

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CONTRACT DC664 (Formerly DC661)
PROFESSIONAL SERVICES AGREEMENT

AMENDMENT NO. 1

THIS AGREEMENT as entered into on the 27th day of June 2006, by and between the **Florida Department of Environmental Protection**, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399 (hereinafter referred to as the "Department") and **Nassau County Board of County Commissioners** as the governing body of the **South Amelia Island Shore Stabilization Municipal Service Benefit Unit** a political subdivision of the State of Florida, whose address is Post Office Box 1010, Fernandina Beach, Florida 32035 (hereinafter referred to as the "County") and **Olsen Associates, Inc.**, whose address is 4438 Herschel St., Jacksonville, Florida 32210 (hereinafter referred to as the "Consultant").

WHEREAS THE Department, County and Consultant have entered into this Agreement designated Contract DC661; and

WHEREAS THE Department wishes to change the designation of Contract DC661 to Contract DC664.

NOW, THEREFORE, in consideration of the mutual covenants herein contained. The Department, County and Consultant agree as follows:

1. Contract DC661, by and between the Department, County and Consultant, will now be designated Contract DC664.


IN ALL OTHER RESPECTS, the Agreement of which this is an Amendment, and attachments relative thereto, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have duly executed this 30th day of

August, 2006.

FOR THE CONSULTANT



Authorized Person

ERIK J. OLSEN

Print Name

Pres.

Title

27 JUNE 06

Date

59-2223174

FEID Number

FOR THE DEPARTMENT



For the Secretary

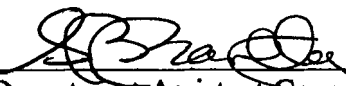
Assistant Director

Title

8/30/06

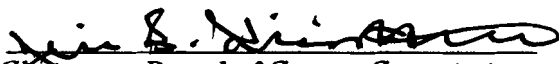
Date

APPROVED AS TO FORM & LEGALITY



Department Assistant General Counsel

FOR NASSAU COUNTY FLORIDA
as governing body of the South Amelia Island
Shore Stabilization Municipal Service Benefit Unit


Chairman, Board of County Commissioners,
As Chairman of the South Amelia Island Shore
Stabilization Municipal Service Benefit Unit

Jim B. Higginbotham

Print Name

Vice Chairman

Title

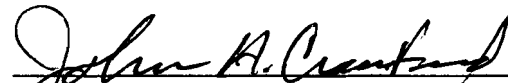
August 23, 2006

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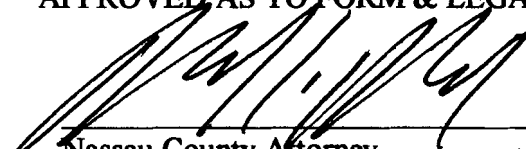
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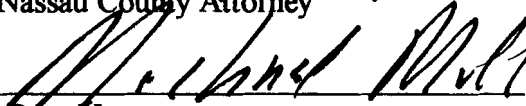

Ex-Officio Clerk

By [Signature] CSO

~~Print Name~~

APPROVED AS TO FORM & LEGALITY


Nassau County Attorney


Print Name

Contract DC661
Professional Services Agreement

The parties, **Florida Department of Environmental Protection**, 3900 Commonwealth Blvd., MS #520, Tallahassee, Florida 32399-3000 (“Department”), **Nassau County Board of County Commissioners** as the governing body of the **South Amelia Island Shore Stabilization Municipal Service Benefit Unit** a political subdivision of the State of Florida, whose address is Post Office Box 1010, Fernandina Beach, Florida 32035 (“County”) and **Olsen Associates, Inc., 4438 Herschel St., Jacksonville, Florida 32210**, (“Consultant”), enter this continuing professional services agreement (“Agreement”), and in consideration of these mutual covenants, agree as follows:

1. General.

The Department and County designate the Department’s Division of Recreation and Parks (**DRP**) as their agent and representative authorized to act on their behalf and to hereby retain the Consultant to perform the professional services as defined by RFSOQBDC 07-05/06. The Consultant shall, during the term of this Agreement, provide the Department with Coastal Engineering Services (“**professional services**”) in accordance with the provisions of §287.055, Fla.Stat. (2005). When called upon as set out below, the Consultant’s services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

- 1.1 The Consultant shall provide the first of a series of on-going professional services, as described in Attachment B, for the long term monitoring of the South Amelia Island Shore Stabilization Project, as required under the provisions of FDEP Joint Coastal Permit 0187721-001 and 002 (“Permit”) and all subsequent Modifications, which expires August 27, 2008. Under this initial contract, services will include the final phase of the monitoring year ending on June 30, 2006. Services provided by the Consultant shall include, but not be limited to, hydrographic surveys, aerial photography (oblique and controlled), annual in-depth analysis of coastal processes in the project area and the formulation and submission of the annual report-of-findings, which may include recommendations for implementing appropriate cost-effective measures for mitigation, and if necessary the Consultant shall formulate, coordinate and manage the construction of these mitigation actions. Professional services may also include design schematics, preparation of budgets, infrastructure design, surveys, elevations, soil reports, inspections, take-offs, estimating, design development, construction documents, bidding assistance or negotiated proposal evaluation, construction supervision and payment certification, which shall be performed to the satisfaction of the Department upon the terms and conditions [i] set out in this Agreement, [ii] referred to in the Request for Statement of Qualifications No. RFSOQBDC 07-05/06 (“RFSOQ”) incorporated herein by reference, [iii] the response to the RFSOQ incorporated herein by reference, and [iv] any Exhibit attached hereto and made a part hereof.

