

**Submitted For:** Environmental Resources Management

1

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$839,815</u>	_____	_____	_____	_____
External Revenues	<u>(\$776,375)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 <u>\$63,440</u>	 _____	 _____	 _____	 _____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget? (Match) Yes X No \_\_\_\_\_  
Budget Account No.: Fund 1225 & 1226 Department 380 Unit 3080 Object 3401  
Program \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact

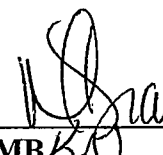
FWC Contract No. 13104 (CFDA 15.614)	1225-3080	\$776,375
Manatee Protection Program	1226-3080	\$ 63,440

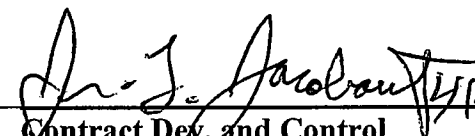
### C. Department Fiscal Review:



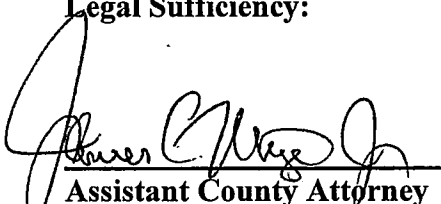
## III. REVIEW COMMENTS

### A. OFMB Fiscal and /or Contract Dev. and Control Comments:

  
OFMB 3/27/2014  
3/25 3/26

  
Contract Dev. and Control  
4-2-14 5/12/13

### B. Legal Sufficiency:

  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

**AMENDMENT NO. 2 TO THE PALM BEACH COUNTY ARTIFICIAL REEF  
AND BREAKWATER ANNUAL CONTRACT, PROJECT NO. 2012ERM01  
DATED MAY 1, 2012 BY AND BETWEEN  
THE VANCE CONSTRUCTION CO. AND PALM BEACH COUNTY  
District #: Countywide**

THIS AMENDMENT to the Palm Beach County Artificial Reef and Breakwater Annual Contract dated May 1, 2012 (R2012-0640), as amended on February 5, 2013 (R2013-0167) (hereinafter "CONTRACT") by and between The Vance Construction Co., a Florida corporation (hereinafter "CONTRACTOR") and the Board of County Commissioners of Palm Beach County, a political subdivision of the State of Florida (hereinafter "COUNTY").

**W I T N E S E T H**

WHEREAS, on May 1, 2012, the CONTRACTOR and COUNTY entered into an Annual Contract for Work to be authorized by Work Order on an as-needed basis, up to a maximum amount for all Work Orders not to exceed the amount of \$1,037,878.75 (hereinafter "CONTRACT PRICE"), for construction of artificial reefs and breakwater projects throughout Palm Beach County; and

WHEREAS, page one (1) of the CONTRACT provides that the CONTRACT may be extended, at the COUNTY'S option for a defined period of time, not to exceed a total of thirty-six (36) months, if the CONTRACTOR and the COUNTY agree; and

WHEREAS, Amendment No. 1 of this CONTRACT was approved on February 5, 2013, in which the CONTRACTOR and the COUNTY mutually agreed to extend the CONTRACT one (1) year, add a not-to-exceed amount of \$1,037,879 for the second year, increase first year CONTRACT PRICE to \$1,143,755, and revise the CONTRACT General Conditions; and

WHEREAS, Articles 42 and 43 of the General Conditions in the CONTRACT provide that Work may be added or revised, unit quantities may be increased or

**AMENDMENT NO. 2 TO PALM BEACH COUNTY ARTIFICIAL REEF AND BREAKWATER ANNUAL  
CONTRACT PROJECT NO. 2012ERM01**

**Page 2**

decreased, and the CONTRACT PRICE may be increased; and

WHEREAS, by this Amendment, the CONTRACTOR and the COUNTY mutually agree to (a) extend the CONTRACT one (1) year and increase the CONTRACT PRICE by a not-to-exceed amount of \$2,293,826.25 for the third year, (b) revise the CONTRACT General Conditions, (c) revise the CONTRACT Technical Specifications for additional or revised Work, with all original terms, conditions and unit prices adhered to, except as modified herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties agree as follows:

1. The above recitations are true and correct and incorporated herein.
2. The CONTRACT dated May 1, 2012 between the CONTRACTOR and the COUNTY is hereby amended to extend the expiration date of the CONTRACT to April 30, 2015.
3. The CONTRACT is hereby amended to increase the CONTRACT PRICE from \$2,181,633.75 to \$4,475,460.00.
4. The CONTRACT is hereby amended by adding the following Miscellaneous Inshore Construction line items to Bid Schedule: Line item #19 Stage Sand at \$1.00/Ton unit price. Line item #20 Transport Sand at \$3.00/Ton-Mile unit price. This applies to the first ton-mile only. Sand transported beyond one mile to be calculated using Line Item #18.
5. The CONTRACT is hereby amended by revising the General Conditions pages 1-3, 12-16, 21, 22, 27, 31, 32, 39, 40, 42, 49-52, which are incorporated

**AMENDMENT NO. 2 TO PALM BEACH COUNTY ARTIFICIAL REEF AND BREAKWATER ANNUAL  
CONTRACT PROJECT NO. 2012ERM01**

**Page 3**

herein.

6. The CONTRACT is hereby amended by revising the Technical Specifications pages 4, 21, 40-42, which are incorporated herein.
7. It is the intent of the parties hereto that this AMENDMENT shall not become binding until the date executed by the COUNTY.
8. All other provisions of the CONTRACT shall remain in full force and effect.

(Remainder of page intentionally left blank)

**AMENDMENT NO. 2 TO PALM BEACH COUNTY ARTIFICIAL REEF AND BREAKWATER ANNUAL  
CONTRACT PROJECT NO. 2012ERM01**

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ATTEST:

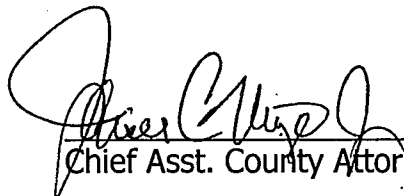
PALM BEACH COUNTY, a Political  
Subdivision of the State of Florida

SHARON R. BOCK, Clerk & Comptroller

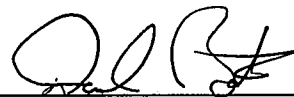
By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Chief Asst. County Attorney

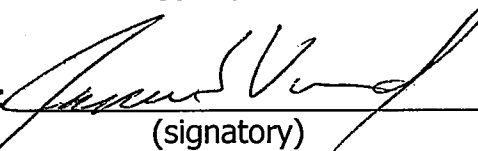
APPROVED AS TO TERMS  
AND CONDITIONS:

  
\_\_\_\_\_  
Daniel Bates, Deputy Director  
Dept. of Environmental Res. Mgmt.

  
\_\_\_\_\_  
(witness signature)

Brock STAVALANI  
\_\_\_\_\_  
(witness name printed)

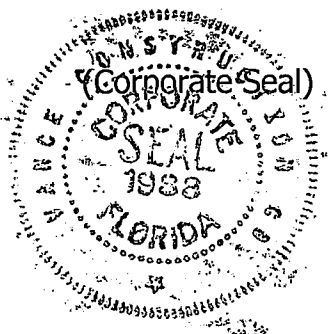
The Vance Construction Co.  
Contractor

By:   
\_\_\_\_\_  
(signatory)

James E. Vance, Jr  
\_\_\_\_\_  
(print signatory's name)

Its: President  
\_\_\_\_\_  
(print title)

65-0040853  
\_\_\_\_\_  
Federal Tax No.



**BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA**

**PROJECT NAME: Palm Beach County Annual Artificial Reef & Breakwater Project  
PROJECT NO.: 2012ERM01**

**GENERAL CONDITIONS**

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## 1 Definitions

Wherever the words or terms defined in this section or pronouns used in their stead occur in the Specifications or other Contract Documents, they shall have the meanings herein given.

~~ADR - Alternative Dispute Resolution.~~

**Application for Payment** - The Construction Application and Certificate for Payment form, including a schedule of values worksheet, furnished by the County which is to be used by the Contractor to request progress or final payment and which includes such supporting documentation as is required by the Contract Documents.

**Bonds** - Bid, Public Construction Bond, and other instruments that protect against loss due to inability, failure or refusal of the Contractor to perform the Work specified in the Contract Documents.

**Change Order** - A document signed by the Contractor and the County that authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after execution of Contract.

**Commencement Date** - Date fixed in the Notice to Proceed as the start date of Work Time.

**Construction Manager** - An employee of the Contractor who shall be in attendance at the project site during performance of the Work and shall represent the Contractor.

**Contract** - The written agreement between the County and the Contractor covering the Work to be performed; when other documents are attached to the Agreement they become part of the Contract. Permits, submittals, Drawings, Plans, Shop Drawings, Change Orders, Field Orders, Work Order Directives, Written Amendments, Work Orders and Work Supplements become part of the Contract when approved. The Contract is also referred to as the Agreement. May also be referred to as "Contract Documents."

