

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT for PROFESSIONAL ENGINEERING SERVICES (“Agreement”), entered into as of this _____ day of _____, 2017 by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach FL 32960 (“COUNTY”), and Coastal Technology Corporation whose address is 3625 20th Street, Vero Beach, FL 32960 (“Consultant”):

BACKGROUND RECITALS:

A. In accordance with the Consultants’ Competitive Negotiations Act, Section 287.055, Florida Statutes, the COUNTY solicited Requests for Statements of Qualification # 2018007 for Professional coastal engineering and biological support services related to the management and renourishment of the Sector 7 Project area.

B. As a result of its response, the County has selected Consultant to provide certain professional services relating to Engineering and Biological support services “Services” for Sector 7 (Porpoise Point) Beach and Dune Renourishment Project (“Project”) as more fully set forth in the Scope of Services attached as Exhibit A to this Agreement and made a part by reference.

C. Consultant has submitted an Hourly Rate Schedule attached as Exhibit B to this Agreement and made a part by reference.

D. The Consultant is willing and able to perform the Services for the COUNTY on the terms and conditions set forth below; and

E. The COUNTY and the Consultant wish to enter into this Agreement for the Consultant’s Services for the Project.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GENERAL.

1.1 All professional services provided by the Consultant for the COUNTY shall be provided consistent with Exhibits A, and B (collectively, the “Exhibits”). All professional services provided by the Consultant for the COUNTY shall be identified in Work Orders and performed in a timely, efficient, cost effective manner, and in accordance with the current professional standards of the applicable discipline. Work Orders shall include a description of services to be performed; a statement of fees; a schedule of deliverables; proposed schedule for compensation and whether compensation is lump sum, maximum amount not-to-exceed, task based, or any combination of the foregoing; a budget establishing the amount of compensation to be paid with sufficient detail so as to identify

all of the various elements of costs; a projected schedule for completion of the work to be performed by the Consultant; and any other additional instructions or provisions relating to the specific Services authorized pursuant to each Work Order that does not conflict with the terms of this Agreement.

1.2 Whenever the term "Work Order" is used herein, it is intended to mean that formal document that is dated; serially numbered; and executed 'by both the COUNTY and the Consultant by which the COUNTY accepts Consultant's proposal for specific services and Consultant indicates a willingness to perform such specific services for the terms and under the conditions specified in this Agreement. Each Work Order must be fully executed by the COUNTY prior to issuance of the related Notice-to-Proceed,

1.3 Services related to any Work Order which would increase, decrease or which are otherwise outside the scope of Services or level of effort contemplated by the Exhibits shall be Services for which the Consultant must obtain the prior written approval of the COUNTY as provided by this Agreement. All terms for the performance of such Services must be agreed upon in a written document prior to any deviation from the terms of the Work Order and Agreement, and when properly authorized and executed by both the Consultant and the COUNTY shall become an amendment to the Agreement.

1.4 The Background Recitals are true and correct and form a material part of this Agreement.

2. COUNTY OBLIGATIONS.

2.1 The COUNTY will provide the Consultant with a copy of any preliminary data or reports available as required in connection with the work to be performed under this Agreement, together with all available drawings, As-built surveys, GIS maps, and other documents in the possession of the COUNTY pertinent to the Project. The Consultant shall satisfy itself as to accuracy of any data provided. The Consultant is responsible for bringing to the COUNTY's attention, for the COUNTY's resolution, material inconsistencies or errors in such data that come to the Consultant's attention.

2.2 The COUNTY shall arrange for access to, and make provisions for the Consultant to enter upon, public and private property (where required) as necessary for the Consultant to perform its Services, upon the timely written request of Consultant to COUNTY.

2.3 The COUNTY shall examine any and all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, and render, in writing, decisions pertaining thereto within a reasonable time.

2.4 Approval by the COUNTY of any of the Consultant's work, including but not limited to drawings, design specifications, written reports, or any work products of any nature whatsoever furnished hereunder, shall not in any way relieve the Consultant of responsibility for the technical accuracy and adequacy of the work. Neither the

COUNTY's review, approval or acceptance of, or payment for, any of the Services furnished under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable in accordance with all applicable laws for all damages to the COUNTY caused by the negligent performance by the Consultant of any of the Services furnished under this Agreement.