- 1.2 The items [i] through [iv] referred to in paragraph 1.1 are part of this Agreement, and, together with this Agreement, constitute the **entire agreement** among the parties, and supersede all prior negotiations, representations, proposals, understandings, and agreements.
- 1.3 To the extent that any conflict is found to exist between the terms and conditions set forth in this Agreement, the RFSOQ, the response to the RFSOQ, and any Exhibit to this Agreement, this Agreement shall be deemed to prevail.
- 1.4 This Agreement may be **amended** only by written instrument signed by the Department, County and the Consultant.
- 1.5 The Consultant shall save and hold harmless and indemnify the State of Florida, the Department and the County against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the Consultant's work under the terms of this Agreement, or, the negligent acts of the Consultant, or any of the employees, agents or representatives of the Consultant or subconsultant to the extent allowed by law.
- 1.6 The Consultant covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
- 1.7 No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Agreement shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
- 1.8 This Agreement is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
- 1.9 In accordance with Section 216.347, Florida Statutes, the Consultant is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
- 1.10 The Consultant shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied for five years following Agreement completion. The Department, County, or other appropriate state agencies or officers, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five years following Agreement completion. In the event any work is subcontracted, the Consultant shall similarly require each subconsultant to maintain and allow access to such records for audit purposes. All records supporting invoices, together with all Consultant records pertinent to overall performance under this Agreement, shall

be maintained for a period of five years, plus additional time for litigation, if any, following the last invoice submitted pursuant to this Agreement.

1.11 The Consultant recognizes that the State of Florida and Nassau County, by virtue of their sovereignty, are not required to pay any taxes on the services or goods purchased under the terms of this Agreement.

1.12 The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to rule 60A-1.032(1), Florida Administrative Code, this Contract shall be exempt from the one percent (1%) transaction fee.

2. Statement of Work (SOW).

Upon the latest date of execution of this document and for a period not to exceed three (3) years, unless otherwise amended as provided for in Section 1, paragraph 1.4 and Section 11, the Consultant shall perform the services as described in paragraph 1.1, Attachment A and Attachment B, which may be adjusted as the monitoring requirements dictate, and which shall include allowances for periods of time for review and approval of submissions by authorities having jurisdiction over the project. Time limits established by the approved SOW shall not, except for reasonable cause agreed to in advance by the Department, be exceeded by the Consultant.

3. Term.

3.1 The **term** of this Agreement shall begin at the latest execution date by all parties and end three (3) years from that date, unless extended by amendment hereto.

3.2 The Consultant shall not be compensated for any services rendered prior to the commencement date in paragraph 3.

4. Work.

Work issued under authority of and by amendment to this Agreement shall [i] cite the RFSOQ, [ii] be responsive to proposals submitted by the Consultant as may be modified during negotiation, [iii] describe the assignments for which professional services are required, and [iv] state the fixed fee/ cost reimbursement price to be paid by the Department and County to the Consultant, which price shall be **inclusive of and limited to all reimbursable costs, wages, and professional fees.**

4.1 "Reimbursable costs" shall mean the Consultant's actual normal and customary costs, including a fairly apportioned amount for allocable overhead, as proposed by the Consultant and agreed to by the Department during negotiation.

4.2 "Wages" shall mean the aggregate of time charges measured by hourly rates at a graded scale applicable to persons actually providing services, which shall include

a reasonable estimate of the Consultant's actual expenditures for items normally comprising a labor burden. Wage rates and related labor burden shall be agreed to by the Department in the negotiation stage. Wages for persons assigned to an on-going project after the Agreement has been issued shall not be included on an invoice until approved by the Department. All wage rates and related labor burden are subject to audit and adjustment.

- 4.3 "Professional fees" shall be expressed as a lump sum, and shall be inclusive of all the Consultant's non-reimbursable costs and profit. For billing purposes, the fee shall be apportioned to the percentage of total services for which each periodic invoice is submitted.
- 4.4 The Consultant shall submit invoices for professional services performed within the previous month directly to the Department through the person and address listed below.

Marshall Flake C/O BDC
3540 Thomasville Rd
Tallahassee, FL 32309
Ph. 850-488-3539
Email: marshall.flake@dep.state.fl.us

- 4.5 Invoices submitted by the Consultant shall be supported by [i] a certificate stating that wages and other factual unit costs supporting the payment requested are accurate, complete, and current, [ii] a certificate that travel expenses are invoiced in accordance with §112.061, Florida Statutes, and [iii] cost detail sufficient for an audit.
- 4.6 The Department shall process and pay its co-share of such invoices within times set out in §215.422, Florida Statutes. (2005). The County shall process and pay its co-share subject to Florida's Prompt Payment Act.
- 4.7 The obligation of the Department and County to process and pay invoices hereunder is contingent upon, (for the Department) continued annual appropriation to the Department for that purpose by the Legislature and (for the County) the ability to raise funds through a special assessment of the Municipal Service Benefit Unit.
- 4.8 Business-hours access to all business records maintained under this Agreement for the purpose of review, copying, and audit by the Department, County, their designees, and such other governmental agencies as provided by law during the contract term, and during the period of extended access under paragraph 1.10, shall not be refused by the Consultant. In the event any work is subcontracted, the Consultant shall require, as a condition of the applicable contract, each subconsultant to maintain, and allow access to, such records for like purposes and term by the Department, County or their designees.
- 4.9 Business-hours access to all such records for the purpose of review,

copying and audit by the Department or its designees during the contract term, and during the period of extended access under paragraph 1.10, shall not be refused by the Consultant.