**Contractor's Fee** - A mutually acceptable fixed fee for Overhead and Profit, or, if none can be agreed upon, a fee specified in the General Conditions based on a percentage of the Work.

**Contract Price** - Contractor's maximum compensation ("not-to-exceed cap") allowed for performing executed Work Orders under the terms and conditions of the Contract Documents.

**Contract Time** - The number of successive calendar days stated in the Contract Documents for the period or term of the Contract.

**Critical Path** - A sequence of inter-dependent tasks that determine the duration of the Project.

**Daily Field Report** - A field report prepared by the Contractor documenting site activity for that day and submitted to the County.

**Defective Work** - Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the County's recommendation of final payment.

**Design Professional** - An individual, firm or corporation that had or has a Contract with the County for the Project's engineering design.

project is declared more than 90% complete by the County at the time of the Surety's bankruptcy or insolvency, the Contractor may, at the County's option, obtain a Maintenance Bond for 100% of the project cost, for the one (1) year warranty period after project completion. The Maintenance Bond shall be submitted on the form provided by the County and shall comply with all of the requirements for Public Construction Bond stated herein.

Failure by the Contractor to substitute satisfactory Bonds under this section shall result in any or all of the following actions by the County:

1. Withholding of all applications for payment until satisfactory bond(s) are received and accepted, and/or;
2. Default in the Contract and cancellation as provided for in the Contract's default clause, and/or;
3. Suspension of the Contractor's name from the County's bid list for a period of not less than three (3) years from the date of Surety or Contract default.

Before commencing Work on the Work Order, Contractor shall provide to County a certified copy of the recorded bond(s). County cannot make any payment to Contractor until Contractor has complied with this requirement.

## **18 Contractor's Insurance**

Unless otherwise specified in this Contract, the Contractor shall, at its sole expense, maintain in full force and effect at all times during the performance of work hereunder, insurance coverage with limits not less than those set forth in the table below and with insurers and under forms of policies acceptable to the County. Contractor shall deliver to County Certificate(s) of Insurance evidencing that such policies are in full force and effect, not later than fourteen (14) calendar days after receipt of notification from the County, but in any event, prior to execution of the Contract by County and prior to commencement of work on the project. Such certificate(s) shall adhere in every respect to the conditions set forth herein. All insurance shall be primary coverage with respect to the County and shall so state on the policy. Any insurance carried by the County or its consultants, shall be excess insurance only. Contractor shall notify the County at least thirty (30) calendar days in advance of cancellation and/or material change(s) in coverage.

The Contractor shall either (1) require of its subcontractors to procure and to maintain during the life of this subcontract, Subcontractor's Comprehensive General Liability, Automobile Liability, Property Damage Liability Insurance and other coverages of the type in the amounts as specified in this Article, or (2) insure the activity of its subcontractor in its own policy.

The Contractor shall purchase and maintain during the life of this Contract, Worker's Compensation Insurance, including Employers Liability, to comply with all applicable state and federal laws covering all of its employees on the project, and in accordance with all of the limits, terms and conditions set forth herein. NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement. Contractor shall defend, indemnify and save the County harmless from any damages resulting to them for failure of Contractor to take out or maintain such insurance.

Contractor shall purchase and maintain during the life of this Contract Commercial General Liability Insurance in accordance with all of the limits, terms and conditions set forth herein.

Should any of the work hereunder involve watercraft owned or operated by Contractor, or any subcontractors, such shall be insured under the Commercial General Liability Policy or by other such liability insurance such as Protection and Indemnity.

Contractor shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth herein.

~~Should any of the Work hereunder involve the construction of a building and/or construction within an existing building, Contractor shall procure and maintain "ALL RISK" Builder's Risk Insurance, including, but not necessarily limited to fire, flood, wind or water damage, in accordance with all of the limits, terms and conditions set forth herein.~~

~~Should any of the Work hereunder involve the hauling and/or rigging of property in excess of \$500,000 or \$250,000 in transit, Contractor shall procure and maintain "ALL RISK" Transit or Motor Truck Cargo Insurance or a similar form of coverage insuring against physical damage or loss of property being transported, stored, moved, or handled by Contractor, or any subcontractors, pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth herein.~~

~~Should any of the work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Contractor, or any subcontractors, Contractor shall procure and agrees to maintain Aircraft Liability Insurance Inland Marine Transit/Installation Floater (provided the coverage is not afforded by the Inland Marine Builder's Risk) to cover the Contractor's, subcontractor's or County's interest in accordance property in-transit, or property stored on or off premises which will become part of the Work with all of the limits, terms and conditions set forth herein.~~

The requirement contained herein as to types and limits, as well as County approval of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Contract.

Certificates of Insurance must provide clear evidence that Contractor's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. All policies must be endorsed so that thirty (30) [ten (10) for non-payment] calendar days advance notification of cancellation in coverage shall be provided to the Board of County Commissioners, Palm Beach County, Florida. Insurance shall remain in full force and effect until all work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by final acceptance of the Work by Palm Beach County.

In the event that the insurance certificates provided hereunder indicate that the insurance shall terminate and lapse during the period of this Contract, then in that event, the Contractor shall furnish, by the renewal day for any policy that may expire, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereof is in effect. Contractor shall not continue to work pursuant to this Contract unless all required insurance remains in effect. County may, without liability to the Contractor, stop work and/or withhold payment to Contractor until coverage is reinstated.

Contractor shall deliver the original Certificate(s) of Insurance to:  
Palm Beach County c/o Department of Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2743

Notices of cancellation, terminations and alterations of said policies shall be delivered to:

Palm Beach County Department of Environmental Resources Management  
 2300 North Jog Road, 4<sup>th</sup> Floor  
 West Palm Beach, FL 33411-2743

**STANDARD CONSTRUCTION CONTRACT INSURANCE REQUIREMENTS**

	<u>CONTRACTS LESS THAN \$500,000</u>	<u>CONTRACTS \$500,000 - \$1,000,000</u>	<u>CONTRACTS MORE THAN \$1,000,000</u>
<u>COMMERCIAL GENERAL LIABILITY:</u>			
<u>Combined Single Limit Personal Injury</u>	<u>\$1,000,000 per</u>	<u>\$1,000,000 per</u>	<u>\$1,000,000 per</u>
<u>Bodily Injury and Property Damage</u>	<u>occurrence</u>	<u>occurrence</u>	<u>occurrence</u>
		<u>\$1,000,000</u>	<u>\$1,000,000</u>
<u>Liability Required Coverages:</u>		<u>Products-</u>	<u>Products-</u>
<u>Premises/Operations</u>		<u>Comp/Op Agg</u>	<u>Comp/Op Agg</u>
<u>Independent Contractors</u>		<u>\$2,000,000</u>	<u>\$2,000,000</u>
<u>Products/Completed Operations</u>		<u>General</u>	<u>General</u>
<u>Contractual Liability</u>		<u>Aggregate</u>	<u>Aggregate</u>
<u>Broad Form Property Damage</u>			
<u>X-C-U Coverages, if applicable</u>			
<u>General Aggregate, if applicable,</u>			
<u>must be on a Per Project basis</u>			
<u>Additional Insured Endorsement</u>	<u>All Contracts: Yes</u>		
<u>WORKERS COMPENSATION AND</u>	<u>All Contracts: Statutory per F.S. Chapter 440</u>		
<u>EMPLOYER'S LIABILITY:</u>	<u>\$1,000,000/\$1,000,000/\$1,000,000</u>		
<u>If work is on or contiguous to</u>			
<u>navigable bodies of water:</u>			
<u>U.S. Longshoremen's and Harbor</u>	<u>\$100/500/100</u>	<u>\$500/500/500</u>	<u>\$500/500/500</u>
<u>Workers Act and/or Jones Act</u>			
<u>Endorsements</u>			
<u>If work involves water craft</u>			
<u>owned or operated by Contractor:</u>			
<u>Protection and Indemnity Coverage</u>	<u>All Contracts: \$1,000,000 per occurrence</u>		
<u>Additional Insured Endorsement</u>	<u>All Contracts: Yes</u>		
<u>COMPREHENSIVE AUTO LIABILITY:</u>			
<u>Combined Single Limit Bodily Injury</u>	<u>\$500,000 per</u>	<u>\$1,000,000 per</u>	<u>\$1,000,000 per</u>
<u>and Property Damage (must include</u>	<u>occurrence</u>	<u>occurrence</u>	<u>occurrence</u>
<u>all owned, hired and non-owned</u>			
<u>vehicles)</u>			
<u>INLAND MARINE TRANSIT /</u>			
<u>INSTALLATION FLOATER:</u>			<u>100% of the highest</u>
			<u>property value</u>
			<u>pending installation or</u>
			<u>in-transit during the</u>
			<u>construction, unless</u>
			<u>otherwise stated as</u>
			<u>follows: \$</u>