2.5 The COUNTY reserves the right to appoint one or more Project Managers for the specific Services in connection with this Agreement. The Project Manager shall: (a) act as the COUNTY's agent with respect to the Services rendered hereunder; (b) transmit instructions to and receive information from the Consultant; (c) communicate the COUNTY's policies and decisions to the Consultant regarding the Services; and (d) determine, initially, whether the Consultant is fulfilling its duties, responsibilities, and obligations hereunder.

2.6 The COUNTY shall give prompt written notice to the Consultant whenever the COUNTY observes or otherwise becomes aware of any development that affects the timing or delivery of the Consultant's Services. If the Consultant has been delayed in completing its Services through no fault or negligence of either the Consultant or any sub-consultant, and, as a result, will be unable to perform fully and satisfactorily under the provisions of this Agreement, then the Consultant shall promptly notify the Project Manager. In the COUNTY's sole discretion, and upon the submission to the COUNTY of evidence of the causes of the delay, this Agreement shall be modified in writing, subject to the COUNTY'S rights to change, terminate, or stop any or all of the Services at any time in accordance with this Agreement.

2.7 The Consultant shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the Consultant's control and through no fault or negligence of the Consultant. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and Consultant shall mutually agree, in writing, to the modifications to be made to this Agreement.

2.8 The COUNTY shall provide professional survey services as may be required for design, permitting, construction and monitoring of the Project.

3. RESPONSIBILITIES OF THE CONSULTANT.

3.1 The Consultant agrees to perform all necessary professional engineering consulting services to assist the COUNTY with professional coastal engineering and biological support services for the Project area as set forth in this Agreement.

3.2 The Consultant will endeavor not to duplicate any previous work done on the Project. Before beginning work, the Consultant shall consult with the COUNTY to clarify and define the COUNTY's requirements for the Project.

3.3 The Consultant agrees to complete the Project within the time frame specified in the Work Order.

3.4 The Consultant will maintain an adequate staff of qualified personnel.

3.5 The Consultant will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

3.6 The Consultant, as a part of the consideration hereof, does hereby covenant and agree that: (1) in connection with the furnishing of Services to the COUNTY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to the services to be performed by Consultant under this Agreement on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and (2) the Consultant shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, as such rules, regulations, or guidelines may be from time to time amended.

3.7 The Consultant shall, during the entire term of this Agreement, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for the Consultant to render its Services as described in this Agreement. The Consultant shall also require all sub-consultants to comply by contract with the provisions of this section.

3.8 The Consultant will cooperate fully with the COUNTY in order that all phases of the work may be properly scheduled and coordinated.

3.9 The Consultant will cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY.

3.10 The Consultant shall report the status of the Services under this Agreement to the County Project Manager upon request and hold all drawings, documents and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

3.11 All documents, reports, tracings, software, specifications, field books, survey notes and information, maps, and other data developed by the Consultant for the purpose of this Agreement, are and shall remain the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the County Project Manager.

3.12 The Consultant will confer with the COUNTY during the further development of improvements for which the Consultant has provided design or other services, and the Consultant will interpret plans and other documents; correct errors and omissions; and prepare any necessary plan revisions not involving a change in the scope of the work required, at no additional cost to the COUNTY, within thirty (30) calendar days of notice by the COUNTY, or upon a determination of the Consultant of the existence of such errors or omissions by the Consultant, whichever event shall first occur.

3.13 The Consultant agrees to maintain complete and accurate books and records ("Books"), in accordance with sound accounting principles and standards for all Services, costs, and expenditures under this Agreement. The Books shall identify the Services rendered during each month of the Agreement and the date and type of each Project-related expense. The COUNTY shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books for the purpose of verifying the accuracy of any invoice. The CONSULTANT shall retain the Books, and make them available to the COUNTY as specified above, until the later of three (3) years after the date of termination of this Agreement, or such longer time if required by any federal, state, or other governmental law, regulation, or grant requirement.

3.14 The Consultant shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY. When applicable and upon receipt of such consent from the COUNTY, the Consultant shall cause the names of the engineering and surveying firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data.

3.15 All documents, including but not limited to drawings and specifications, prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein and are not intended or represented to be suitable for reuse by the COUNTY or others on any other project. Reuse of any document or drawing shall be at the COUNTY's own risk. The Consultant shall not be held liable for any modifications made to the documents by others.