4.10 The price for work assigned by a contract amendment may be adjusted by the Department at any time up to three years following completion of work described in the contract amendment to exclude any sums which the Department determines to exceed the Consultant's actual costs plus fee, or which reflect inaccurate, incomplete, or non-current wage rates or errors in other factual unit costs.

4.11 The contract price may be adjusted by the Department at any time up to one year following completion of work described in the Contract to exclude any sums which the Department determines to exceed the Consultant's actual cost plus fee, or which reflect inaccurate, incomplete, or non-current wage rates or errors in other factual costs.

5. Termination.

5.1 The Department or County may terminate this Agreement at any time without cause upon 30-days written notice to the Consultant.

5.1.1 Upon receipt of such notice, the Consultant shall cease performance, and invoice the Department for all services provided under the Agreement within thirty (30) days.

5.1.2 Under no circumstances shall the Department or County be liable for payment of any invoice [i] if the amount, when combined with all other payments exceeds the contract amendment price, or [ii] is received after the 30-day period.

5.2 The Department or County may terminate this Agreement upon 10-days written notice of intent to terminate and payment of all outstanding invoices in the event of failure of the Consultant to perform as agreed.

5.2.1 During such 10-day period, the Consultant shall invoice all completed work. Invoices received after such period will not be submitted for payment.

5.2.2 During such 10-day period, the Consultant shall have opportunity to cure the failure of performance. Upon the Consultant's satisfactory response to such notice, the intent to terminate will be withdrawn.

5.3 The Department or County may terminate this Agreement without notice for the Consultant's [i] breach of the warranty in §8, below, or [ii] refusal to allow public access to all records regardless of form made or received by the Consultant in connection with its performance under this Agreement unless such records are

exempt from application of Art.I;§24(a), Florida Constitution., and §119.071, or other applicable Florida Statutes.

6. Notice.

6.1 Notices as provided for herein shall be deemed complete when served upon designated representatives of the parties at their addresses shown in paragraph 6.2.

6.2 Designated representatives are:

For the Department: Michael Renard, Project Manager
Florida Department of Environmental Protection
Alfred B. Maclay Gardens State Park
3540 Thomasville Road, Bldg B-1
Tallahassee, Florida 32309
(850) 488-5372

and

Suzanne Brantley, Esq.
Office of the General Counsel
3900 Commonwealth Blvd. MS #35
Tallahassee, Florida 32399-3000
(850) 245-2242

For the County: William Moore
Director of Planning & Development
Amelia Island Plantation
1501 Lewis Street
Amelia Island, FL 32034-3000
(904) 277-5103

For the Consultant: Erik Olsen, President
Olsen Associates, Inc.
4438 Herschel Street
Jacksonville, FL 32210
(904) 387-6114

6.3 Notice shall be sufficient if delivered by hand, by certified mail, or by delivery service to the persons at the addresses shown in paragraph 6.2.

6.4 Any change in address or substitution of designated representative shall be provided in writing to the other party within 10 days of its effective date.

6.5 The Department's Project Manager is Mark Latch, or his successor, Phone (850) 245-3104. The Consultant's Project Manager is Erik Olsen, or his successor, Phone 904-387-6114. All matters shall be directed to the Project Managers for

appropriate action or disposition. Names and telephone numbers of successors shall be provided to the other project manager within 10 days.

7. Independent Contractors.

The Consultant is neither an agent nor an employee of the Department or County, but is an independent contractor/vendor to the Department and County, and shall supply on its own account all personnel, equipment, software and materials necessary to full performance of its duties hereunder.

7.1 The Consultant is responsible for the professional quality, technical accuracy, timely completion and coordination of all design, drawings, specifications, reports, and other services furnished by it and by its subconsultants under this Agreement.

7.2 The Consultant shall, without additional compensation and without limiting other remedies, correct or revise errors, omissions, or other deficiencies in designs, drawings, specifications, quantities, reports, and other submissions prepared by it or its subconsultants in the performance of this Agreement

7.3 All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal and signature in accordance with the applicable Florida Statutes and administrative rules promulgated by the Florida Department of Business and Professional Regulation, in effect at the time of execution of this Contract.

8. Procurement of Agreement.

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 procure this Agreement, and that it has not paid or agreed to pay any person or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the execution of this Agreement.

9. Discrimination.

The Consultant warrants [i] that no person or firm shall be excluded on grounds of race, creed, religion, national origin, age, sex, or disability from participation, or otherwise be subjected to discrimination, in performance of this Agreement, and [ii] that neither it nor any affiliate nor any supplier, subconsultant, or other subcontractor of Consultant, is or has been placed on the discriminatory vendor list maintained by the Florida Department of Management Services pursuant to Ch. 287, Florida Statutes. (2005).

10. Coverage.

10.1

- a. The Consultant shall secure and maintain during the term of this Agreement errors and omissions coverage of not less than \$1,000,000 per occurrence.
- b. Commercial general liability coverages with limits of not less than \$1,000,000 per occurrence.
- c. \$2,000,000 general aggregate, including bodily injury, property damage, products liability, completed operations, personal injury, and advertising liability.

10.2 This coverage shall meet all claims that may arise from performance of professional services and operations under this Agreement, whether by the Consultant or by persons employed or retained directly or indirectly by the Consultant.