# Additional Insured Endorsement

Yes	CONTRACTS	CONTRACTS
	LESS THAN	\$500,000
	\$500,000	OR MORE
COMMERCIAL GENERAL LIABILITY:		
Combined Single Limit Personal Injury	\$500,000 per	\$1,000,000 per
Bodily Injury and Property Damage	occurrence	occurrence

## Liability Required Coverages:

- Premises/Operations
- Independent Contractors
- Products/Completed Operations
- Contractual Liability
- Broad Form Property Damage
- X-C-U Coverages, if applicable
- General Aggregate, if applicable, must be on a Per Project basis

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY:	Statutory	Statutory
If work is on or contiguous to navigable bodies of water:		
U.S. Longshoremen's and Harbor Workers Act and/or Jones Act Endorsements	\$100/500/100	\$500/500/500

If work involves water craft owned or operated by Contractor:  
Protection and Indemnity Coverage

\$1,000,000 per occurrence

If work involves hauling and/or rigging of property in excess of \$500,000:

"ALL RISK" Transit or Motor Truck Cargo or similar form of insurance  
Replacement cost coverage for highest value involved.  
Must contain a Waiver of Subrogation in favor of Palm Beach County

If work involves any type of aircraft (fixed wing or helicopter):  
Aircraft Liability

\$5,000,000 each occurrence  
bodily injury (including passenger and property damage)

## COMPREHENSIVE AUTO LIABILITY:

Combined Single Limit Bodily Injury and Property Damage (must include all owned, hired and non-owned vehicles)  
\$500,000 per occurrence  
\$500,000 per occurrence

## BUILDER'S RISK:

"All Risk" including fire, flood, wind, water, vandalism and  
Limits equal to total project construction value.

malicious mischief damage.	Contractor assumes all
Policy must specifically eliminate	deductibles as ongoing cost
"Occupancy Clause". Must be	of doing business. County
endorsed to cover until final	is not providing any
acceptance of project by the	insurance on behalf of
County. Sub-limits for any coverage	Contractor for loss or
are not acceptable if they are	damage to work or to any
less than the total value of	other property of
the project.	Contractor. If Contractor
	maintains any insurance for
	loss of or damage to
	Contractor's property, such
	must be endorsed to include
	a Waiver of Subrogation
	against Palm Beach County.

#### ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE:

A. The certificate holder on the insurance certificate shall be "Board of County Commissioners, Palm Beach County, Florida" care of the Palm Beach County Department of Environmental Resources Management, 2300 North Jog Road, 4<sup>th</sup> Floor West Palm Beach, FL 33411-2743.

B. The following paragraph shall appear unaltered on the Certificate of Insurance to guarantee that the Board of County Commissioners, its officers, directors, agents, and employees are named as additional insured:

"The Board of County Commissioners, Palm Beach County, Florida (a political subdivision of the State of Florida), its officers, directors, agents, and employees are named as additional insured under the terms of this policy."

C. Must clearly indicate project name and project number to which it applies.

D. Must contain a provision that County is to be provided at least thirty (30) [ten (10) for non-payment] calendar days prior written notice in the event of cancellation in coverage.

E. Evidence of renewal coverage must be provided by the renewal day for any policy that may expire during the term of this Contract.

F. General Liability must state coverage is primary as respect to County and its authorized representatives and contain Cross Liability and Severability of Interest clauses.

#### 19 Contractor's Responsibility

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent contractor and not as the agent of the County in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and County. Contractor shall perform all work in accordance with its own methods subject to compliance with the Contract. Contractor represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this

## **26 Salvaged Materials**

In the absence of special provisions to the Contract, salvaged materials, equipment or supplies that occur are the property of the County and shall be stored as directed by the County, or shall be properly disposed of by the Contractor at its sole cost, if directed by the County.

## **27 Subcontracts**

The Contractor shall notify the County before Work begins on each Work Order and request approval, in writing, of the use of subcontractors proposed for the Work. If the proposed subcontractors and/or trades differ from the Contractor's Attachment No. 5 Subcontractor List in the Bid Form, the Contractor shall also include documentation in compliance with the substitution provisions of this Contract (Instructions to Bidders 2.3) with its request. The Contractor shall not employ any subcontractors that the County, within a reasonable time and at its sole discretion, rejects. The Contractor also shall not employ any subcontractors that the County determines are not performing the Work in strict conformance with the Contract Documents, or approved changes thereto.

The Contractor agrees that it is as fully responsible to the County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the County.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions, the Supplemental General Conditions and other Contract Documents insofar as applicable to the Work of subcontractors, and to give the Contractor the same power as regards to terminating any subcontract that the County may exercise over the Contractor under any provision of the Contract Documents. The Contractor shall only Contract with bondable Subcontractors if the Subcontractor is performing work that represents more than 15% of the Work.

## **28 Permits**

The Contractor shall obtain all necessary permits, licenses, royalties, inspections and certificates pertaining to the Work and shall comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, orders, notices and requirements, whether or not provided by the Drawings, Specifications, General Conditions or other parts of the Contract Documents without additional charge or expense to the County and shall also be responsible for and correct at its own cost and expense, any violations thereof resulting from and in connection with its performance of the Work.

The Contractor recognizes that the Palm Beach County Department of Planning, Zoning, and Building (PZ&B) is a separate department within the County that is charged with the inspection of improvements to real property for code compliance. Separate government agencies may also inspect the Work for permit compliance. The improvements to be made by the Contractor pursuant to this Contract may be subject to inspection by PZ&B and separate government agencies. The Contractor agrees that it shall not assert, as a County caused delay or as a defense of any delay on the part of the Contractor, any good faith action or series of actions on the part of PZ&B or separate government agencies, including, but not limited to PZ&B's or separate government agency's refusal to accept any portion of the Contractor's work.

## **29 Employees**

All labor described in these Specifications or indicated on the Drawings and the Work specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

Any interference with, or abuse or threatening conduct toward the County or its inspectors by the Contractor or its employees or agents, shall be authority for the County to annul the Contract and re-let the Work. No intoxicating substance shall be allowed on the Work.

The Contractor shall comply with and shall cooperate with County in enforcing jobsite conditions and job work rules which directly affect the performance of the work including but not limited to starting and quitting time, smoking regulations, check-in and check-out procedures, job site safety regulations and security regulations, emergency plans and procedures, and daily clean-up.

## **30 Florida Products and Labor**

The Contractor's attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

## **31 Equal Employment Opportunity**

The Contractor shall not discriminate against employees or applicants for employment because of sex, race, color, religion, disability, age, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or national origin, or genetic information. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their sex, race, color, religion, disability, age, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or national origin, or genetic information. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; 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 setting forth the provisions of this nondiscrimination clause.

## **32 Sanitary Regulations**

The Contractor shall provide adequate sanitary conveniences for the use of those employed on the Work. Such conveniences shall be made available when the first employees arrive on the Work, shall be properly secluded from public observation, and shall be constructed and maintained in suitable numbers and at such points and in such a manner as may be required by Local codes, Ordinances, Laws, Rules and Regulations. The Contractor shall maintain the sanitary facilities in a satisfactory and sanitary condition at all times and shall enforce their use.

## **33 Taxes**

The Contractor shall pay all sales, consumer, use, duties, assessments of any nature and other similar taxes that may be applicable to any work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds the County



- C. Changes in the Contract or Work Order Price, or, Contract or Work Time which embody the substance of any written decision rendered by the County pursuant to ADR, provided that, ~~in lieu of executing any such Change Order or Work Supplement, Contractor or County may litigate any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such ADR and litigation~~ a court, but during any such litigation, Contractor shall carry on with the Work and adhere to the Progress Schedule as provided in Article 47.

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract or Work Order Price, or, Contract or Work Time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice shall be Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

All changes to the Contract must comply with Palm Beach County Board of County Commissioners Resolution No. R89-633 dated April 4, 1989, the current Countywide Policy and Procedure Memorandum (PPM) No. CW-F-050, any revisions thereto and any other policies enacted by the Board of County Commissioners in relation to contract changes.

#### **43 Change of Contract Price and Work Order Price**

##### **A. General**

1. The Contract Price constitutes the Contractor's maximum compensation (subject to adjustments authorized in writing) allowed for performing executed Work Orders. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price.
2. The Contract and Work Order Price may only be changed by a Change Order, Work Supplement or Written Amendment. Any claim for an increase or decrease in the Contract or Work Order Price shall be based on written notice delivered by the party making the claim to the other party and to the County promptly (but in no event later than thirty (30) calendar days) after occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) calendar days after such occurrence (unless the County allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. ~~All claims for adjustment in the Contract or Work Order Price shall be determined by ADR if County and Contractor cannot otherwise agree on the amount involved.~~ No claim for an adjustment in the Contract or Work Order Price shall be valid if not submitted in accordance with this Article.
3. The value of any Work covered by a Change Order, Work Supplement or of any claim for an increase or decrease in the Contract or Work Order Price shall be determined in one of the following ways:
  - a. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
  - b. By mutual acceptance of a lump sum, including a Contractor's Fee for overhead and profit (determined as provided in paragraph C.1).