4. **TERM; TIME FOR COMPLETION.**

4.1 The time for completion of the Project shall be defined in the Work Order.

5. **COMPENSATION.**

5.1 The COUNTY shall pay to the Consultant the mutually agreed professional fees for Services rendered for the Project, to be paid in monthly installments or on a deliverable basis, as set forth in the Work Order based upon rates identified in Exhibit B. Duly certified invoices, in triplicate, phased as per the Exhibits, shall be submitted to the County Project Manager, in detail sufficient for proper prepayment and post payment audit. Upon submittal of a proper invoice the County Project Manager will determine if the tasks or portions thereof have been satisfactorily completed. Upon a determination

of satisfactory completion, the County Project Manager will authorize payment to be made. All payments for services shall be made to the Consultant by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.2 The COUNTY may at any time notify the Consultant of requested changes to the Services under an existing Work Order, and thereupon the COUNTY and the Consultant shall execute a mutually agreeable amended Work Order or a new Work Order.

5.3 The COUNTY shall have the sole right to reduce or eliminate, in whole or in part, any portion of the Services under an existing Work Order at any time and for any reason, upon written notice to the Consultant specifying the nature and extent of the reduction. In such event, the Consultant shall be paid for the Services already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

5.4 The COUNTY may, at any time and for any reason, direct the Consultant to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The Consultant shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the services under this Agreement for a period in excess of six (6) months, the compensation of Consultant for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

6. **ADDITIONAL WORK.**

6.1 If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the Consultant to provide, either directly by the Consultant or by a sub-consultant, such additional services by a new Work Order or by a written amendment to a specific Work Order. In order to remain consistent with State Beach Management Funding Assistance Program policies the County is limiting consultant mark-up of sub-consultant contracts to a 5 percent maximum and approved consultant travel rates as set forth in Chapter 112 of the Florida Statutes.

7. **INSURANCE AND INDEMNIFICATION.**

7.1 The Consultant shall not commence work on this Agreement until it has obtained all insurance required under this Agreement and such insurance has been approved by the County's Risk Manager.

7.2 Consultant's insurance coverage shall be primary.

7.3 All required insurance policies shall be placed with insurers licensed to do business in Florida and with a Best's rating of A VII or better.

7.4 The insurance policies procured shall be occurrence forms, not claims made policies with the exception of professional liability.

7.5 A certificate of insurance shall be provided to the County's Risk Manager for review and approval, ten (10) days prior to commencement of any work under this Agreement. The COUNTY shall be named as an additional insured on all policies except workers' compensation and professional liability.

7.6 The Consultant's insurance companies shall send written verification to the County Risk Manager that they will provide 30 days prior written notice to the County Risk Manager of its intent to cancel or modify any required policies of insurance.

7.7 Consultant shall include all sub-consultants as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements stated herein.

7.8 The COUNTY, by and through its Risk Manager, reserves the right periodically to review any and all policies of insurance and reasonably to adjust the limits of coverage required hereunder, from time to time throughout the term of this Agreement. In such event, the COUNTY shall provide the Consultant with separate written notice of such adjusted limits and Consultant shall comply within thirty (30) days of receipt thereof. The failure by Consultant to provide such additional coverage shall constitute a default by Consultant and shall be grounds for termination of this Agreement by the COUNTY.

7.9 The Consultant shall indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

8. **TERMINATION.**

8.1 This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the Consultant; or (b) by the Consultant, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or (d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

8.2 In the event of termination by the COUNTY, the COUNTY's sole obligation to the Consultant shall be payment for those portions of satisfactorily completed work

previously authorized by approved Work Order. Such payment shall be determined on the basis of the hours of work performed by the Consultant, or the percentage of work complete as estimated by the Consultant and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the Consultant, elect to employ other persons to perform the same or similar services.

8.3 The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

8.4 In the event that the Consultant merges with another company, becomes a subsidiary of, or makes any other substantial change in structure, the COUNTY reserves the right to terminate this Agreement in accordance with its terms.

8.5 In the event of termination of this Agreement, the Consultant agrees to surrender any and all documents prepared by the Consultant for the COUNTY in connection with this Agreement.

8.6 The COUNTY may terminate this Agreement for refusal by the Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by the Consultant in conjunction with this Agreement.

8.7 The COUNTY may terminate this Agreement in whole or in part if the Consultant submits a false invoice to the COUNTY.

9. TRUTH-IN-NEGOTIATION CERTIFICATE; CONTINGENCY FEES.

9.1 Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement. The wage rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the wage rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this "Certificate" within one (1) year following final payment. COUNTY has the authority and right to audit Consultant's records under this provision. The COUNTY does not hereby waive any other right it may have pursuant to Section 287.055, Florida Statutes, as it may be from time-to-time amended.