10.3 Insurance required by paragraph 10.1 shall include a hold-harmless provision in favor of the Department and County, and the certificate shall list the Department and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the Nassau County Board of County Commissioners as additional insured.

10.4 The Consultant shall secure and maintain for the term of this Agreement commercial automobile liability insurance for all claims which may arise from the services and operations performed under this Agreement, whether by the Consultant or by persons employed or retained directly or indirectly by it, with minimum liability limits of:

\$1,000,000 for automobile liability combined single limit for Consultant-owned vehicles, and

\$1,000,000 for hired and non-owned automobile liability coverage.

10.7 To the extent required by law, the Consultant will be self-insured against, or will secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of his employees connected with the work under the Agreement. If any work is subcontracted, the Consultant shall require the subconsultant similarly to provide Workers' Compensation Insurance for all of the subconsultant's employees unless such employees are covered by the protection afforded by the Consultant. Any self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Consultant shall provide, and cause each subconsultant to provide, adequate insurance satisfactory to the Department, for the protection of such employees.

- 10.8 All policies shall be issued by insurers licensed by or eligible to do business in the State of Florida.
- 10.9 The Consultant's current certificate of insurance shall provide that its coverage shall not be cancelled for any reason during the term hereof except upon 30-days written notice to the Department.

11. Amendments.

The Department plans periodically to amend this contract by issuance of written Contract Amendments executed by the Department, County and Consultant, to include time extensions, cost increases and modifications to the scope of work, required to meet the annual reporting requirements of the Permit and to provide mitigation services if required.

- 11.1 In the event that the Consultant rejects modifications reflected in such change order, it shall be deemed a change directive.
- 11.2 The Consultant shall perform the modified scope of work as set out in the change directive, and invoice the Department accordingly.
- 11.3 The scope of work described in the proposal may be modified by change order or change directive, as set out in this section.

12. Time is of the essence.

Time is of the essence in the performance of all duties and the giving of all notices required under this Agreement.

13. Disputes.

Disputes shall be resolved as follows:

- 13.1 The parties shall make a good faith attempt to resolve disagreements which may arise from time to time by **informal conference** within 10 days of the date matter requiring resolution arises.
- 13.2 In the event that the matter is not resolved at informal conference, the complaining party shall give written **notice of dispute** to the other party within 5 days after the informal conference. The notice shall set out in detail all aspects of the matter to be resolved, including relief sought.
- 13.3 Within 10 days of receipt of the notice of dispute, the party shall deliver its detailed **written response** to the complaining party, and a **formal conference** shall be convened no later than 30-days following the matter requiring resolution.

13.3.1 All persons necessary to resolution of the matter shall attend the formal conference.

13.3.2 Minutes of the formal conference shall be taken, transcribed, and signed-off by the Department, and shall be copied to Consultant and County.

13.4 In the event that the matter is not resolved at formal conference, the complaining party shall within 21 days from the date of said conference, file and serve an appropriate **claim** as prescribed by **Chapter 120**, Florida Statutes.

13.5 In no event shall a dispute arising under this Agreement be part of any claim or count in a complaint filed in any court, federal or State, until all remedies afforded in Chapter 120, Florida Statutes, have been exhausted.

13.6 Venue for any formal claim and hearing or trial in any forum shall be Leon County.

13.7 The parties waive the right to a jury trial on all issues that arise under this Agreement.

14. **Assignment.**

This Agreement is an exclusive contract for services, and may not be assigned in whole or in part without written approval of the Department and County.

15. **Subcontracting.**

15.1 The Consultant shall not subcontract, assign, or transfer any work under this Agreement without prior written consent of the DEPARTMENT, except as listed in submittal

15.2 The Department's consent to any subcontract shall not [i] relieve the Consultant of responsibility to the Department for satisfactory completion of the work so assigned, [ii] make the Department liable to the subconsultant for the work performed, or [iii] create a contractual relationship between the subconsultant and the Department.

15.3 The employment of unauthorized aliens by any Consultant is considered a violation of Section 274(e) of the Immigration and Nationality Act. If the Consultant knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Consultant shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.

16. **Department and County Property.**

It is specifically agreed that work performed under this Agreement is work for hire, and that all right, title, and interest in and to such work, including without limitation all

schematics, designs, plans, and specifications produced and developed by the Consultant or its subconsultants in performance hereunder, whether subject to patent, copyright, or other such protection, shall be the property of the Department and County during the term of this Agreement, and shall remain the property of the Department and County thereafter; **provided** that any materials used by the Consultant and any subconsultants for which patent or copyright protection has previously been secured by them shall remain the property of the Consultant or subconsultant.

17. **Governing Law.**

This Agreement was made in the State of Florida and shall be construed pursuant to Florida law.

18. **Attachments.**

List of Attachments and Forms included as part of this Agreement

- A. **Scope of Work**
- B. **Proposal**
- C. **Truth-In-Negotiation certificate**

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IN WITNESS WHEREOF the parties have caused this Agreement to be formally executed effective the date signed on behalf of the Department of Environmental Protection.