~~Where the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Contract and there is not a corresponding adjustment with respect to any other item of Work and if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may make a claim for an increase in the Contract or Work Order Price in accordance with ADR if the parties are unable to agree as to the amount of any such increase.~~

#### **44 Change Procedures**

##### **A. Minor Changes:**

The County shall advise the Contractor, in writing, of minor changes in the Work not involving an adjustment to Contract or Work Order Price, or, Contract or Work Time by issuance of a Field Order.

##### **B. Other Changes:**

1. The County may, at any time, without notice to the surety, by written order designated or indicated to be a Change Order or Work Supplement, make any change in the Work within the general scope of the Contract, including but not limited to changes:
  - a. In the Specifications (including drawings and designs);
  - b. In the time, method or manner of performance of the Work;
  - c. In the County furnished facilities, equipment, materials, services, or site; or
  - d. Directing acceleration in the performance of the Work.
2. Any other written order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from the County, which causes any change, shall be treated as a change order under this clause, provided that the Contractor gives the County written notice not later than ten (10) calendar days after the occurrence of the event giving rise to the claim but prior to incurring any expense stating the date, circumstances, and source of the order and that the Contractor regards the order as a Change Order or Work Supplement.
3. Except as provided in this Article, no order, statement, or conduct of the County shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment, and this Article shall not allow, nor be construed to allow, a claim otherwise disallowed by the Contract Documents.
4. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided however, that no claim for any change under Paragraph 2 above shall be allowed for any costs unless the Contractor gives written notice as herein required.
5. If the Contractor intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) calendar days after receipt of a written Change Order or Work Supplement under Paragraph 1 above or the furnishing of a written notice under Paragraph 2 above, submit to the County a written statement

setting forth the general nature and monetary extent of such claim, unless this period is extended by the County. The statement of claim hereunder may be included in the notice under Paragraph 2 above.

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

#### **45 Omitted Work**

The County may, at any time, by a written order, without notice to the Sureties, require the omission of such Contract Work as it may find necessary or desirable. An order for omission of Work shall be valid only by an executable Change Order or Work Supplement. All Work so ordered must be omitted by the Contractor. The amount by which the Contract or Work Order Price shall be reduced shall be determined as follows:

- A. By such applicable unit prices, or rates for work of a similar nature or character as set forth in the Contract; or,
- B. By the appropriate lump sum price set forth in the Contract; or,
- C. By the reasonable and fair estimated cost of such omitted Work as determined by the Contractor and approved by the County.

#### **46 Changes Not to Affect Bonds**

It is distinctly agreed and understood that any changes made in the Contract Documents for Work associated with this Project, whether such changes increase or decrease the amount thereof, or any change in the manner or time of payments or time of performance made by the County to the Contractor shall in no way annul, release or affect the liability and surety on the Bonds given by the Contractor.

If notice of any change is required to be given to a Surety by the provisions of any Bond, the giving of any such notice shall be the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

#### **47 Continuing the Work**

Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with County. ~~If the Contractor and County are unable to agree, all such disputes shall be referred to ADR and litigation.~~ No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Contractor and County agree in writing otherwise and County shall continue to make payments in accordance with the Contract Documents.

#### **48 Change of Contract or Work Time**

The Contract Time may only be changed by a Change Order or Written Amendment. The Work Time may only be changed by Change Order, Work Supplement or Written Amendment. Except as provided in Article 49, any claim for an extension of the Work Time shall be based on written notice delivered by the Contractor to the County promptly (but in no event later than 10 calendar days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Except as provided in Article 49, notice of the extent of the claim with supporting data shall be delivered within thirty (30) calendar days after such occurrence (unless the County allows, in writing, an additional period of time to ascertain more accurate data in

~~**Mobilization:** Partial payments shall be made therefore in accordance with the following:~~

Percent of Original Work Order Price Earned, Excluding Mobilization	Percent of Lump Sum Price for Mobilization or 10 Percent of the Work Order Price, Whichever is Less
5	25
10	50
25	75
50	100

~~Any remaining amount shall be paid upon completion of all the Work.~~

~~EXAMPLES:~~

~~Example A) Contractor completes 25% of the Work excluding mobilization. The Work Order Price is \$100,000 and the mobilization amount is \$25,000. The Contractor is eligible for partial payment of either 75% of the mobilization amount or 10% of the Work Order Price, whichever is less. In this case, the lesser amount is 10% of the Work Order Price, which is \$10,000.~~

~~Example B) Contractor completes 25% of the Work excluding mobilization. The Work Order Price is \$55,000 and the mobilization amount is \$5,000. The Contractor is eligible for partial payment of either 75% of the mobilization amount or 10% of the Work Order Price, whichever is less. In this case, the lesser amount is 75% of the mobilization, which is \$3,750.~~

Mobilization: For Work Orders with Work Time of 120 calendar days or less, partial payment will be made at 50% of the bid price for mobilization, per month, for each of the first two (2) months. For Work Orders with Work Time in excess of 120 calendar days, partial payment will be made at 25% of the bid price for mobilization, per month, for each of the first four (4) months. In no event shall more than 50% of the bid price for mobilization be paid prior to commencing construction on the project site.

Maintenance of Traffic: Partial payment shall be made as a percentage of the actual Work Order completed.

The Application for Progress Payment and SBE-M/WBE Construction Activity Schedule 3 shall identify the amount of the Total Complete based upon the value of the authorized Work performed to date as approved by fully executed Work Supplement(s). Retainage shall be held in the amount of five percent (5%) of the Total Complete. The amount of Previous Payments and Retainage shall then be subtracted to equal the Total Due during the Application for Progress Payment period.

The County may increase the retainage up to ten percent (10%) if the County determines, at its discretion, that the Contractor is not making satisfactory progress toward final completion of the Work or where there is other specific cause for such withholding.

The County shall, within twenty (20) business days (twenty-five (25) business days, if also reviewed by a Design Professional or another public entity) after receipt of an Application for Progress Payment, either pay the Contractor, or, reject the Application for Progress Payment, in whole or in part, indicating in writing to the Contractor the invoice deficiencies and any action necessary to make the invoice complete and proper. A Proper Application for Progress Payment includes: completed and correct Invoice Form from Appendix A, or a County-approved substitute, SBE Schedules, Warranty of Title and Release, Statement of Unresolved Claims, any invoice documentation required by the Technical Specifications and appendices such as pre-construction or pay surveys, truck or barge tickets, and compliance with the provisions of

this Article, insurance, Living Wage and other Contract Document provisions. Additional form requirements on Federally-funded projects include: Certification of EEO Compliance, Certification Disbursement of Previous Payment to Subcontractors, Construction Compliance with Specifications and Plans, and, may include copies of subcontractor invoices.

The County may refuse to make payment of the full amount because claims have been made against the County on account of the Contractor's performance of the Work, or because Liens have been filed in connection with the Work, or there are other items entitling the County to a credit against the amount recommended. If the County has rejected the Application for Progress Payment, in whole or in part, the Contractor may make the necessary corrections and submit a Proper Application for Progress Payment; the day after the next Palm Beach County Board of County Commissioners meeting, or, ten (10) business days after presentation of the Proper Application for Progress Payment to the County, whichever occurs later, the amount approved shall, subject to the provisions of the following Paragraph, become due and when due shall be paid by the County to the Contractor.

The Contractor may send an overdue notice if the County has not paid the Contractor as required above. If the County does not reject the Application for Progress Payment within four (4) business days of the receipt of the overdue notice, the Application for Progress Payment will be deemed acceptable.

The Contractor, its subcontractors, and suppliers are required to timely pay their subcontractors and suppliers in accordance with the Florida Statute section 218.735.

Dispute(s) regarding the acceptability of the Application for Progress Payment shall be referred to and resolved by the ERM Director or ERM Deputy Director pursuant to Article 70, Section C.

## **55 Partial Utilization**

The County shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to Substantial Completion of all of the Work. Whenever the County plans to exercise said right, the Contractor shall be notified in writing by the County, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service. If the Contractor agrees that such part of the Work is substantially complete and is capable of being partially utilized, the Contractor shall certify to the County that such part of the Work is substantially complete and requests the County to issue a Certificate of Substantial Completion for that part of the Work. If the County does not consider that part of the Work to be substantially complete, the County shall notify the Contractor in writing, giving the reasons therefore.

