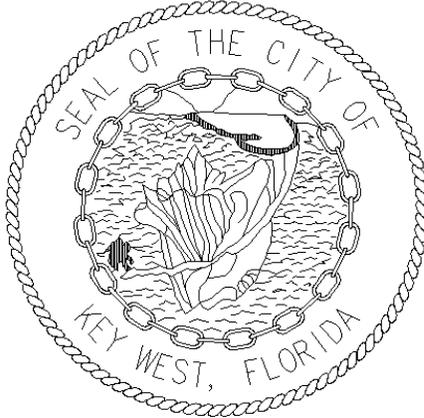


# CONTRACT DOCUMENTS FOR:



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ITB #18 - 006  
SMATHERS BEACH RENOURISHMENT

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PROJECT # FT 19001801  
APRIL 2018

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MAYOR: CRAIG CATES

COMMISSIONERS:

SAM KAUFMAN

RICHARD PAYNE

JIMMY WEEKLEY

CLAYTON LOPEZ

MARGARET ROMERO

BILLY WARDLOW

CITY OF KEY WEST  
KEY WEST, FLORIDA

CONTRACT DOCUMENTS

for

ITB #18-006: SMATHERS BEACH RENOURISHMENT

\*\*\*\*

CONSISTING OF:  
BIDDING REQUIREMENTS  
CONTRACT FORMS  
CONDITIONS OF THE CONTRACT  
SPECIFICATIONS  
DRAWINGS & PERMITS

\*\*\*\*

CITY OF KEY WEST  
ENGINEERING SERVICES  
KEY WEST, FLORIDA

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**PART 1**

**BIDDING REQUIREMENTS**

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## INVITATION TO BID

Sealed Bids for the Construction of ITB #18-006: SMATHERS BEACH RENOURISHMENT Project FT 19001801, addressed to the City of Key West, will be received at the office of the City Clerk, City of Key West, 1300 White St., Key West, Florida, until 3:00 p.m., local time, on Wednesday, May 16, 2018 and then will be publicly opened and read. Any bids received after the time and date specified will not be considered.

The City retains the right to award bid to the bidder that best meet the needs of the City.

The base project contemplated consists of the placement of approximately 20,000 tons of sand at Smathers Beach from a permit-approved upland mine. The sand will be placed above and below mean high water according to the attached drawings and permits.

Three (3) additive alternates to reconstruct breach berms may, at the City's sole discretion, be considered in the selection and included with the award. Those alternates include; placement of approximately 490 tons of sand at South Beach, placement of approximately 80 tons of sand at Dog Beach, and placement of approximately 190 tons of sand at Simonton Beach. The sand will be sourced from the same upland mine as with the base bid project.

Drawings and Specifications may be obtained from Demand Star by Onvia. Please contact Demand Star at [www.demandstar.com](http://www.demandstar.com) or call 1-800-711-1712.

**One (1) original and two (2) flash drives in PDF format of the Bid are to be submitted in two sealed envelopes, one within the other, clearly marked on the outside, "ITB #18-006: SMATHERS BEACH RENOURISHMENT" and addressed to:**

CITY CLERK  
KEY WEST CITY HALL  
1300 WHITE STREET  
KEY WEST, FLORIDA 33040

Each Bid must be submitted on the prescribed forms and accompanied by bid security as prescribed in the Instructions to Bidders, payable to the City of Key West, Florida, in an amount not less than 5 percent of the amount bid.

**THE BIDDER MUST BE A LICENSED CONTRACTOR BY THE STATE OF FLORIDA AND SUBMIT PROOF OF SUCH WITH THE BID.**

The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Bidding Documents. Within 10 days after the Notice of Award, the successful Bidder will also be required to furnish documentation showing that he is in compliance with the licensing requirements of the state and that the provisions of Chapter 66 Section 87 of the Code of Ordinances of the City of Key West. Compliance with these provisions is required before he can enter into the agreement contained in the Contract Documents. Specifically, within 10 days after the Notice of Award, the successful Bidder must demonstrate that he holds, as a minimum, the following licenses and certificates:

- A. City of Key West License, as defined in Code of Ordinances, Chapter 66, enabling the Contractor to perform the work stated herein.

- B. A valid Certificate of Competency issued by the Chief Building Official of Key West, Florida.
- C. A valid occupational license issued by the City of Key West, Florida.

All bid bonds, contract bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or insurance company having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said Surety or Insurance Company shall be duly licensed and qualified to do business in the State of Florida.

Before a Contract will be awarded for the work contemplated herein, the OWNER will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the Bidder shall submit such information as deemed necessary by the OWNER to evaluate the Bidder's qualifications.

At the time of the award, the successful Bidder must show satisfactory document of such State, County and City licenses as would be required. Any permit and/or license requirement and subsequent costs are located within the bid documents. The successful Bidder must also be able to satisfy the City Attorney as to such insurance coverage and legal requirements as may be demanded in Bid. The City may reject bids: (1) for budgetary reasons, (2) if the bidder misstates or conceals a material fact in its bid, (3) if the bid does not strictly conform to the law or is non-responsive to the bid requirements, (4) if the bid is conditional, (5) if a change of circumstances occurs making the purpose of the bid unnecessary, (6) or if such rejection is in the best interest of the City. The City may also waive any minor formalities or irregularities in any bid.