FOR THE CONSULTANT

FOR THE DEPARTMENT


Authorized Person


For the Secretary

Erik J. Olsen
Print Name

Assistant Director
Title

Pres - Olsen Assoc, Inc
Title

6/27/06
Date

23 June 06
Date

APPROVED AS TO FORM & LEGALITY

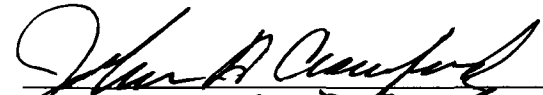
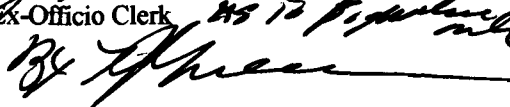
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Department Assistant General Counsel

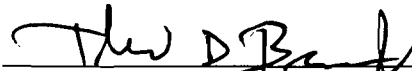
FOR NASSAU COUNTY FLORIDA
as governing body of the South Amelia Island
Shore Stabilization Municipal Service Benefit Unit

ATTEST:


Chairman, Board of County Commissioners,
As Chairman of the South Amelia Island Shore
Stabilization Municipal Service Benefit Unit


Ex-Officio Clerk


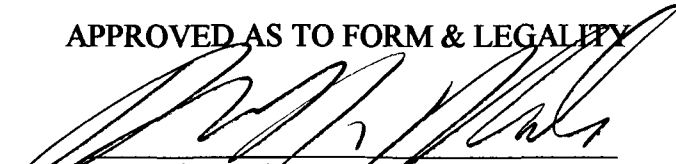
John A. Crawford, Ex-Officio Clerk
by Jerry Greeson, Chief of Staff
Print Name


Print Name Thomas D. Branan, Jr.

Chairman
Title

APPROVED AS TO FORM & LEGALITY

Approved 6-12-06
Date


Nassau County Attorney

59-1863042
FEID Number

Michael S. Mullin
Print Name

ATTACHMENT A

Scope of Work

ARTICLE 1. SCOPE OF SERVICES

- 1.1 The Department and County designate the Department's Division of Recreation and Parks (**DRP**) as their representative and agent authorized to act on their behalf and to hereby retain the Consultant to perform the professional services as previously defined, and the Consultant does hereby agree to perform such services upon the terms and conditions set forth in the Agreement, Solicitation No. RFSOQBDC07-05/06 and Attachments, which by reference forms a part of this Agreement.

ARTICLE 2. KEY PERSONNEL

- 2.1 The Consultant shall not deviate from the key personnel shown in the Consultant's response to the Department's Statement of Qualifications for RFSOQBDC07-05/06 without first obtaining the written consent of the Department.
- 2.2 In determining the cost of subsequent monitoring or mitigation assignments covered by amendments to this Agreement, the Consultant shall provide the current wage rates and other factual unit costs for key personnel and supporting staff.

ARTICLE 3. TASKS & BUDGET RESPONSIBILITY

- 3.1 Upon the execution of this Agreement, the Consultant agrees to provide the monitoring services, listed in Attachment B, Section 1, for the final phase of the present monitoring period, required by the FDEP Joint Coastal Permit 0187721-001 and 002 and all subsequent Modifications.
- 3.2 The Consultant shall be compensated for completing the specific work listed in Attachment B, with the total sum of **\$133,530** as specified in Attachment B, attached hereto and incorporated herein by reference. The Department shall pay **\$87,067** and the County shall pay **\$46,463**. All invoices shall be submitted to the Department's representative identified in Paragraph 4.4 of this agreement. Once the Department's share is expended, invoices for partial or complete payment shall be forwarded for payment to the County's representative identified in Paragraph 6.2 of this Agreement.
- 3.3 The budget for continued monitoring and or mitigation depends on both a **Legislative Appropriation** and a **County Assessment**, with the percentage of the Department's and the County's cost share, to be determined for each task by the Bureau of Beaches and Coastal Systems, in accordance with annual funding provided by the Legislature, through the Beach Management Program. If the budget is determined to be insufficient, the Department may modify the work to be performed, or may terminate the assigned task, at the Department's sole discretion. If budgeted funds subsequently revert and are no longer available to the Department, or the FDEP Joint Coastal Permit 0187721-001 and 002 and all subsequent Modifications is not

extended, the Department may terminate the Agreement in accordance with Paragraph 5 of this Agreement.

- 3.4 If a mitigation construction action is required under the terms of the permit, or deemed necessary and advisable by the Department, a separate contract amendment will be executed for the design, permitting and construction of the mitigation action. Since the Consultant does not have control over the cost of labor and materials, or over the competitive bidding and market conditions, the estimates of construction cost are to be made on the basis of the Consultant's experience and qualifications.
- 3.5 The Consultant shall conform to the following provisions to keep any construction costs within the Department's construction budget.
 - 3.5.1 By 50% completion of the construction documents phase, the Consultant shall resolve with the Department any apparent discrepancy between his estimates of probable construction cost and the scope and requirements of the Department. The Consultant shall be permitted to include acceptable alternates in the contract documents for the purpose of providing a finished and acceptable project within the construction budget. Inability of the Department to award an acceptable construction contract because the lowest acceptable bid is greater than the construction budget shall be cause for the Consultant to be required to revise the project at the Consultant's own cost and expense in accordance with the requirements of this Contract until a contract can be awarded within the construction budget.
 - 3.5.2 If the Consultant advises the Department, in writing, before the construction documents are 50% complete, that in the Consultant's opinion, the scope of work the Department has established and is insisting upon, will cause the construction cost to exceed the construction budget, and the resolution thereafter of this issue fails, or if the Department increases the probable construction cost during the construction document phase, by adding to the scope and/or requirements, and the Consultant so notifies the Department in writing of the probable increase in cost, and the Department then orders the Consultant to proceed notwithstanding, the Consultant shall not be responsible for not being able to award a construction contract within the construction budget. Under such conditions the extra work of the Consultant, as required, to include in the bidding document alternates as requested by the Department and/or to redesign and redraft the contract documents shall be considered an "Additional Service" and payment for such extra work shall be as provided for under Article 6 of this Attachment.
 - 3.5.3 If the award of a construction contract is delayed more than four (4) months following the completion of contract documents, the Consultant shall be permitted to revise estimates in accordance with recognized published changes in construction cost.
- 3.6 Construction task costs shall be based upon one of the following sources, in order of preference as follows:

- 3.6.1 Lowest acceptable good faith Consultant's proposal received for any or all portions of a construction task.
- 3.6.2 Detailed estimate of project construction cost authorized by the Department.
- 3.6.3 The Consultant's latest estimate of probable construction cost based on current area, volume or other unit costs.