9.2 Pursuant to the Consultants' Competitive Negotiations Act, F. S. section 287.055, the Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person

other than a bona fide employee working solely for the Consultant any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this contract. For breach of violation of this provision, the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

10. **MISCELLANEOUS PROVISIONS.**

10.1 **Independent Contractor.** It is specifically understood and acknowledged by the parties hereto that the Consultant or employees or subconsultants of the Consultant are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

10.2 **Merger; Modification.** This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the Consultant and the COUNTY.

10.3 **Governing Law; Venue.** This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

10.4 **Remedies; No Waiver.** All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

10.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

10.6 Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

10.7 No Pledge of Credit. The Consultant shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness.

10.8 Public Records. The Consultant shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this Agreement.

10.9 Notices: Any notice, request, demand, consent, approval, or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (a) Hand delivery to the other party; (b) Delivery by commercial overnight courier service; or (c) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

<u>County:</u>	Indian River County <u>Attn:</u> Richard B. Szpyrka, P.E. 1801 27 th Street Vero Beach, FL 32960-3365 Email: rszpyrka@ircgov.com
<u>Consultant:</u>	Coastal Technology Corporation. <u>Attn:</u> Michael Walther, P.E., D.CE 3625 20 th Street Vero Beach, FL 32960 Email: mwalther@coastaltechcorp.com

Notices shall be effective when received at the address as specified above. Facsimile transmission is acceptable notice effective when received, provided, however, that facsimile transmissions received (i.e., printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next day that is not a weekend day or a holiday. The original of the notice must additionally be mailed. Either party may change its address, for the purposes of this section, by written notice to the other party given in accordance with the provisions of this section.

10.10 Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by Consultant shall survive the termination or expiration of this Agreement.

10.11 Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement

10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

11. **FEDERAL PROVISIONS** OWNER and CONSULTANT will adhere to the following, as applicable to this work:

A. Equal Employment Opportunity. During the performance of this contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant 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, 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Consultant 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.

(5) The Consultant 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.

(6) In the event of the Consultant'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 Consultant 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 as 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.

(7) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

B. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). In accordance with the statute, Consultants must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Consultants must be required to pay wages for covered workers not less than once a week. The County must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

C. Compliance with the Copeland "Anti-Kickback" Act.

(1) Consultant. The Consultant shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Consultant and subcontractor as provided in 29 C.F.R. § 5.12.

D. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

(1) Overtime requirements. No Consultant 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 Consultant and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant 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 \$10 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. FEMA, or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant 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.

E. Rights to Inventions Made Under a Contract or Agreement. If a Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights

to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

F. Clean Air Act.

(1) The Consultant 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 Consultant 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 Consultant agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

G. Federal Water Pollution Control Act.

(1) The Consultant 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 Consultant 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 Consultant agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

H. Energy Policy and Conservation Act. The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

I. 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 Consultant is required to verify that none of the Consultant, 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 Consultant 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 Indian River County. If it is later determined that the Consultant 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

Indian River 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.

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

K. Procurement of Recycled/Recovered Materials.

(1) In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

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

(1) The Consultant agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Consultant 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 Consultant 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.

M. DHS Seal, Logo, and Flags. The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

N. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to partially fund the Project. The Consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

O. 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, Consultant, or any other party pertaining to any matter resulting from the contract.

P. Program Fraud and False or Fraudulent Statements or Related Acts. The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.

Q. Affirmative Steps. Consultant shall take the following affirmative steps to ensure minority business, women's business enterprises and labor surplus area firms are used when possible:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Ensuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

Coastal Technology Corporation

By Michael Walther

Michael Walther, PE, D.CE
Vice-President

Date December 21, 2017

Witness:

By Jeanne H. Walther
Printed Name: Jeanne H. Walther

INDIAN RIVER COUNTY
By its Board of County Commissioners

By _____

Peter D. O'Bryan, Chairman

Date Approved by BCC: _____

Attest: Jeffrey R. Smith, Clerk of Court
And Comptroller

By _____
Deputy Clerk

Approved:

Jason E. Brown
County Administrator

Approved as to form and legal
sufficiency:

William K. DeBaal
Deputy County Attorney

EXHIBIT A
Sector 7 (Porpoise Point) Beach and Dune Renourishment Project
Scope of Services

I. PROJECT BACKGROUND

As defined in the Indian River County Beach Preservation Plan (2015) the Sector 7 Beach and Dune Restoration Project is located on the east coast of Florida within Indian River County. The northern boundary of the project is located approximately 18.3 miles south of the Sebastian Inlet and extends approximately 2.2 miles between the Florida Department of Environmental Protection (FDEP) Reference (R) Monuments R-97-R-108. The Sector 7 project area has been historically erosional of which a majority (R-99-R-108) is designated by FDEP (2016) as critically eroded.