## **INSTRUCTIONS TO BIDDERS**

### **1. CONTRACT DOCUMENTS**

#### **A. FORMAT**

The Contract Documents are divided into parts, divisions, and sections for convenient organization and reference. Generally, there has been no attempt to divide the Specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

#### **B. DOCUMENT INTERPRETATION**

The separate sections contained within these Contract Documents are intended to be mutually cooperative and to provide all details reasonably required for the execution of the proposed work.

Questions should be directed in writing to Atkins North America; Attention Mark Henry, Project Manager, at [mark.henry@atkinglobal.com](mailto:mark.henry@atkinglobal.com). Should there be any doubt as to the meaning or intent of said Contract Documents, the Bidder should request of the Engineer, in writing (at least eight (8) days prior to the Bid opening) an interpretation thereof. Any interpretation or change in said Contract Documents will be made only in writing, in the form of addenda to the Documents which will be furnished to all registered holders of Bidding Documents. Bidders shall submit with their PROPOSALS, or indicate receipt of, all Addenda. The Owner will not be responsible for any other explanation or interpretations of said Documents.

### **2. GENERAL DESCRIPTION OF THE PROJECT**

A general description of the work to be done is contained in the Invitation to Bid and the scope is specified in applicable parts of these Contract Documents.

### **3. QUALIFICATION OF CONTRACTORS**

The prospective Bidders must meet the statutorily prescribed requirements before award of the Contract by the Owner.

### **4. BIDDER'S UNDERSTANDING**

Each Bidder must inform himself of the conditions relating to the execution of the work, and it is required that he will inspect the site and make himself thoroughly familiar with all the Contract Documents. Failure to do so will not relieve the successful Bidder of his obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. Each Bidder shall inform himself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work.

This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

5. TYPE OF PROPOSAL

A. UNIT PRICE

The Proposal for the work is to be submitted on a unit price basis. Unit prices shall be submitted for all items of work set forth in the Proposal. All items required to complete the work specified or shown on the Drawings but not included in the Proposal shall be considered incidental to those set forth in the Proposal. The estimate of quantities of work to be done is tabulated in the Proposal and although stated with as much accuracy as possible is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the CONTRACTOR will be made on the measurement of the work actually performed by the CONTRACTOR.

6. PREPARATION OF PROPOSALS

A. GENERAL

All blank spaces in the Proposal form must be filled in, as required, in BLACK INK. All price information will be shown in both words and figures where required. No changes shall be made in the phraseology of the forms. Written amounts shall govern in case of discrepancy between amounts stated in writing and the amounts stated in figures.

Any Proposal shall be deemed non-responsive which contains omissions erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the published Invitation to Bid.

Only one Proposal from any individual, firm, partnership, or corporation under the same or different names, will be considered. Should it appear to the Owner that any Bidder is interested in more than one Proposal for work contemplated; all Proposals in which such Bidder is interested will be rejected.

C. SIGNATURE

The Bidder shall sign his proposal in the blank space provided therefor. If Bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation. If the Bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign Contracts on behalf of the partnership. If signature is by an agent, other than

an officer of a corporation or a member of a partnership, a notarized power of attorney must be on file with the Owner prior to opening of Proposals or submitted with the Proposal, otherwise the Proposal will be regarded as not properly authorized.

D. SPECIAL BIDDING REQUIREMENTS

**THE BIDDER MUST BE A LICENSED CONTRACTOR BY THE STATE OF FLORIDA AND SUBMIT PROOF OF SUCH WITH THE BID.**

The Bidder's attention is brought to the hiring practices and licenses and permits of the City of Key West. These are defined in the addition to Article 38, ORDINANCES, PERMITS, and LICENSES, as set forth in the Supplementary Conditions.

The Bidder shall submit with his Bid his experience record showing his experience and expertise in related work. Such experience record shall provide at least five (5) current or recent projects of similar work, preferably within Florida or the Southeastern United States. For each project, the following information will be provided:

1. Description and location of work
2. Contract amount
3. Dates work was performed
4. Owner
5. Name of Owner's contact person and phone number

E. ATTACHMENTS

Bidder shall complete and submit the following forms with his Bid:

Anti-Kickback Affidavit  
Public Entity Crime Form  
City of Key West Indemnification Form  
Equal Benefit for Domestic Partners Affidavit  
Non-collusion Affidavit  
Cone of Silence Affidavit  
Lobbying Restrictions Certificate  
Bidder's Checklist

7. STATE AND LOCAL SALES AND USE TAX

Unless the Supplementary Conditions contains a statement that the Owner is exempt from state sales tax on materials incorporated into the work due to the qualification of the work under this Contract; all state and local sales and use taxes as required by the laws and statutes of the state and its political subdivisions shall be paid by the Contractor. Prices quoted in the Proposal shall include all nonexempt sales and use taxes, unless provision is made in the Proposal form to separately itemize the tax.

## 8. SUBMISSION OF PROPOSALS

All Proposals must be submitted not later than the time prescribed, at the place, and in the manner set forth in the Invitation to Bid. Proposals must be made on the Proposal forms provided herewith and submitted intact with the volume containing the Bidding requirements, Contract forms, and Conditions of the Contract.

Each Proposal must be submitted in a sealed envelope, so marked as to indicate the Bidder's name and its contents without being opened, and addressed in conformance with the instructions in the Invitation to Bid.