It shall be understood by the Contractor that until such written notification of the Certification of Substantial Completion of that part of the Work is issued by the County, all responsibility for care and maintenance of all items or portions of the Work to be partially utilized shall be borne by the Contractor. Upon issuance of said written notice of partial utilization, the County shall accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

The County shall prepare a Punchlist for that part of the Work declared substantially complete in accordance with time limitations outlined in Article 56.

The Contractor shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the County, and the Contractor's one (1) year correction period shall commence only after the date of Final Acceptance of the Work.

Federally-funded projects include: Certification of EEO Compliance, Certification Disbursement of Previous Payment to Subcontractors, Construction Compliance with Specifications and Plans, and, may include copies of subcontractor invoices.

The Contractor may be required to submit complete and legally effective releases or waivers (satisfactory to the County) of all liens and "Notices to Owner" arising out of or filed in connection with the Work.

Dispute(s) regarding the acceptability of the Application for Final Payment shall be referred to and resolved by the ERM Director or ERM Deputy Director pursuant to Article 70, Section C.

#### **58 Record Documents**

The Contractor shall keep one (1) record copy of all Specifications, Drawings, Addenda, modifications and shop drawings at the site in good order and clearly annotated to show all changes made during the construction process. These shall be available to the County for inspection and reference and shall be delivered to the County upon completion of the Project, prior to Application for Final Payment.

#### **59 Final Payment and Acceptance**

Upon receipt of written notice from the Contractor that the Work under a Work Order has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of a Proper Application for Final Payment and accompanying documentation, the County shall promptly examine the Work and, making such tests as it may deem proper and using all of the care and judgment normally exercised in the examination of completed Work, shall satisfy itself that the Contractor's statement appears to be correct and the Contractor's other obligations under the Contract Documents have been fulfilled. The County shall render in writing that it has examined the Work under the Work Order and that the Work appears, to the best of the County's knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders or Work Supplements, that the Contractor's other obligations under the Contract Documents have been fulfilled, and that the County therefore recommends acceptance of the Work under the Work Order for ownership and final payment to the Contractor. However, it is agreed by the County and the Contractor that such statement does not in any way relieve the Contractor from its responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the County or its agents liable for any faulty Work done or defective materials or equipment used by the Contractor.

The County shall then make a final estimate of the value of all Work done and shall deduct therefore all previous payments which have been made. The County shall report such estimate along with its recommendation as to the acceptance of the Work or the County's findings as to any deficiencies therein. After the County's receipt and acceptance of the Proper Application for Final Payment and accompanying documentation required by the Contract Documents, pursuant to Article 57, the County shall make final payment to the Contractor, in accordance with the provisions and time constraints of the Local Government Prompt Payment Act (FS 218.735), of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following amounts:

1. Liquidated Damages, as applicable.
2. At the discretion of the County, up to one hundred and fifty percent (150%) of the value of outstanding items from the Punchlist. All such Work shall be completed or corrected to the satisfaction of the County within the time stated on the

## 69 Notice and Service

All notices, demands, requests, instructions, approvals and claims shall be made in writing.

Any notice to or demand upon the Contractor shall be sufficiently given if delivered to such office of the Contractor or sent by facsimile to the number specified in the Bid (or to such other office or number as the Contractor may from time to time designate to the County in writing), or if deposited in the United States Mail in a sealed, postage prepaid envelope.

All notices or other papers required to be delivered by the Contractor to the County, or to any of its representatives shall, unless otherwise specified in writing to the Contractor, be delivered to: Department of Environmental Resources Management, 2300 North Jog Road, 4<sup>th</sup> Floor, West Palm Beach, FL 33411-2743, and any other notice or demand upon the County shall be sufficiently given if delivered to such office, or if deposited in the United States Mail in a sealed, postage prepaid envelope, in each case addressed to such office (or to such other representative of the County or to such other address as the County may subsequently specify in writing to the Contractor for such purpose).

Any such notice or demand shall be deemed to have been given or made as of the time of actual delivery, or, in the case of mailing, when the same should have been received in due course of posts, or in the case of a facsimile, at the time of actual transmission thereof.

## 70 ~~Resolution of Claims and Disputes~~ Waiver of Florida Statute Chapter 558

County and Contractor agree that the notice and cure provisions of Florida Statute Chapter 558 shall not apply to this Contract.

~~Any dispute relating to a question of fact arising under this Contract shall be resolved through good faith efforts upon the part of Contractor and County or its representatives. At all times, Contractor shall carry on the work and maintain its progress schedule in accordance with the requirements of the Contract and the determination of the County or its representatives, pending resolution of any dispute. Any dispute that is not disposed of by mutual agreement shall be decided by the County or its representatives who shall reduce such decision to writing. The decision of the County or its representatives shall be final and conclusive. Contractor's failure to protest County's determinations, instructions, clarifications or decisions within fourteen (14) calendar days after receipt thereof shall constitute a waiver by Contractor of all its rights to further protest, judicial or otherwise.~~

### ~~A. ADR Procedures:~~

- ~~1. The Contractor and County shall agree to submit all disputes regarding the acceptability of Application for Progress or Final Payments ("pay disputes") to the ERM Director/Deputy Director. The Contractor and County may agree to submit all remaining claims not resolved by mutual agreement using the ADR Procedures listed below, which may be followed by the parties to resolve all disputes, if possible, prior to either the County or Contractor submitting the claim to litigation ("pay disputes"). The County reserves the right to proceed with or withdraw from ADR procedures at any time in its sole discretion, except for pay disputes.~~

### ~~2. ADR Procedures available to the parties include:~~

- ~~a. ERM Director/Deputy Director~~
- ~~b. Facilitated Negotiation; and,~~



~~c. Non-Binding Arbitration:~~

~~B. If a Claim is resolved by an ADR Procedure, the County shall prepare or obtain appropriate documentation.~~

~~C. ERM Director/Deputy Director~~

- ~~1. In the event any dispute with respect to any payment or pay request cannot be resolved between the Contractor and County project staff, Contractor may, in accordance with the alternative dispute resolution requirements of Florida Statute section 218.72, et seq, demand in writing a meeting with and review by the department (agency) director. In the absence of the department director, a deputy director may conduct the meeting and review. Such meeting and review shall occur within ten (10) business days of receipt by County of Contractor's written demand. The department (agency) director, or deputy director, shall issue a written decision on the dispute within ten (10) business days of such meeting. This decision shall be deemed the County's final decision for the purposes of the Local Government Prompt Payment Act.~~

~~D. Facilitated Negotiations:~~

- ~~1. If a Claim has not been resolved by mutual agreement, the dispute may, upon agreement of the parties, be submitted to the individual designated as the Facilitator for this Project.~~
  - ~~a. The Facilitator shall be designated by the Contractor and County. In the event that the parties are unable to agree as to the designation of the Facilitator, the Facilitator shall be designated by the American Arbitration Association, who shall appoint an impartial individual who is skilled at negotiating.~~
  - ~~b. The County shall, at the time of referral to the Facilitator, provide a description of the issues or concerns that relate to the claim to the Facilitator and Contractor. Any party may within five (5) calendar days of receipt of the description by the Facilitator forward to the Facilitator and other parties a written notice as to any other issues and concerns that they believe relate to the claim. Unless otherwise agreed, there shall be no ex parte communications with the Facilitator.~~
  - ~~c. The Facilitator shall also promptly determine if all parties are in possession of adequate information necessary to evaluate said issues and concerns. In the event that they are not, the Facilitator shall utilize his/her best efforts to obtain the required information in a prompt manner.~~
  - ~~d. The Facilitator shall immediately prepare an agenda consisting of the various issues and concerns that shall be delivered to the County and Contractor, and schedule a conference among all parties.~~
  - ~~e. The conferences shall be attended by the persons most familiar with the issues set forth in the Agenda prepared by the Facilitator as well as a representative of each party who is authorized to act on behalf of such party as to reaching agreement as to such issues. The County shall also be present if requested by either of the parties or the Facilitator during all or part of such conferences.~~
  - ~~f. The Facilitator shall not offer opinions as to the issues and concerns under discussion, but shall lead the negotiations in an impartial manner.~~
  - ~~g. The Facilitator shall endeavor to develop consensus and agreement as to each issue and concern. Agreements as to such issues, if reached, shall be acknowledged by the parties upon preparation of a written summary by the Facilitator.~~
  - ~~h. Upon determination by the Facilitator that such negotiations are unlikely to achieve further meaningful results, the Claim shall be subject to further ADR Procedures in accordance with this Contract.~~



- i. ~~The costs of the Facilitator shall be borne equally by the County and Contractor.~~
- j. ~~These proceedings and the documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations and not subsequently admissible at any further proceeding except for such summaries of agreements prepared by the Facilitator and acknowledged by the parties.~~