The project was initially nourished in 2007 under FDEP Joint Coastal Permit No. 0215960-001-JC and U.S. Army Corps of Engineers (USACE) permit no. SAJ-2003-6106 (IP-IS). Permit required post construction monitoring concluded 2011 however, the County continues to collect annual beach profile surveys along the Sector 7 project area.

The Sector 7 Project Area sustained damage from Hurricane Matthew (2016) and is in need of renourishment to maintain protection to upland properties and infrastructure.

II. SCOPE OF SERVICE

- A. Provide professional coastal engineering and biological support services, on an open-end project specific services basis, related to the management and renourishment of the Sector 7 project area.
- B. A description of the scope of services includes but is not limited to the following:
- Expertise in planning, environmental investigation, analysis, and related services in preparing design proposals and permitting for the Sector 7 Beach and Dune Restoration Project.
 - Feasibility analysis of project alternatives, to include cost-effectiveness, permitability, environmentally conscientiousness, engineering soundness, and constructability.
 - Identification and documentation of environmental impacts of feasible alternatives (i.e. possible impacts to marine turtle nesting and nearshore hardbottom resources).
 - Experience with numerical hydrodynamic and morphological coastal modeling and utilization of predictive modeling to evaluate project performance.

- Expertise in the preparation of National Environmental Policy Act (NEPA) documents and preparation of monitoring and mitigation plans.
- Knowledge of local, State, and Federal regulations relative to Indian River County shoreline and good working relationships with State and Federal review agencies' staff assigned to Indian River County.
- Preparation of State and Federal Permit applications and all services necessary for issuance of permits.
- Preparation of final plans, bid and contract documents, and assistance to the County in selection of contractors.
- Supervision of construction, review and approval of work completed, and preparation of As-Built drawings.
- Experience in sea turtle monitoring (nesting and nearshore) and reporting to State and Federal agencies.
- Experience in offshore biological monitoring (nearshore hardbottom, UMAM, etc.) and reporting to State and Federal agencies.
- Experience in completing post construction physical monitoring reports (shoreline change analysis, sediment testing and analysis, aerial photography, etc.)
- Grant assistance and writing.
- Experience with FEMA relative to Federal policy, reporting, and project reimbursement.
- Geotechnical collection and analysis.

Exhibit B

Hourly Rate Schedule

December 19, 2017

Coastal Tech - G.E.C., Inc.

Personnel Classification	Rate
Principal Engineer	\$250
Sr. Project Manager	\$190
Project Manager, EOR	\$165
Sr. Permitting Specialist	\$133
Permitting & NEPA Specialist	\$122
Sr. Coastal Engineer/Sr. Construction Manager	\$233
Coastal Engineer II	\$125
Coastal Engineer I	\$105
Sr. CAD Operator	\$140
CAD Operator	\$105
Sr. GIS Analyst	\$105
GIS Technician	\$90
Administrative Staff Support	\$85
Clerical	\$71

CSA Ocean Sciences, Inc.

Personnel Classification	Rate
Project Scientist 3	\$136
Project Scientist 2	\$104
Project Scientist 1	\$93
Project Scientist 1	\$93
Senior Scientist 1	\$169
Senior Scientist 2	\$204

Ecological Associates, Inc.

Personnel Classification	Rate
Project Manager	\$115
Sr. Scientist II	\$105
Sr. Scientist I	\$95
Biologist II	\$90
Biologist I	\$80
Field Tech.	\$55

S&ME

Personnel Classification	Rate
Principal Geologist	\$185
Senior Geologist	\$150
Project Geologist	\$125
Staff Professional	\$95
Environmental Technician	\$75
Principal Cultural Resources Professional	\$120
Senior Cultural Resources Professional	\$95
Project Cultural Resources Professional	\$70
Staff Cultural Resources Professional	\$60
CAD Operator	\$70
Administrative Support	\$60

S&ME- Sand Sample Lab Rates

Sample Lab Test	Rate
Munsell Color Determination	\$5
Grain Size Distribution	\$75
Carbonate Content	\$50
Amount Finer than No. 200 Sieve	\$10

CT-GEC subconsultant administration fee not to exceed 5% of subconsultant's fee.