## 9. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Prior to the time and date designated for receipt of Proposals, any Proposal submitted may be modified or withdrawn by notice to the party receiving Proposals at the place designated for the receipt of Proposals. Such notice shall be in writing over the signature of the Bidder or by telegram. If by telegram, written confirmation over the signature of the Bidder shall be mailed and postmarked on or before the date and time set for receipt of Proposals, and it shall be so worded as not to reveal the amount of the original Proposal. No Proposal may be withdrawn after the time scheduled for the opening of Proposals, unless the time specified in paragraph AWARD OF CONTRACT of these Instructions to Bidders shall have elapsed.

## 10. BID SECURITY

Proposals must be accompanied by cash, a certified check drawn on a bank in good standing, or a Bid Bond issued by a Surety authorized to issue such bonds in the state where the work is located, in the amount of five (5) percent of the total amount of the Proposal submitted. This Bid security shall be given as a guarantee that the Bidder will not withdraw his Proposal for a period of Sixty (60) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Contract within the time specified.

The attorney-in-fact who executes this bond in behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of the execution of the bond. Where State Statute requires, certification by a resident agent shall also be provided.

If the Bidder elects to furnish a Bid Bond, he shall use the Bid Bond form bound herewith, or one conforming substantially thereto in form and content.

## 11. RETURN OF BID SECURITY

Within fifteen (15) days after the award of the Contract, the Owner will return the Bid securities to all Bidders whose Proposals are not to be further considered in awarding the Contract. Retained Bid securities will be held until the Contract has been finally executed, after which all Bid securities, other than Bidder's Bonds and any guarantees which have been forfeited, will be returned to the respective Bidders whose Proposals they accompanied.

12. AWARD OF CONTRACT

Within forty-five (45) calendar days after the opening of the Proposals, the Owner will accept one of the Proposals or will act in accordance with the following paragraphs. The acceptance of the Proposal will be by written notice of award, mailed to the office designated in the Proposal, or delivered to the Bidder's representative. In the event of failure of the lowest responsive Bidder to sign the Contract and provide acceptable insurance certificate(s), the Owner may award the Contract to the next lowest, responsive, responsible Bidder. Such award, if made, will be made within sixty (60) days after the opening of the Proposals.

The Owner reserves the right to accept or reject any and all Proposals, and to waive any informalities and irregularities in said Proposal.

13. BASIS OF AWARD

The award will be made by the Owner on the basis of that Proposal from the lowest responsive, responsible Bidder, which in the Owner's sole and absolute judgement, will serve the best interests of the Owner. The Owner may evaluate the lowest bid based on the base bid (Smathers Beach Nourishment) alone or with any or all additive alternates (Additional Beach Berm Rebuilds) based on the Owner's anticipated inclusion of the additive alternates.

The Owner reserves the right to accept or reject any or all Proposals and to waive any informalities and irregularities in said Proposals.

If at the time this Contract is to be awarded, the total of the lowest acceptable Proposal exceeds the funds then estimated by the Owner as available, the Owner may reject all Proposals or take such other action as best serves the Owner's interest.

14. EXECUTION OF CONTRACT

The successful Bidder shall, within ten (10) working days after receiving notice of award, sign and deliver to the Owner a Contract in the form hereto attached together with the acceptable insurance certificates as required in these Documents. Within ten (10) working days after receiving the signed Contract, with acceptable insurance from the successful Bidder, the Owner's authorized agent will sign the Contract. Signature by both parties constitutes execution of the Contract.

15. CONTRACT BONDS

A. PERFORMANCE AND PAYMENT BONDS

The successful Bidder shall file with the OWNER, at the time of delivery of the signed Contract, a Performance Bond and Payment Bond on the form bound herewith, each in the full amount of the Contract price in accordance with the requirements of Florida Statutes Section 255.05 or 713.23, as applicable, as security for the faithful performance of the Contract and the payment of all persons supplying

labor and materials for the construction of the work and to cover all guarantees against defective workmanship or materials, or both, during the warranty period following the date of final acceptance of the work by the OWNER. The Surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to the OWNER, shall be authorized to do business in the State of Florida, and shall be listed on the current U.S. Department of Treasury Circular Number 570 or amendments thereto in the Federal Register of acceptable Sureties for federal projects. The CONTRACTOR shall supply the OWNER with phone numbers, addresses, and contacts for the Surety and their agents. Pursuant to Section 255.05(7), Florida Statutes, in lieu of the bond required by law, the contractor may file with the city an alternative form of security in the form of cash, a money order, a certified check, a cashier's check or an irrevocable letter of credit.

B. POWER-OF-ATTORNEY

The Attorney-in-Fact (Resident Agent) who executes this Performance and Payment Bond in behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the bond.

All Contracts, Performance and Payment Bonds, and respective powers-of-attorney will have the same date.

16. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The Bidder who has a contract awarded to him and who fails to promptly and properly execute the contract shall forfeit the Bid security that accompanied his Bid, and the Bid security shall be retained as liquidated damages by the Owner, and it is agreed that said sum is a fair estimate of the amount of the damages the Owner will sustain in case the Bidder fails to enter into a Contract or furnish the required bonds. Bid security deposited in the form of cash, a certified check, or cashier's check shall be subject to the same requirements as a Bid Bond.

17. PERFORMANCE OF WORK BY CONTRACTOR

The Contractor shall perform on site and with his own organization, labor equivalent to at least forty (40) percent of the total amount of the work to be performed under this Contract. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the Engineer determines that it would be to the client's advantage, the percentage of labor to be performed by the Contractor's own organization may be reduced; provided prior written approval of such reduction is obtained by the Contractor from the Engineer.