E. ~~Non-Binding Arbitration:~~

~~1. Controversies and Claims Subject to Non-Binding Arbitration:~~

- a. ~~Any controversy or Claim arising out of or related to the Contract, or the breach thereof (except controversies or Claims relating to the aesthetic effect and except those waived by final payment as provided in the General Conditions) may, upon agreement of the parties, be referred to non-binding arbitration, which shall be conducted in accordance with this Paragraph E, if the Claim remains unresolved following ADR Procedures under Paragraph D above.~~

~~2. Rules and Notices for Non-Binding Arbitration:~~

- a. ~~Claims subject to ADR shall be referred to non-binding arbitration in accordance with American Arbitration Association Construction Industry, except as modified herein.~~
- b. ~~Notice of demand for non-binding arbitration shall be filed in writing with the other party to the Contract between the County and Contractor.~~

~~3. Contract Performance During Non-Binding Arbitration:~~

- a. ~~During non-binding arbitration proceedings, the County and Contractor shall comply with the provisions of the General Conditions.~~

~~4. When Non-Binding Arbitration May Be Demanded:~~

- a. ~~Demand for non-binding arbitration may not be made until:~~
  - i. ~~Written notice of a claim has been given in accordance with the terms of this Contract; and,~~
  - ii. ~~The parties have attempted to resolve the claim through Facilitated Negotiation.~~
- b. ~~In no event shall a demand for non-binding arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.~~

~~5. Consolidation/Common Arbitrators:~~

- a. ~~To the extent not prohibited by the County's or Contractor's agreements with third parties, disputes or Claims with third parties involving common questions of fact or law shall be heard by the same arbitrators in consolidated, non-binding arbitration proceedings.~~

~~6. Document Production, Depositions, and Exchange of Non-Binding Arbitration Exhibits:~~

- a. ~~After a demand for non-binding arbitration, each party shall have the right to immediate production of Project-related documents requested in writing from the other party for inspection and copying, except for those documents which are covered by an unwaived attorney/client privilege or which were prepared in anticipation of arbitration or litigation.~~
- b. ~~Following production, each party to the dispute shall be entitled to take three (3) depositions that in combination shall not exceed three (3) days in length for direct examination.~~
- c. ~~No later than ten (10) calendar days prior to the hearing, the parties shall make available to each other, for inspection and copying, the exhibits, photographs, and other documents which they intend to introduce or refer to during the non-binding arbitration.~~

~~7. Award Resulting from Non-binding Arbitration:~~

- a. ~~The award resulting from the non-binding arbitration shall be advisory only. It shall contain specific, detailed findings of fact and conclusions explaining the rationale for the award.~~
- b. ~~Within thirty (30) calendar days from the date of the award, the County and Contractor shall each serve written notice to the other, indicating either acceptance or rejection of the award. Failure to specifically accept the award shall be deemed as rejection. If both accept the award, then the dispute or Claim shall be deemed to have been resolved and the County shall prepare or obtain appropriate documentation to implement the award. If either the County or Contractor, or both, reject the award, the dispute or Claim shall be considered unresolved and subject to litigation in the appropriate jurisdiction.~~
- c. ~~The award shall not be admissible as evidence in subsequent litigation, but shall be considered for recovery of attorney's fees and costs as provided in Paragraph E.8. For purposes of compliance with the applicable statute of limitations, the running of the statute shall be suspended as of the date of demand for non-binding arbitration, provided that litigation is commenced within sixty (60) calendar days from the date of the arbitration award.~~

~~8. Attorneys Fees, Arbitration Costs, and Court Costs:~~

- a. ~~Attorneys fees, arbitration costs, and litigation costs shall be awarded to:~~
  - i. ~~The party who accepts a non-binding arbitration award and subsequently prevails in litigation necessitated by the other party's rejection of the award; and,~~
  - ii. ~~The prevailing party in any litigation necessary to obtain:~~
    - (a) ~~Enforcement of ADR Procedures; or,~~
    - (b) ~~Collection of a final, non-appealable judgment obtained subsequent to exhaustion of ADR Procedures.~~

**71 Contractor Furnished Drawings, Data and Samples**

Review and permission to proceed by County as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Contractor and does not relieve Contractor from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required to be submitted to the County for review, shall be submitted attached to forms provided by County.

### 3. CONFLICTS

3.1 To the extent that there is a conflict between the various sections of the Contract Documents, the following order of documents shall indicate precedence:

3.1.1 In order of the most recent document date: Work Orders, Work Supplements, Contract Amendments, Change Orders, Addenda, and/or modifications to the Technical Specifications or Plans authorized by the COUNTY.

3.1.2 Technical Specifications and its attachments, and Construction Plans

3.1.3 Supplemental General Conditions

3.1.4 Contract, General Conditions and Appendices

3.1.5 FDEP and USACE Permits

3.1.6 Bonds, Guarantee, Instructions to Bidders, Invitation for Bid

3.1.7 Proposal

### 4. DEFINITIONS

4.1 Contract Documents: Technical Specifications and its attachments, Permits, Construction Plans, General Conditions, Supplemental General Conditions, Bid Proposal, Written Amendments, Addenda, Change Orders, Work Orders, Work Supplements and required Contractor Submittals related to the work.

4.2 Materials: Materials includes limestone rock, concrete (piles, culverts, catch basins, etc.), ~~and~~ pre-fabricated reef modules and sand hereinafter described.

4.3 Mobilization: The deployment by the CONTRACTOR of such equipment and material as is necessary to perform the work as detailed in the Contract Documents and in compliance with State, Federal and local laws and regulations.

- 14.3.3 SCUBA Divers: The nature of the construction of this project, potentially limited visibility at the reef construction sites, the need to complete the project in a timely manner, safety and the COUNTY's prior experience in building these types of structures and reefs underwater require that the CONTRACTOR provide experienced and capable divers familiar with directing heavy equipment and placement of materials from both the surface and underwater.

## 15. QUANTITY MEASUREMENTS

- 15.1 Barge displacement shall be utilized for measurement of material tonnages to determine payments made to the CONTRACTOR. The CONTRACTOR shall furnish the COUNTY with barge displacement formulas not less than ten (10) work days prior to loading or unloading stone from any barge. The COUNTY shall provide an Engineer who shall use methods of measuring and calculating mutually acceptable to the COUNTY and the CONTRACTOR to determine an accurate tonnage of ~~rock and/or concrete~~ material on each barge before each barge departs the staging area for a ~~reef~~-construction site, and/or COUNTY staff shall perform these measurements and calculations. The CONTRACTOR shall not be paid for ~~stone~~-quantities that have not been measured by the COUNTY. In certain situations, as determined by the COUNTY, truck weigh tickets and/or an integrated weighing system may be acceptable for verification of tonnage.

## 16. STAGING AREA

- 16.1 Prior to execution of each Work Order, the CONTRACTOR and the COUNTY will agree upon the staging site to be used to stockpile and load barges for the duration of the Work Order. Selection and use of any staging site will be at no additional cost to the COUNTY. If the staging site must be changed during the Work Order's construction, the CONTRACTOR must have prior written approval by the COUNTY.

20.4.5.2. Slides: In the event of the sliding or failure of any part of the structure during its construction, or after its completion, but prior to its acceptance, the CONTRACTOR shall, upon written order of the COUNTY, cut out and remove the slide from the structure and then rebuild that portion of the structure with new materials or reuse the displaced materials for rebuilding.

## 20A. MISCELLANEOUS NEARSHORE CONSTRUCTION

20A.1 The CONTRACTOR shall stage a barge and tug and provide the labor necessary to transport sand for habitat restoration projects. Unless otherwise specified in the Work Order, the CONTRACTOR shall be responsible for coordination and loading of the material from the staging area onto the barge. The CONTRACTOR shall ensure that the barge has proper containment to prevent sand from entering the water during transportation to the project site.

## 21. SURVEYS

The CONTRACTOR shall provide a professional survey as necessary to establish and maintain quality control for all work performed at each job site under this section to assure compliance with permit and contract requirements. The CONTRACTOR shall maintain records of his quality control tests, inspections and corrective actions. Quality control measures shall cover all construction operations including, but not limited to, the placement of all materials to the grade lines shown and in accordance with this section.

21.1 Layout of Work: From the monuments, control data and elevations established by the COUNTY, the CONTRACTOR shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the contact drawings.

21.2 Survey Markers: The CONTRACTOR shall furnish, at their own expense, such stakes, templates, platforms, equipment, tools and material, and all labor as may be required in laying out any part of the work from the monuments, control data and elevations established by the COUNTY. It shall be the responsibility of the CONTRACTOR to maintain and preserve all stakes and other marks established by the COUNTY until authorized to remove them, and if such marks are destroyed by the CONTRACTOR or through his negligence, prior to their

authorized removal, they may be replaced by the COUNTY, at their discretion, and the expense of replacement will be deducted from any amounts due or to become due the CONTRACTOR. The COUNTY may require that work be suspended at any time when location and limit marks established by the CONTRACTOR are not reasonably adequate to permit checking of the work.

