;
4. May not use non-members as liaisons between board members;
5. Avoid the appearance of impropriety.

Written Correspondence:

The Sunshine Law applies to all Advisory Board business including written correspondence and emails. Advisory Board Members should not communicate with each other via written or electronic correspondence. Should an Advisory Board Member wish to send information to all other Board members, he or she should send the information through the County Staff Liaison as a one-way communication.

- **Two-way communication must be held in the Sunshine.**
- Discussions must occur at the public meeting.
- The Sunshine Law and rules on communication apply only to matters that may foreseeably come before the governing board.
- Social events are of course permissible – be mindful of the Sunshine Law!

Quorum:

In order to hold a public meeting and take action, the Advisory Board must have a quorum of its members physically present in the meeting room.

Inspection Trips:

The County Attorney Office recommends against two or more members taking an inspection trip together. If an inspection trip is required, all elements of the Sunshine Law must be strictly followed. The County Staff Liaison should work with the County Attorney’s Office to coordinate an inspection if one is required.

Penalties for violations of the Sunshine Law:

It is a second degree misdemeanor to knowingly violate the Sunshine Law and may include a fine up to \$500 or 60 days imprisonment, removal from position.

Public Records Law, Chapter 119, Florida Statutes

History:

Florida began its tradition of transparency back in 1909 with the passage of [Chapter 119](#) of the Florida Statutes or the “Public Records Law.” This law provides that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Florida Legislature. Over the years, the definition of what constitutes “public records” has come to include not just traditional written documents such as papers, maps and books, but also tapes, photographs, film, sound recordings and records stored in computers.

What is a public record?

A public record encompasses all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, regardless of whether such materials are in final form.

Public records include: all documents, paper, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with the transaction of official business by the agency.

Applicability:

Advisory Board Members are required to adhere to the Public Records law. Any record made or received by the Advisory Board Member in the course of County business is a public record.

Recommendations:

- Should an Advisory Board member need to send a one-way communication to the Advisory Board, he or she should copy the County Staff Liaison (at the County employee’s email address). This will allow the email to be maintained on the County’s network server.
- Advisory Board members may wish to create a notebook to maintain all committee business and once the committee service is over, provide the notebook to the County Staff Liaison to maintain for compliance with the Public Records Law.
- Generally, the document author is the custodian of the record. The Advisory Board member is not required to maintain each agenda. The County Staff Liaison will maintain the agendas and the attached documents.

Statutory exemptions may apply:

Generally all records made or received by an agency in the course of official business are public records. There must be a specific statutory exemption in order for a record to be exempt (or protected) from disclosure.

Exemptions may include:

- Documents prepared for litigation or in anticipation of litigation, however these documents lose the statutory exemption at the close of litigation.
- Social security numbers of employees or former employees.
- Sealed bid or proposals; there is a shade period that applies. Following the shade period, the documents lose the statutory exemption and are public records.

Public Records Requests:

Public Records requests in Collier County are governed by Ch. 119, Fla. Stat., and Collier County Resolution No. 07-327. The Resolution provides:

- Requests may be made verbally or in writing by any person.
- The County cannot require the requestor to provide their request in writing.
- The County has a “reasonable” time to respond; however the County must take action promptly and cannot create an arbitrary time to respond – for example 72 hours. Requests should be processed as received.
- The County may charge for the cost of retrieving the records if the amount requested is voluminous. The County will charge actual staff time for work in excess of one (1) hour to gather and review the records.
- May charge 15 cents per page.
- The County is not required to create records that do not already exist.
- The County is not required to provide explanation of records.

Penalties:

There are both civil and criminal penalties for knowingly violating the Public Records Law.

Social Networking:

The Sunshine Law and Public Records Laws applies to Social Networking for example Facebook, Twitter, and You Tube. This presents unique challenges to document and maintain the records. Advisory Board members should avoid discussing official committee business on these social networking sites – remember there can be no two-communication outside of the Sunshine Law. If you are in a position to use social networking for Advisory Board business, please discuss with your County Staff Liaison.