ARTICLE 4. DEPARTMENT'S & COUNTY'S RESPONSIBILITIES

- 4.1 As the Department's and County's agent, the Department shall examine all documents submitted by the Consultant and render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Consultant's work. The Department shall observe the procedure of issuing orders to sub-consultants and contractors only through the Consultant for all monitoring and mitigation tasks.
- 4.2 The Department shall provide full information as to its requirements for any assigned task.
- 4.3 The Department shall furnish or direct the Consultant to obtain, at the Department's and County's expense, a certified survey of the site locating, if applicable, the following:
 - 4.3.1 Grades and lines of all applicable erosion control structures.
 - 4.3.2 Rights of way, deed restrictions, encroachments, zoning restrictions, boundaries and beach contours.
 - 4.3.3 Locations, dimensions and data pertaining to existing erosion control structures.
 - 4.3.4 Other improvements.
 - 4.3.5 Full information as to the applicable CCL and MHW line.
 - 4.3.6 Test cores, when required, to establish existing sand characteristics.
- 4.4 The Department shall pay for structural, chemical, mechanical, soil mechanics or other tests and reports, if required.
- 4.5 The Department shall arrange and pay reasonable professional fees for legal, auditing and insurance counseling services if required for the Project.
- 4.6 If the Department or the Consultant observes or otherwise becomes aware of any defects in the project, written notice thereof shall be given to the other parties within 10 days.

- 4.7 If the estimates of probable project construction cost of the detailed cost estimate or the lowest good faith proposal is in excess of any limit stated herein, the Department may give written approval if it is determined to be in the best interest of the Department and County or shall cooperate in revising the project scope or quality, or both, to reduce the cost as required.

ARTICLE 5. BASIC SERVICES

- 5.1 For Monitoring Services the Consultant shall compile and prepare an annual report as required by the Joint Coastal Permit 0187721-001 and 002 and all subsequent Modifications.
- 5.2 For Mitigation Services the Consultant shall prepare schematic design studies leading to a recommended solution together with a general description of the project for approval by the Department. The Consultant shall prepare, from the approved schematic design studies, the design development documents.
- 5.3 The Consultant shall prepare, from the approved design development documents, contract documents consisting of working drawings and written technical specifications for structural, mechanical, electrical, service-connected equipment, and site work, using an Auto CAD Release 2006 compatible. One 3.5 inch diskette of the drawing(s) and five (5) copies of the contract documents with a further revised estimate of probable project construction costs based on current area volume, or other unit costs shall be submitted. The specifications shall include the necessary bidding information and general conditions of the construction contract.
- 5.4 The Consultant shall keep the Department informed of any adjustments to previous estimates of probable project construction costs indicated by changes in scope, requirements or market conditions.
- 5.5 The Consultant shall furnish ten (10) copies of the contract documents for the bidding phases of the assignment, consisting of construction drawings, specifications, construction agreement forms, general conditions, special provisions and technical provisions.
- 5.6 It shall be the responsibility of the Consultant to provide documents which conform to applicable building codes, local zoning codes and generally accepted construction industry standards.
- 5.7 The Consultant shall signify responsibility for the contract documents prepared pursuant to the Agreement by affixing his signature, date and seal thereto as required by Chapters 471 or 481, Florida Statutes, including the following statement:

"The plans, specifications and addenda comply with the applicable minimum building codes."

- 5.8 Where this Agreement provides for the Department's approval of the Consultant's design suggestions and decisions, such approval shall not relieve the Consultant of any responsibility or warranty hereunder.
- 5.9 The Consultant shall assist the Department as needed to obtain construction building and or environmental permits from the state, counties, and local municipalities, as required.
- 5.10 The Consultant shall assist the Department in obtaining proposals from consultants and in awarding and preparing construction contracts. The Consultant shall submit a written recommendation to the Department regarding the cost for construction proposed by the apparent low bidder.
- 5.11 The Consultant shall provide administration of the contract for construction and shall advise and consult with the Department during construction until final payment is made and the project is terminated as specified in paragraph 5 of the Agreement.
- 5.12 The Consultant shall visit the construction site a minimum of once per month, or at more frequent intervals appropriate to the stage of construction, to become familiar with the progress and quality of the work. The Consultant is to determine if the construction is being performed in a manner indicating that the work when completed will be in accordance with the construction documents.
- 5.13 The Consultant shall make decisions on all matters relating to the execution and progress of the work or the interpretation of the contract documents. The Consultant shall check and approve samples, schedules, shop drawings and other submissions for conformance with the design concept for the project and for compliance with the contract documents.
- 5.14 The Consultant shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the construction documents.
- 5.15 The Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, be responsible for the techniques or sequences of construction or the safety precautions incident thereto, or be responsible for the Contractor's failure to carry out the construction work in accordance with the contract documents. Based on certificates for payment for completed work and on the basis of the Consultant's observations as a qualified professional while at the site, the Consultant will keep the Department informed of the progress of the work, will endeavor to guard the Department against defects and deficiencies in the construction work, and shall inform the Department when the work fails to conform to the construction documents. By issuing a certificate for payment, the Consultant represents to the Department that its observations have revealed the quality of the work is in accordance with the contract documents. The Consultant will conduct inspections to determine the dates of substantial and final completion and issue a final certificate of payment.