21.3 Survey Checks: Surveys made by the CONTRACTOR are required on each material placed for determining that the materials are acceptably placed on the work. The CONTRACTOR shall make checks as the work progresses to verify lines, grades, and thicknesses established for the completed work. At least one check survey as specified below shall be made by the CONTRACTOR for each 25-foot section as shown as practicable after completion. Following placement of each type of materials, the cross-section of each step of the work shall be approved by the COUNTY before proceeding with the next step of the work. Approval of cross-sections based upon check surveys shall not constitute final acceptance of the work. Cross-sections shall be taken by the CONTRACTOR on lines 15 feet apart, measured along the structure reference line, with readings at 5-foot intervals and at breaks along the lines. However, other cross section spacing and reading intervals may be used if determined appropriate by the COUNTY.

21.4 Breakwater Surveys: For the construction of breakwaters, the CONTRACTOR shall perform check surveys as the work progresses, using a professional surveyor licensed in Florida, to verify footprint, lines, grades and thicknesses established. The CONTRACTOR shall have cross-section surveys performed prior to and after placing the geotextile, bedding stone and after each type of armor stone placement is completed. The cross sections shall be spaced 25 feet apart along the length of the structure. Elevations shall be surveyed at 5-foot intervals and at all breaks in elevation. Other cross section spacing and point intervals may be used by the CONTRACTOR if approved by the COUNTY. Additional elevations shall be taken as the COUNTY may deem necessary. The surveys shall be conducted in the presence the COUNTY, unless waived by the COUNTY in writing.

## 22. PAYMENT

The COUNTY shall compute or verify all quantities of materials claimed in invoices. Monthly progress payments shall be based on the tonnage of rock placed in accordance to

the plans and specifications as calculated by the COUNTY, and/or tonnage of sand transported to a project site. The COUNTY shall not compensate the CONTRACTOR for partial construction of a reef, i.e., purchase and trucking of limestone boulders to a staging site. Progress payments shall be subject to retainage as described in the General Conditions.

In order to accommodate projects with varying distances from a staging site, payment for the transportation of the materials to the project site will be based on ton-miles. Distance for ton-mile calculations for materials other than sand will begin at the mouth of Lake Worth Inlet and be the distance from there to the project site. Distance for ton-mile calculations for sand will begin at the staging location and be the distance from there to the project site. Ton-miles will be the distance multiplied by the number of tons. The cost for each ton-mile shall only apply to loaded barges transiting to the construction site for material deployment. Barges returning to the staging site, whether loaded or not are not eligible for ton-mile charges. Likewise, materials brought back to the staging site are not eligible for additional ton-mile charges if they are taken back to the construction site.

Mobilization/Demobilization is bid as a lump sum item per Work Order. When an open work order exists, subsequent and concurrent work orders issued shall not be eligible for additional mobilization/demobilization payments.

## 23. WEATHER CONDITIONS

The open ocean marine Project Area(s) may be affected by tropical storms and hurricanes primarily from June through November, and by windy and/or rainy weather, including severe electrical storms, at any time during the year. The CONTRACTOR shall be responsible for obtaining information concerning rain, wind and wave conditions that could influence Project operations prior to making a bid. The following publications contain climatological and meteorological observations and data for the Project Area.

- 23.1 Local Climatological Data - Monthly Summary published by the National Oceanic and Atmospheric Administration (NOAA), Asheville, NC. Subscription price and ordering information is available from the National Climatic Data Center, Federal Building, Asheville, NC 22801. This publication gives hourly wind speed and direction observations. The Annual Summary gives a summary of the observations for the period of record.

**SCHEDULE 1 FOR AMENDMENT NO. 2 (3<sup>RD</sup> YEAR OF CONTRACT TERM)  
LIST OF PROPOSED SBE-M/WBE PARTICIPATION**

PROJECT NAME OR BID NAME: Palm Beach County Annual Artificial Reef & Breakwater PROJECT NO. OR BID NO.: 2012ERM01  
 NAME OF PRIME BIDDER: The Vance Construction Co. ADDRESS: PO Box 36, Cuttyhunk Ma 02713  
 CONTACT PERSON: James E Vance Jr. PHONE NO.: 561-650-0016 FAX NO.: 561-354-5978  
 BID OPENING DATE: 2/28/2012 USER DEPARTMENT: Environmental Resources Management

THIS DOCUMENT IS TO BE COMPLETED BY THE PRIME CONTRACTOR AND SUBMITTED WITH BID PACKET. PLEASE LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK TO BE COMPLETED BY ALL SBE -M/WBE's ON THIS PROJECT. IF THE PRIME IS AN SBE-M/WBE, PLEASE ALSO LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK TO BE COMPLETED BY THE PRIME ON THIS PROJECT. THE PRIME AFFIRMS THAT IT WILL MONITOR THE SBES LISTED TO ENSURE THE SBES PERFORM THE WORK WITH ITS OWN WORKFORCE.

		(Check one or both Categories)		DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK				
Name, Address and Phone Number		M/WBE	SBE	Black	Hispanic	Women	Caucasian	Other
		Minority Business	Small Business					(Please Specify)
1.	The Vance Construction Co. 955 25th Ct West Palm Beach FL 33407	<input type="checkbox"/>	<input checked="" type="checkbox"/>				1,274,426.25	
2.	Eastman Aggregates 3705 Bellevue Ave Lake Worth FL 33461 561-969-7147	<input type="checkbox"/>	<input checked="" type="checkbox"/>				535,178.70	
3.		<input type="checkbox"/>	<input type="checkbox"/>					
4.		<input type="checkbox"/>	<input type="checkbox"/>					
5.		<input type="checkbox"/>	<input type="checkbox"/>					
(Please use additional sheets if necessary)								
		Total					1,809,604.95	

Total Not to Exceed Price for Year 3: \$2,293,826.25

Total SBE-M/WBE Participation Dollar Amount and/or Percentage of Work 1,809,604.95

I hereby certify that the above information accurate to the best of my knowledge:

Signature

President

Title

- NOTE: 1. The amount listed on this form for a SBE-M/WBE Prime or Subcontractor must be supported by price or percentage listed on the signed Schedule 2 or signed proposal in order to be counted toward goal attainment.
2. Firms may be certified by Palm Beach County as an SBE and/or M/WBE. If firms are certified as both an SBE and M/WBE, please indicate the dollar amount and/or percentage under the appropriate category.
3. M/WBE information is being collected for tracking purposes only.



OSBA SCHEDULE 2 FOR AMENDMENT NO. 2 (3<sup>RD</sup> YEAR OF CONTRACT TERM)  
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE

This document must be completed by ALL SBE-M/WBE's and submitted with this bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE's is certified to perform. Failure to properly complete Schedule 2 will result in your SBE participation not being counted.

PROJECT NUMBER: 2012ERM01 PROJECT NAME: Palm Beach County Annual Artificial Reef & Breakwater

TO: The Vance Construction Co.  
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise ☒ Minority Business Enterprise ☐

Black ☐ Hispanic ☐ Women ☐ Caucasian ☒ Other (Please Specify) ☐

Date of Palm Beach County Certification:

The undersigned is prepared to perform the following described work in connection with the above project. Additional Sheets May Be Used As Necessary

Line Item/				Total Price/
Lot No.	Item Description	Qty/Units	Unit Price	Percentage
1	Turbidity monitoring/reporting	60	90.00	5,400.00
2	Mobilization # demobilizationn	7	24,000.00	168,000.00
7	Supply filter fabric	13,444.0	4.50/sy	60,498.00
10	Load and install rock	2,900	60.00	174,000.00
11	Transport rock	11,900.	1.50	17,850.00
12	load/install reef materials	400	60.00	24,000.00

at the following price or percentage 449,748.00  
(SBE Prime or Subcontractor's Quote)

and will enter into a formal agreement for work with you contingent upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE-M/WBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage   
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE-M/WBE listed to ensure the SBE-M/WBE perform the work with their own work force. The undersigned SBE-M/WBE Prime or SBE-M/WBE subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

The Vance Construction Co.

Print name of  
SBE-M/WBE Company

By:

(Signature)

James E Vance Jr., President

Print name/title of person executing on behalf  
of SBE-M/WBE

OSBA SCHEDULE 2 FOR AMENDMENT NO. 2 (3<sup>RD</sup> YEAR OF CONTRACT TERM)  
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE

This document must be completed by ALL SBE-M/WBE's and submitted with this bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE's is certified to perform. Failure to properly complete Schedule 2 will result in your SBE participation not being counted.