Ethics Laws – Florida Statutes, County Ordinance, County Policy

Three areas:

Chapter 112, Florida Statutes, Part III

Collier County Ordinance No. 2003-53, as amended

Collier County Manager Administrative Procedures CMA #5311 (employees only)

Ch. 112, Fla. Stat.

Ch. 112, Fla. Stat., provides a **Code of Ethics** for public officers and employees. The Code of Ethics protects against conflict of interest and establishes standards for the conduct of elected officials and government employees in situations where conflicts may exist.

A **conflict of interest** is a situation in which regard for a private interest tends to lead to a disregard of a public duty or interest.

Florida’s Code of Ethics

Applies to: Board, Public Officials, and Employees

Addresses: Standards of Conduct, Voting Conflicts, and Financial Disclosure

Prohibits certain actions or conduct

Requires certain disclosures be made to the public

Standards of Conduct

- **Soliciting and Accepting Gifts**

May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.

- **Accepting Unauthorized Compensation**

May not accept any compensation, payment, or thing of value that is given to influence a vote or official action.

- **Misusing Public Position**

May not corruptly use official position to obtain a special privilege for yourself or others.

- **Disclosing or Using Certain Information**

May not disclose or use information not available to the public and obtained by reason of the public position for the personal benefit of yourself or others.

Additional Standards of Conduct

Doing business with one's agency - A public officer or employee acting in a private capacity shall not attempt to do business with the County/Agency where he/she serves as an officer or employee. Applies to private business in which public officer, employee, spouse or child has a material interest. (112.313(3)).

Engaging in conflicting employment or contractual relationship - A public officer may not be employed or contract with any business entity regulated by or doing business with his or her public agency. (112.313(7)). May be waived by 2/3 vote of full Board (112.313(12)). Specific exemptions apply.

Voting Conflicts of Interest

Requires that no County, municipal, or other Local Public Officer (including members of Board appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in Section 112.312(2), or to any relative or business associate. (Specific exemptions apply.)

Exemptions:

- (1) Remote and speculative test – or “uncertainty at the time of vote”
- (2) Size of class test – “unique gain or loss”

When there is a conflict - Abstain from voting:

- (1) Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict.
- (2) May not participate in the discussion without first disclosing the nature of their interest.
- (3) May not participate in an attempt to influence the outcome.

Optional Abstention Provision – Section 286.012, Fla. Stat.

Penalties: Civil penalties, fine or removal from office

[YY-1128/1167753/1]

County Ethics Ordinance No. 2003-53, as amended

- More stringent than Florida Statutes

Statement of Policy

An individual covered by this Ordinance **shall**:

1. Not use his or her position as a public servant for unlawful gain or enrichment;
2. Avoid conduct that gives the appearance of an impropriety in the performance of his/her public duties; and
3. Not accept anything of value if the public servant knows or reasonably should have known that it was given with the intent to reward or influence him/her in the performance or nonperformance of his/her public duties.

NO THANK YOU!

Public officials are prohibited from accepting any gift or any other thing of monetary value from anyone that has an interest that may be substantially affected by the performance or non-performance of duties of a public official.

Limited Exceptions Apply!

- Gifts from relatives
- Unsolicited advertising or promotional materials
- Gifts for participation in a seminar
- Award of nominal commercial value (\$40)
- Food or beverage offered to all attendees at a business meeting (the \$4.00 rule (inflation))

WHEN IN DOUBT, PLEASE ASK!

Questions, please contact the County Attorney's Office:

Jeffrey A. Klatzkow, County Attorney
Jeff.klatzkow@colliercountyfl.gov
Colleen M. Greene, Assistant County Attorney
Colleen.greene@colliercountyfl.gov
3299 Tamiami Trail East, 8th Floor
Naples, FL 34112
(239) 252-8400