- 5.16 The Consultant shall have the authority to reject work which does not conform to the construction documents or local building or zoning codes. Whenever necessary or advisable to determine proper implementation of the intent of the construction documents, the Consultant shall have the authority to require additional inspections or testing to determine whether or not such work is properly fabricated, installed or completed.
- 5.17 The Consultant shall enlist services of a qualified subconsultant, when approved in writing by the Department, for surveys, subsurface investigation, testing and detailed cost estimating when required. The direct cost of these services shall be invoiced to the Consultant by the subconsultant with approval for payment by the Consultant for services rendered by the subconsultant in accordance with the terms of the Department's written authorization.
- 5.18 The Consultant certifies that wage rates or other factual unit costs furnished to the Department in the future, to support additional service proposals, will be accurate, complete and current at the time of submitting such proposals. The Consultant agrees that the basic services compensation and any authorized additional service compensation shall be adjusted to exclude any significant sums by which the Department determines such compensations were increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. The Department and the Consultant agree that all such adjustments in compensation shall be made within one year following completion of the services covered by this Agreement.
- 5.19 The Consultant shall be responsible for all work performed under the terms of this Agreement. The Consultant may enlist the professional services of a subconsultant as necessary to perform the services required by this Agreement, provided the services are authorized by the Department in writing prior to the work being performed. It is understood by the Consultant that neither the Department nor the County shall be liable to any subconsultant for any expenses or liabilities incurred and that the Consultant shall be solely liable to the subconsultant for all expenses and liabilities.

ARTICLE 6. ADDITIONAL SERVICES

- 6.1 It is acknowledged that the following services cause the Consultant extra expense and are not covered by the payments for Consultant's basic services. After these services are authorized in writing by the Department, they shall be paid for as a fixed price as prescribed by Article 9.
- 6.1.1 Additional services due to significant changes in general scope of the project or its requirements, including, but not limited to, changes in size, complexity or character of construction.
- 6.1.2 Making measured drawings of existing construction when required for planning additions or alterations.
- 6.1.3 Revising previously approved drawings or specifications to accomplish changes.

- 6.1.4 When required by the Department, preparing documents for supplemental work initiated after commencement of the construction phase as a change order to the construction contract.
- 6.1.5 Consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the types set forth in Article 5 as may be required in connection with the replacement of such work.
- 6.1.6 Arranging for the work to proceed should the contractor default due to delinquency or insolvency.
- 6.1.7 Providing prolonged contract administration and observation of construction should the construction contract time be exceeded by more than 25% due to no fault of the Consultant. Construction contract time is the period of time allotted in the contract documents for completion of the work, including substantial completion and final completion.
- 6.1.8 Revising the tracings to show changes made during the construction process, based on the marked up prints, drawings and other data furnished by the consultant and which the Consultant considers significant.
- 6.1.9 Additional project administration resulting from the project involving more than one general construction contract, or separate construction contracts for different building trades or separate equipment contracts.
- 6.1.10 Making an inspection of the project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contracts.
- 6.1.11 Furnishing and directing one or more project representatives (if more extensive representation at the site than called for in Article 5 is required) with the understanding that the number, identity, salaries and length of service of such representatives shall be agreed to in advance by the DEPARTMENT. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the resident project representative (if one is furnished), the Consultant will endeavor to provide further protection for the Department against defects and deficiencies in the work, but the furnishing of such resident project representation shall not make the Consultant responsible for the consultant's failure to perform the construction work in accordance with the contract documents.
- 6.1.12 Preparing drawings, specifications and other documentation and supporting data, evaluating consultant's proposals and providing other services in connection with change orders to the construction documents.

- 6.2 Additional services in connection with the project not otherwise provided for in this Agreement.

ARTICLE 7. REIMBURSABLE EXPENSE

- 7.1 Reimbursable expenses include actual expenditures, not exceeding the limits of Section 112.061, Florida Statutes, made by the Consultant in the interest of the project for the following incidental expenses. All reimbursable expenses shall be approved with a not-to-exceed written authorization from the Department.

Reimbursable expenses include:

- 7.1.1 Expense of transportation and living for the Consultant when traveling in connection with services other than those defined in Article 5.
- 7.1.2 Reproduction of drawings and specifications, excluding copies for Consultant's office use and five (5) sets at each phase for the Department's review and approval as required in Article 5.
- 7.1.3 Fees paid for securing approval of authorities and agencies having jurisdiction over the project.