18. TIME OF COMPLETION

The time of the completion of the work to be performed under this contract is stated in the Proposal and is the essence of this Contract. Delays and extensions of time may be allowed in accordance with the provisions stated in the Contract Documents.

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## PROPOSAL

**TO:** CITY OF KEY WEST  
**ADDRESS:** 1300 WHITE STREET  
P.O. BOX 1409  
KEY WEST, FLORIDA 33041

**PROJECT TITLE:** ITB #18-006: SMATHERS BEACH RENOURISHMENT

**ENGINEERING PROJECT NUMBER:** FT 19001801

### BIDDER'S INFORMATION

**Contact Name:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

### BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Bidder further declares that he has carefully examined the Contract Documents for the construction of the project, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

The Bidder further agrees that he has exercised his own judgment regarding the interpretation of subsurface information and has utilized all data that he believes pertinent from the Engineer, Owner, and other sources in arriving at his conclusions.

The Bidder further agrees that the Owner may "non-perform" the work in the event that the low bid is in excess of available funding. Non-performance will be determined prior to Notice of Award.

## CONTRACT EXECUTION AND BONDS

The Bidder agrees that if this Proposal is accepted, he will, within ten (10) days including Sundays and legal holidays, after Notice of Award, sign the Contract in the form annexed hereto, and will, at that time deliver to the Owner evidence of holding the required licenses and certificates, and will, to the extent of his Proposal, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete all work as specified or indicated in the Contract Documents.

## CERTIFICATES OF INSURANCE

The Bidder agrees to furnish the Owner, before commencing the work under this Contract, the Certificates of Insurance as specified in these Documents.

## START OF CONSTRUCTION AND CONTRACT COMPLETION TIME

The Bidder further agrees to begin work within ten (10) calendar days after the date of the Notice to Proceed. The contractor can expect work to occur during turtle nesting season which begins on April 15, 2018. No sand can be placed on the beaches before a turtle nesting survey has been conducted each morning by qualified personnel (e.g., Save-A-Turtle volunteers). Sand may be allowed to be placed at staging areas on the beaches if secured with proper silt fencing and approved by permitting agencies. Contractors need to submit a construction plan (including, but not limited to; staging plan, Maintenance of Traffic (MOT), equipment, and work schedule) with the bid for approval. Project shall be completed within ninety (90) calendar days from Notice to Proceed.

## LIQUIDATED DAMAGES

In the event the Bidder is awarded the Contract and shall fail to complete the work authorized by the Contract within the time limit or extended time limit agreed upon in that Contract, as more particularly set forth in the Contract Documents, liquidated damages shall be paid to the Owner at the rate of \$500.00 per day for all work authorized under the Contract Documents, until the work shall have been satisfactorily completed as provided in the Contract Documents. Sundays and legal holidays shall be included in determining days in default.

The Bidder hereby acknowledges that he has received Addenda No. \_\_\_\_\_ , \_\_\_\_\_ ,

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. (Bidder shall insert No. of each addendum received) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that his proposal(s) includes all impacts resulting from said addenda.

## SALES AND USE TAX

The Bidder agrees that all federal, state, and local sales and use taxes are included in the stated prices for the work.

## UNIT PRICE ITEMS

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.



**ADDITIVE ALTERNATES**

#1. SOUTH BEACH BERM / PURCHASE, DELIVERY & PLACEMENT OF SAND (includes all costs associated with additional work)

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Extended Total</u>
490	TONS	\$ _____	\$ _____

#2. DOG BEACH BERM / PURCHASE, DELIVERY & PLACEMENT OF SAND (includes all costs associated with additional work)

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Extended Total</u>
80	TONS	\$ _____	\$ _____

#3. SIMONTON BEACH BERM / PURCHASE, DELIVERY & PLACEMENT OF SAND (includes all costs associated with additional work)

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Extended Total</u>
190	TONS	\$ _____	\$ _____

**NOTE: THE CITY MAY EVALUATE THE LOWEST BID PRICE BASED ON THE BASE BID ALONE OR WITH ANY OR ALL ADDITIVE ALTERNATES BASED ON THE ANTICIPATED INCLUSION OF THE ADDITIVE ALTERNATES.**

SUBCONTRACTORS

The Bidder further proposes that the following subcontracting firms or businesses will be awarded subcontracts for the following portions of the work in the event that the Bidder is awarded the Contract:

Portion of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Portion of Work: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

SURETY

\_\_\_\_\_ whose address is

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Street City State Zip

BIDDER

The name of the Bidder submitting this Bid is: \_\_\_\_\_

Doing business at \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

This address is where all communications concerning this Bid shall be sent.

The names of the principal officers of the Corporation submitting this Bid, or of the Partnership, or of all persons interested in this Bid as Principals are as follows:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____

**If Sole Proprietor or Partnership**

IN WITNESS hereto the undersigned has set his/her/its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Signature of Bidder \_\_\_\_\_

Title \_\_\_\_\_

**If Corporation**

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

(SEAL)

Name of Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary



**FLORIDA BID BOND**

BOND NO. \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_

\_\_\_\_\_ hereinafter called the PRINCIPAL, and \_\_\_\_\_

a corporation duly organized under the laws of the State of \_\_\_\_\_ having

its principal place of business at \_\_\_\_\_

\_\_\_\_\_ in the State

of \_\_\_\_\_ and authorized to do business in the State of Florida, as SURETY, are held

firmly bound unto hereinafter called the Obligee, in the sum of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_ )

for the payment for which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the PRINCIPAL is herewith submitting his or its Bid or Proposal for: ITB #18-006: SMATHERS BEACH RENOURISHMENT / FT 19001801, said Bid Proposal, by reference thereto, being hereby made a part hereof.