PROJECT NUMBER: 2012ERM01 PROJECT NAME: Palm Beach County Annual Artificial Reef & Breakwater

TO: The Vance Construction Co.  
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise X Minority Business Enterprise \_\_\_\_\_

Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Women \_\_\_\_\_ Caucasian X Other (Please Specify) \_\_\_\_\_

Date of Palm Beach County Certification: 12/10/2013

The undersigned is prepared to perform the following described work in connection with the above project. Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
13	Transport Reef Material	3,400	1.50	5,100.00
15	Load/install filter fabric	13,444	4.50	60,498.00
16	load/install bedding stone	1950.0	35.00	68,250.00
17	load/install rock	15,510	35.00	542,850.00
18	Transport all materials	197,307.0	.75	147,980.25

at the following price or percentage 824,678.25  
(SBE Prime or Subcontractor's Quote)

and will enter into a formal agreement for work with you contingent upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE-M/WBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage \_\_\_\_\_  
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE-M/WBE listed to ensure the SBE-M/WBE perform the work with their own work force. The undersigned SBE-M/WBE Prime or SBE-M/WBE subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

The Vance Construction Co.

Print name of

SBE-M/WBE Company

By: James E Vance Jr.

(Signature)

James E Vance Jr., President

Print name/title of person executing on behalf  
of SBE-M/WBE

OSBA SCHEDULE 2 FOR AMENDMENT NO. 2 (3<sup>RD</sup> YEAR OF CONTRACT TERM)  
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE

This document must be completed by ALL SBE-M/WBE's and submitted with this bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE's is certified to perform. Failure to properly complete Schedule 2 will result in your SBE participation not being counted.

PROJECT NUMBER: 2012ERM01 PROJECT NAME: Palm Beach County Annual Artificial Reef & Breakwater

TO: The Vance Construction Co.  
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise ☒ Minority Business Enterprise ☐

Black ☐ Hispanic ☐ Women ☐ Caucasian ☒ Other (Please Specify) ☐

Date of Palm Beach County Certification: December 27, 2013

The undersigned is prepared to perform the following described work in connection with the above project. Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
3	Supply Limestone Rock (3-4)	5160/Tons	29.07	150,001.20
4	Supply Limestone Rock (2-3)	13250/Tons	29.07	385,177.50

at the following price or percentage \$ 535,178.70  
(SBE Prime or Subcontractor's Quote)

and will enter into a formal agreement for work with you contingent upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE-M/WBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage 0 \_\_\_\_\_  
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE-M/WBE listed to ensure the SBE-M/WBE perform the work with their own work force. The undersigned SBE-M/WBE Prime or SBE-M/WBE subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

Eastman Aggregate Enterprises, LLC  
Print name of  
SBE-M/WBE Company

By: [Signature]  
(Signature)

Bernard Eastman MGRM  
Print name/title of person executing on behalf  
of SBE-M/WBE

**CONTRACT HISTORY**  
**Palm Beach County Annual Artificial Reef & Breakwater Project (Primary Contractor)**  
**Project Number 2012ERM01**  
**The Vance Construction Co.**

Contract R2012-0640 dated May 1, 2012 for initial 1 year Term for \$1,037,878.75.  
Amendment No. 1 (R2013-0167) dated February 5, 2013 extends the Contract 1 year, expiring April 30, 2014.  
Amendment No. 1 additional Contract amount for 2nd year of \$1,037,879 (allowed by Tech. Specs.) plus \$105,876 increase to 1st year.  
Amendment No. 2 to extend the Contract 1 year, expiring April 30, 2015.  
Amendment No. 2 additional Contract amount for 3rd year of \$1,037,879 (allowed by Tech. Specs.) plus \$1,255,947.25 increase.  
Contract Not To Exceed: \$4,475,460.00  
SBE Goal: 15.86%

**Work Order Summary:**

WORK ORDER NUMBER	TOTAL/ SBE AMOUNT	ACTUAL* TOTAL/SBE AMOUNT	WORK ORDER DESCRIPTION	DATE / APPROVED BY	COMMENCEMENT DATE
0640-1	\$82,170.50 \$0.00	\$80,537.96 \$0.00	Phil Foster Park Snorkel Reef	6/28/2012 ERM	7/30/2012
0640-1, Work Supplement 1	\$0.00 \$20,298.60	\$0.00 \$7,848.52	Work Supplement to Phil Foster Park Snorkel Reef Work Order clarifying SBE participation	8/1/2012 ERM	n/a
0640-2	\$121,550.00 \$17,850.00	\$123,065.80 \$14,007.84	Jupiter Inlet Artificial Reef (FWC)	8/1/2012 CRC	8/2/2012
0640-3	\$107,982.00 \$0.00	\$107,982.00 \$0.00	Peanut Island	8/22/2012 CRC	8/27/2012
Change Order No. 1			Revise Contract's Guarantee and Bonding Requirements	9/11/2012 BCC	n/a
0640-3, Work Supplement 1	\$66,994.00 \$0.00	\$62,260.00 \$0.00	Peanut Island	12/5/2012 CRC	12/10/2012
Amendment No. 1			Increase Contract by \$105,876, Extend Contract 1 Year, and Revise Contract General Conditions	2/5/2013 BCC	n/a
0640-4	\$764,993.00 \$158,437.50	\$755,993.00 \$280,871.01	John's Island Oyster Reef (Phase 2); BCC Delegation 2/5/13	4/30/2013 ERM	7/15/2013
0640-5	\$129,928.00 44,036.00	\$135,590.00 \$26,754.00	Boynton Inlet Artificial Reef (FWC)	7/24/2013 CRC	7/25/2013
Amendment No. 2			Revise Contract General Conditions and Technical Specifications & Increase Contract by \$1,255,947.25 and Extend Contract 1 Year	BCC	n/a

Total: \$1,265,428.76  
SBE: \$329,481.37  
SBE Participation: 26.03%

Contract Balance: \$3,210,031.24  
Report Date: 4/2/2014

\* Actual amount expended for completed Work Orders and approved for closeout by Contract Review Committee.

R2012.0640  
CONTRACT

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of MAY 01 2012, 20\_\_\_\_, between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and The Vance Construction Co., hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

That the said Contractor having been awarded the Contract for the:

**PROJECT NAME:** Palm Beach County Annual Artificial Reef & Breakwater Project  
**PROJECT NO.:** 2012ERM01

In accordance with the Bid therefore and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Contractor and the County, the Contractor hereby covenants and agrees to and with the County to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all materials, labor, supervision, equipment, supplies, fees, expertise, and services necessary to fully complete all work in accordance with all requirements of the Contract Documents and in accordance with all applicable codes and governing regulations, within the time limit specified in the Bid Form. The Contract Documents consist of the following documents which are incorporated herein by reference.

- A - Invitation for Bid, Instructions to Bidders, Bid Form and Attachments 1 through 16
- B - Completed Bonds and Insurance Forms
- C - General Conditions, Supplemental General Conditions and Appendices A, B
- D - Technical Specifications, including Figures, Tables, Attachments, Appendices
- E - Addenda
- F - Permits
- G - Drawings/Plans

The Contractor acknowledges that the Work described by this Agreement shall be authorized by Work Order(s) and no minimum number or dollar value of Work Order(s) is promised under this Contract. The Contractor agrees to perform each Work Order issued by the County hereunder for the fixed prices to be established in each Work Order, based on the unit prices set forth in the Contract Bid Schedule, up to a maximum amount for all Work Orders not to exceed one million thirty-seven thousand eight hundred seventy-eight dollars and seventy-five cents (\$1,037,878.75), except as may be increased according to Articles 42 and 43 of the General Conditions. Each Work Order shall establish a fixed price, a time for completion and applicable Liquidated Damages for delay in Substantial and Final Completion.

This Contract is for a term not-to-exceed twelve (12) months from the date set forth above, with an optional extension not to exceed thirty-six (36) months total contract time.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the said County and caused the seal of the said County to be affixed hereto, and the Contractor has hereunto set its hand and seal the day and year written. The Contractor represents that it is authorized to execute this contract on behalf of itself and its Surety.

ATTEST:

SHARON R. BOCKLEY  
CLERK & COMPTROLLER

R2012 06 40 MAY 01 2012

PALM BEACH COUNTY, FLORIDA, A  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

By:

Shelley Vana  
Shelley Vana, Chair

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

James Bates  
Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS:

Daniel Bates  
Daniel Bates, Deputy Director  
Department of Environmental Resources Management

CONTRACTOR:

The Vance Construction Co.  
(Corporate Name)

a Florida corporation  
(insert state of corporation)

By:

James E. Vance, Jr.  
(signatory)

James E. Vance, Jr.  
(print signatory's name)

Its:

President  
(print title)

March 28<sup>th</sup>

2012

(date of execution)

955 25<sup>th</sup> Court

(Contractor's Official Address)

West Palm Beach, FL 33405

(Contractor's City, State, Zip Code)

65-0040853

(Federal Tax No.)

VC0000013087

Palm Beach County Vendor #

P.O. Box 4592, West Palm Beach, FL 33402

Payment Remittance Address

Elizabeth Scott  
(witness signature)

ELIZABETH SCOTT  
(witness name printed)

(Corporate Seal)