ARTICLE 8. SCHEDULE

- 8.1 The Consultant shall complete 100% of construction documents for mitigation projects, including missing information, within 90 days of receipt of the services set forth in this Agreement. This time period shall include the Department's review and processing time unless otherwise specified herein. After receipt of the Department's final comments and positive indication from all permitting agencies that permits will be issued, the Department shall proceed with preparation of final bid documents, advertising and receipt of the bids, bid opening and tabulations.
- 8.1.1 The services called for in the schematic design phase of the Contract shall be completed and five (5) copies of the documents and estimates of probable project construction costs submitted to the Department within the specified time following authorization for the Consultant to proceed with the project.
- 8.1.2 Upon the latest date of Execution of the contract, the Consultant shall proceed with the performance of the services called for in the design development phase of this Agreement, and shall submit five (5) copies of the documents and revised estimates of probable project construction cost within the specified time.
- 8.1.3 After acceptance by the DEPARTMENT of the design development documents and revised estimates of probable cost, indication of any specific modifications or changes in scope desired by the DEPARTMENT, the Consultant shall proceed with the performance of the Services called for in the construction documents phase of this Agreement, and shall submit five (5) copies of the

documents and further revised estimates of probable project construction costs within the specified time. Additional time shall be allowed for the Department's review and approval.

- 8.2 Unless sooner terminated as provided in the Agreement, or by its expiration and non-renewal this Agreement shall remain in force. This Agreement may be renewed for additional periods at the Department's and County's discretion.

ARTICLE 9. PAYMENTS TO CONSULTANT

- 9.1 For the Consultant's basic services as identified in Article 5, payments shall be made at the completion of each phase of the work in proportion to services performed.
- 9.2 Payments for additional services to the Consultant as defined in Article 6 as a fixed price shall be made as prescribed in the authorization for services to be issued by the Department.
- 9.3 Payments for additional services as defined in Article 6 shall be determined by multiplying hours worked by the then current fee schedule referenced in Article 5. Payments for reimbursable expenses as provided in Article 7 shall be paid upon presentation of a detailed invoice and related supporting documentation, such as receipts, statements, or invoices.
- 9.4 Thirty (30) calendar days shall be allowed for the Department's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.5 No deduction shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractor.
- 9.6 The Consultant shall submit to the Department a final invoice for payment of services authorized by this Agreement no later than thirty (30) days after submittal of final payment from the contractor.
- 9.7 If any work designed or specified by the Consultant during any phase of service is abandoned or suspended in whole or in part for three months, the Consultant shall be paid for the service performed prior to receipt of written notice from the Department of such abandonment or suspension, together with any reimbursement then due.

ARTICLE 10. TERMINATION OF AGREEMENT

- 10.1 In the event of termination, due to the fault of other than the Consultant, the Consultant shall be paid for services performed to termination date, including reimbursements then due.

ARTICLE 11. REUSE OF DOCUMENTS

- 11.1 The Documents prepared pursuant to this Agreement shall be the property of the Department. The Department shall be provided a set of reproducible drawings and all other supporting documents produced as part of this Agreement.
- 11.2 The Consultant shall deliver to the Department the original tracings upon final completion of the project.
- 11.3 The Department may reuse the documents prepared under this Agreement as its own product.

ARTICLE 12. SPECIAL PROVISIONS

- 12.1 It shall be the responsibility of the Consultant to fully inform the Department of the progress of the planning and design as provided herein. To this end, the Consultant shall furnish the Department with a complete schedule at the end of each month. The Consultant shall furnish these reports until a construction contract award is made, at which time the Consultant shall submit reports concerning progress, quality of work and statements as may be needed regarding the construction work proceeding in accordance with the construction documents.
- 12.2 Prohibitions Against Liens or Other Encumbrances: The Consultant hereby covenants and agrees that fee title to the real property for which services will be provided is in the Board of Trustees of the Internal Improvement Trust Fund and that Consultant shall not do or permit anything which purports to create a lien or encumbrance of any nature against the real property including, but not limited to, mortgages or construction liens against the real property or against any interest of the State of Florida, the Board of Trustees of the Internal Improvement Trust Fund, or the Department of Environmental Protection, Division of Recreation and Parks.

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ATTACHMENT B

Proposal

Section 1. Work tasks, Compensation and Schedule:

Work to be performed under Task B of the '05/06' monitoring season as required by the FDEP Joint Coastal Permit ("**Permit**") 0187721-001 and 002 and all subsequent Modifications:

1.1 Compile & Submit the Annual Monitoring Report

i. Rectified Digital Aerial Color Photography	\$8,750
ii. Oblique Aerial Photography	\$5,000
iii. Surveys including: Structures MHWL Amelia Island Shoreline Bathometric survey of Nassau Sound	\$51,780
iv. Subcontractor Management	\$5,000
v. Data Management	\$7,500
vi. Analyses	\$17,500
vii. Reproduction	\$2,000
viii. Report Preparation	<u>\$36,000</u>
	Total: \$133,530

1.2 Compensation:

1.2.1 The consultant shall be compensated for completing the work listed in paragraph 1.1, with the total sum of **\$133,530**.

1.3 Schedule:

1.3.1 The work shall commence upon the latest date of execution of this Agreement and although the contract remains in force for three years from that date, unless otherwise amended, the compiled Annual Monitoring Report for the current monitoring season shall be submitted within the 90 day period specified in the Permit, but no later than October 1st, 2006.

ATTACHMENT C

TRUTH-IN-NEGOTIATION CERTIFICATE

I, Erk J. Olsen, the Pres
(Name) (Title)

of COMPANY NAME hereby certify that wage rates and other factual unit costs supporting the compensation to be paid under future DEP Contract No. DC661 amendments, are accurate, complete, and current as of the date of execution of the above mentioned amendments.

Olsen assoc, inc
Company Name
4438 Heichel St
Company Address
Jacksonville, FL 32210

By: [Signature]
Title: Pres

Date: 23 Jun 06