WHEREAS, the PRINCIPAL contemplates submitting or has submitted a bid to the OBLIGEE for the furnishing of labor, materials, (except those specifically furnished by the Owner), equipment, machinery, tools, apparatus, means of transportation for, and the performance of the work covered in the Proposal and the detailed Drawings and Specifications entitled:

ITB #18-006: SMATHERS BEACH RENOURISHMENT / FT 19001801

WHEREAS, it was a condition precedent to the submission of said bid that a cashier's check, certified check, or bid bond in the amount of 5 percent of the base bid be submitted with said bid as a guarantee that the Bidder would, if awarded the Contract, enter into a written Contract with the Owner for the performance of said Contract, within 5 working days after written notice having been given of the award of the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the PRINCIPAL within 5 working days after written notice of such acceptance, enters into a written Contract with the OBLIGEE then this obligation shall be void: otherwise the sum herein stated shall be due and payable to the OBLIGEE and the Surety herein agrees to pay said sum immediately upon

demand of the OBLIGEE in good and lawful money of the United States of America, as liquidated damages for failure thereof of said principal.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
Attorney-In-Fact

\*\*\*\*\*

**ANTI-KICKBACK AFFIDAVIT**

STATE OF FLORIDA                    )  
  : SS  
COUNTY OF MONROE                )

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein Bid will be paid to any employees of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: \_\_\_\_\_

Sworn and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida at Large

My Commission Expires: \_\_\_\_\_

\* \* \* \* \*

**SWORN STATEMENT UNDER SECTION 287.133(3)(a)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICE AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted with Bid, Bid or Contract No. \_\_\_\_\_ for  
\_\_\_\_\_
  
2. This sworn statement is submitted by \_\_\_\_\_  
(Name of entity submitting sworn statement)  
  
whose business address is \_\_\_\_\_  
\_\_\_\_\_ and (if applicable) its Federal  
Employer Identification Number (FEIN) is \_\_\_\_\_ (If the entity has no FEIN,  
include the Social Security Number of the individual signing this sworn statement.)
  
3. My name is \_\_\_\_\_ and my relationship to  
(Please print name of individual signing)  
  
the entity named above is \_\_\_\_\_.
  
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, any Bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, material misrepresentation.
  
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
  
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means
  1. A predecessor or successor of a person convicted of a public entity crime: or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
  
7. I understand that a "person" as defined in Paragraph 287.133(1)(8), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which Bid or applies to Bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The

term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

There has been a proceeding concerning the conviction before a hearing of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

The person or affiliate has not been put on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority,

\_\_\_\_\_ who, after first being sworn by me, affixed his/her signature in the  
(Name of individual signing)

space provided above on this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

My commission expires: \_\_\_\_\_  
NOTARY PUBLIC

**CITY OF KEY WEST INDEMNIFICATION FORM**

The CONTRACTOR shall indemnify and hold harmless the City of Key West, its officers, and employees, from liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this agreement. Except as specifically provided herein, this agreement does not require CONTRACTOR to indemnify the City of Key West, its employees, officers, directors, or agents from any liability, damage, loss, claim, action or proceeding.

These indemnifications shall survive the term of this agreement. In the event that any action or proceeding is brought against the City of Key West by reason of such claim or demand, CONTRACTOR shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West.

The indemnification provided above shall obligate CONTRACTOR to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City of Key West's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City of Key West whether performed by CONTRACTOR, or persons employed or utilized by CONTRACTOR.

The CONTRACTOR's obligation under this provision shall not be limited in any way by the agreed upon Contract Price as shown in this agreement, or the CONTRACTOR's limit of or lack of sufficient insurance protection.

CONTRACTOR: \_\_\_\_\_

SEAL:

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

DATE: \_\_\_\_\_





## Sec. 2-773. Cone of Silence

- (a) Definitions. For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:
- 1) *Competitive Solicitation* means a formal process by the City of Key West relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. Competitive Solicitation shall include request for proposals ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), invitation to bid ("ITB") or any other advertised solicitation.
  - 2) *Cone of Silence* means a period of time during which there is a prohibition on communication regarding a particular Competitive Solicitation.
  - 3) *Evaluation or Selection Committee* means a group of persons appointed or designated by the City to evaluate, rank, select, or make a recommendation regarding a Vendor or the Vendor's response to the Competitive Solicitation. A member of such a committee shall be deemed a city official for the purposes of subsection (c) below.
  - 4) *Vendor* means a person or entity that has entered into or that desires to enter into a contract with the City of Key West or that seeks an award from the City to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a Competitive Solicitation for compensation or other consideration.
  - 5) *Vendor's Representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a Vendor, or a consultant, lobbyist, or actual or potential subcontractor or sub consultant who acts at the behest of a Vendor in communicating regarding a Competitive Solicitation.
- (b) Prohibited Communications: A Cone of Silence shall be in effect during the course of a Competitive Solicitation and prohibit:
- 1) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and the City's administrative staff including, but not limited to, the city manager and his or her staff;
  - 2) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and the Mayor, City Commissioners, or their respective staff;
  - 3) Any communication regarding a particular Competitive Solicitation between a potential Vendor or Vendor's Representative and any member of a City evaluation and/or selection committee therefore; and

- 4) Any communication regarding a particular Competitive Solicitation between the Mayor, City Commissioners, or their respective staff, and a member of a City evaluation and/or selection committee therefore.

(c) Permitted Communications: Notwithstanding the foregoing, nothing contained herein shall prohibit:

- 1) Communication between members of the public who are not Vendors or a Vendor's representative and any city employee, official or member of the City Commission;
- 2) Communications in writing at any time with any city employee, official or member of the City Commission, unless specifically prohibited by the applicable Competitive Solicitation.

(A) However, any written communication must be filed with the City Clerk. Any City employee, official or member of the City Commission receiving or making any written communication must immediately file it with the City Clerk.

(B) The City Clerk shall include all written communication as part of the agenda item when publishing information related to a particular Competitive Solicitation.

- 3) Oral communications at duly noticed pre-bid conferences;
- 4) Oral presentations before publicly noticed evaluation and/or selection committees;
- 5) Contract discussions during any duly noticed public meeting;
- 6) Public presentations made to the City Commission or advisory body thereof during any duly noticed public meeting;
- 7) Contract negotiations with city staff following the award of a Competitive Solicitation by the City Commission; or
- 8) Purchases exempt from the competitive process pursuant to section 2-797 of these Code of Ordinances.

(d) Procedure

- 1) The Cone of Silence shall be imposed upon each Competitive Solicitation at the time of Public Notice of such solicitation as provided by section 2-826 of this Code. Public notice of the Cone of Silence shall be included in the notice of the Competitive Solicitation. The city manager shall issue a written notice of the release of each Competitive Solicitation to the affected departments, with a copy thereof to each Commission member, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

- 2) The Cone of Silence shall terminate at the time the City Commission or other authorized body makes final award or gives final approval of a contract, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation.
- 3) Any City employee, official or member of the City Commission that is approached concerning a Competitive Solicitation while the Cone of Silence is in effect shall notify such individual of the prohibitions contained in this section. While the Cone of Silence is in effect, any City employee, official or member of the City Commission who is the recipient of any oral communication by a potential Vendor or Vendor's Representative in violation of this section shall create a written record of the event. The record shall indicate the date of such communication, the persons with whom such communication occurred, and a general summation of the communication.

(e) Violations/penalties and procedures.

- 1) A sworn complaint alleging a violation of this ordinance may be filed with the City Attorney's office. In each such instance, an initial investigation shall be performed to determine the existence of a violation. If a violation is found to exist, the penalties and process shall be as provided in section 1-15 of this Code.
- 2) In addition to the penalties described herein and otherwise provided by law, a violation of this ordinance shall render the Competitive Solicitation void at the discretion of the City Commission.
- 3) Any person who violates a provision of this section shall be prohibited from serving on a City of Key West advisory board, evaluation and/or selection committee.
- 4) In addition to any other penalty provided by law, violation of any provision of this ordinance by a City of Key West employee shall subject said employee to disciplinary action up to and including dismissal.
- 5) If a Vendor is determined to have violated the provisions of this section on two more occasions it shall constitute evidence under City Code section 2-834 that the Vendor is not properly qualified to carry out the obligations or to complete the work contemplated by any new Competitive Solicitation. The City's Purchasing Agent shall also commence any available debarment from city work proceeding that may be available upon a finding of two or more violations by a Vendor of this section.

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**LOBBYING RESTRICTIONS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

\*\*\*\*\*

## **BIDDER'S CHECKLIST**

(Note: The purpose of this checklist is to serve as a reminder of major items to be addressed in submitting a bid and is not intended to be all inclusive. It does not alleviate the Bidder from the responsibility of becoming familiar with all aspects of the Contract Documents and proper completion and submission of the bid.)

- All Contract documents thoroughly read and understood.
- All blank spaces in Bid Form filled in, using black ink.
- Total and unit prices added correctly.
- Addenda acknowledged (if applicable).
- Subcontractors (if applicable) are named as indicated in the Proposal.
- Experience record included.
- Bid signed by authorized officer.
- Bid Bond completed and executed, including power-of-attorney dated the same date as Bid Bond.
- Bidder familiar with federal, state, and local laws, ordinances, rules and regulations affecting performance of the work.
- Bidder, if successful, able to obtain and/or demonstrate possession of required licenses and certificates within (10) ten calendar days after receiving a Notice of Award.
- Bid submitted intact with the volume containing the Bidding Requirements, Contract Forms, Conditions of the Contract, one (1) original and two (2) USB drives, each containing a single complete PDF file.
- Bid Documents submitted in sealed envelope and addressed and labeled in conformance with the instructions in the Invitation to Bid.
- Other forms listed below.

**Bidders shall cite compliance with these required Contract Provisions and shall include the following EXECUTED documents with bid:**

- Anti-Kickback Affidavit.
- Public Entity Crimes.
- City of Key West Indemnification Form.
- Equal Benefits for Domestic Partners Affidavit.
- Non-collusion Affidavit.
- Cone of Silence Affidavit.
- Lobbying Restrictions Certification

**Failure to include the above forms may result in a determination that the proposal is nonresponsive.**

**Additionally, a signed bid shall indicate acknowledgement and compliance with the following federal regulations on pages 67-72 of the Supplementary Conditions:**

- Access by Grantee
- Copyrights
- Disadvantaged Business Enterprises (DBE)
- Energy Policy & Conservation Act
- Equal Employment Opportunity
- Contract Hours & Safety Standards
- Clean Air Act
- Federal Water Pollution Control Act
- Disbarment & Suspension
- Byrd Anti-Lobbying Amendment
- Procurement of Recovered Materials
- Retention of All Records
- Additional Federal Regulations

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**PART 2**

**CONTRACT FORMS**

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**CONTRACT**

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2018  
by and between the City of Key West, hereinafter called the "OWNER", and \_\_\_\_\_

---

hereinafter called the "CONTRACTOR";

WITNESSETH:

The CONTRACTOR, in consideration of the sum to be paid him by the OWNER and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for ITB #18-006: SMATHERS BEACH RENOURISHMENT, FT 19001801, Key West, Florida to

the extent of the Proposal made by the CONTRACTOR, dated the \_\_\_\_\_ day of \_\_\_\_\_ 2018 all in full compliance with the Contract Documents referred to herein.

The BIDDING REQUIREMENTS, including the signed copy of the Proposal, the CONTRACT FORMS, the PERFORMANCE AND PAYMENT BONDS, the CONDITIONS OF THE CONTRACT, the SPECIFICATIONS, and the DRAWINGS, and other items, dated March 2018, are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith.

In consideration of the performance of the work as set forth in these Contract Documents, the OWNER agrees to pay to the CONTRACTOR the amount bid in the Proposal as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The CONTRACTOR agrees to complete the work within the time specified in the Contract Documents and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said Proposal.

The CONTRACTOR agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period after the date of final acceptance of the work by the OWNER, and further agrees to indemnify and save the OWNER harmless from any costs encountered in remedying such defects.

It is agreed that the Contract, based upon the Proposal, shall be fully complete within the stated number of consecutive calendar days from the date the Notice to Proceed.

In the event that the CONTRACTOR shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of \$500 per day. Sundays and legal holidays shall be included in determining days in default.

This Contract will automatically expire upon completion of the project.

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribe the same this

\_\_\_\_\_ day of \_\_\_\_\_, A.D., 2018

CITY OF KEY WEST

By \_\_\_\_\_

Title \_\_\_\_\_

CONTRACTOR

By \_\_\_\_\_

Title \_\_\_\_\_

\* \* \* \* \*

**PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS**, that in accordance with Florida Statutes Section 255.05, \_\_\_\_\_

with offices at \_\_\_\_\_  
hereinafter called the CONTRACTOR (Principal), and

---

with offices at \_\_\_\_\_  
a corporation duly organized and existing under and by virtue of the laws of the State of Florida, hereinafter called the SURETY, and authorized to transact business within the State of Florida, as SURETY, are held and firmly bound unto **CITY OF KEY WEST**, represented by its \_\_\_\_\_, hereinafter called the CITY (Obligee), in the sum of:

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
lawful money of the United States of America, for the payment of which, well and truly be made to the CITY, the CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:**

**WHEREAS**, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the CITY, dated \_\_\_\_\_, 2018 to furnish at his own cost, charges, and expense all the necessary materials, equipment, and/or labor in strict and express accordance with said Contract and the Contract Documents as defined therein, all of which is made a part of said Contract by certain terms and conditions in said Contract more particularly mentioned, which Contract, consisting of the various Contract Documents is made a part of this Bond as fully and completely as if said Contract Documents were set forth herein;

**NOW THEREFORE**, the conditions of this obligation are such that if the above bounden CONTRACTOR:

1. Shall in all respects comply with the terms and conditions of said Contract and his obligation there under, including the Contract Documents (which include the plans, drawings, specifications, and conditions as prepared by the CITY, invitation to bid, instructions to bidders, the CONTRACTOR'S bid as accepted by the above CITY, the bid and contract performance and payment bonds, and all addenda, if any, issued prior to the opening of bids), being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying PRINCIPAL with labor, materials, or supplies, used directly or indirectly by PRINCIPAL in the prosecution of the work provided for in the contract; and

3. Pays CITY all losses, costs, expenses, damages, attorney's fees, including appellate proceedings, injury or loss of whatever kind and however arising including, without limitation, delay damages to which said CITY may be subject by reason of any wrongdoing, misconduct, want of care or skill, negligence, failure of performance, breach, failure to petition within the prescribed time, or default, including patent infringements, on the part of said CONTRACTOR, his agents or employees, in the execution or performance of said Contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this obligation shall be void; otherwise, to remain in full force and effect for the term of said Contract.

**AND**, the said Surety for value received, hereby stipulates and agrees that no change involving any extension of time, or addition to the terms of the Contract Documents, or to the work to be performed, or materials to be furnished there under shall affect said obligation of said Surety on this Bond, and the said Surety does hereby waive notice of any such changes, extension of time, alterations, or additions of the terms of the Contract Documents, or to the work.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

**IN WITNESS WHEREOF**, the above parties bonded together have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2018 the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**CONTRACTOR**

By: \_\_\_\_\_

(SEAL)

ATTEST

**SURETY**

By: \_\_\_\_\_

(SEAL)

ATTEST

**PAYMENT BOND**

BOND NO. \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS**, that in accordance with Florida Statutes Section 255.05, \_\_\_\_\_

with offices at \_\_\_\_\_

hereinafter called the CONTRACTOR, (Principal), and \_\_\_\_\_

with offices at \_\_\_\_\_

a corporation duly organized and existing under and by virtue of the laws of the State of

\_\_\_\_\_, hereinafter called the SURETY, and authorized to transact business within the State of Florida, as SURETY, are held and firmly bound CITY OF KEY WEST, represented

by its City Commission, hereinafter called the City (Obligee), in the sum of:

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

lawful money of the United States of America, for the payment of which, well and truly be made to the CITY, and the CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:**

**WHEREAS**, the CONTRACTOR has executed and entered into a certain Contract for \_\_\_\_\_ attached hereto, with the CITY, dated \_\_\_\_\_, 2018 to furnish at his own cost, charges, and expense the necessary materials, equipment, and/or labor in strict and express accordance with said Contract and the plans, drawings (if any), and specifications prepared by the CITY, all of which is made a part of said Contract by certain terms and conditions in said Contract more particularly mentioned, which Contract, consisting of the various Contract Documents specifically mentioned herein and relative hereto, is made a part of this Bond as fully and completely as if said Contract Documents were set forth herein.

**NOW THEREFORE**, the conditions of this obligation are such that if the above bounden CONTRACTOR shall in all respects comply with the terms and conditions of said Contract and his obligation thereunder, including the Contract Documents (which include the plans, drawings, specifications, and conditions prepared by the CITY, invitation to bid, instructions to bidders, the CONTRACTOR’S bid as accepted by the CITY, the bid and contract and payment bonds, and all

addenda, if any, issued prior to the opening of bids), and further that if said CONTRACTOR shall promptly make payments to all persons supplying materials, equipment, and/or labor, used directly or indirectly by said CONTRACTOR or subcontractors in the prosecution of the work for said contract is accordance with Florida Statutes, Section 255.05 or Section 713.23, then this obligation shall be void; otherwise to remain in full force and effect for the term of said contract, including and all guarantee periods as specifically mentioned in said Contract Documents.

**AND**, the said SURETY for value received, hereby stipulates and agrees that no change involving any extension of time, or addition to the terms of the Contract or to the work to be performed, or materials to be furnished thereunder, or in the Contract Documents and specifications accompanying the said contract shall affect said obligation of said SURETY on this Bond, and the said SURETY does hereby waive notice of any such changes, extension of time, alternations, or additions of the terms of the Contract, or to the work, to the Contract Documents, or to the specifications.

Claimant shall give written notice to the CONTRACTOR and the SURETY as required by Section 255.05 or Section 713.23, Florida Statutes. Any action instituted against the CONTRACTOR or SURETY under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2) or Section 713.23, Florida Statutes.

**IN WITNESS WHEREOF**, the above parties bounded together have executed this instrument

this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**CONTRACTOR**

By: \_\_\_\_\_

(SEAL)

ATTEST

**SURETY**

By: \_\_\_\_\_

(SEAL)

ATTEST

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**PART 3**

**CONDITIONS OF THE CONTRACT**

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## **DEFINITIONS**

Whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

### **1. AS APPROVED**

The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the ENGINEER for conformance with the Contract Document”.

### **2. AS SHOWN, AND AS INDICATED**

The words “as shown” and “as Indicated” shall be understood to be followed by the words “on the Drawings”.

### **3. BIDDER**

The person or persons, partnership, firm, or corporation submitting a Proposal for the work contemplated.

### **4. CONTRACT DOCUMENTS**

The “Contract Documents” consist of the Bidding Requirements, Contract Forms, Conditions of the Contract, Specifications, Drawings, all modifications thereof incorporated into the Documents before their execution, Change Orders, and all other requirements incorporated by specific reference thereto. These form the Contract.

### **5. CONTRACTOR**

The person or persons, partnership, firm, or corporation who enters into the Contract awarded him by the OWNER.

### **6. CONTRACT COMPLETION**

The “Contract Completion” is the date the OWNER accepts the entire work as being in compliance with the Contract Documents, or formally waives nonconforming work to extent of nonconformity, and issues the final payment in accordance with the requirements set forth in Article, “Final Payment” of these General Conditions.

### **7. DAYS**

Unless otherwise specifically stated, the term “days” will be understood to mean calendar days. Business day or working day means any day other than Saturday, Sunday, or legal holiday.

### **8. DRAWINGS**

The term “Drawings” refers to the official Drawings, Profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof, signed by the ENGINEER, which shows the location, character, dimensions, and details of the work to be performed. Drawings may either be bound in the same book as the balance of the Contract Documents, or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.

### **9. ENGINEER**

The person or organization identified as such in the Contract Documents. The Term “ENGINEER” means ENGINEER or his authorized representative.

**10. NOTICE**

The term “notice” or the requirement to notify, as used in the Contract Documents or applicable state or federal statutes, shall signify a written communication delivered in person or by registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to him who gives the notice.

**11. OR EQUAL**

The term “or equal” shall be understood to indicate that the “equal” Product is equivalent to or better than the Product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the Project design requirements will be made by the ENGINEER. Such equal Products shall not be purchased or installed by the CONTRACTOR without written authorization.

**12. OWNER**

The person, organization, or public body identified as such in the Contract Documents.

**13. PLANS (See Drawings)**

**14. SPECIFICATIONS**

The term “Specifications” refers to those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto. Where standard specifications, such as those of ASTM, AASHTO, etc., have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents. If referenced specifications conflict with specifications contained herein, the requirements contained herein shall prevail.

**15. NOTICE TO PROCEED**

A written notice given by the OWNER to the CONTRACTOR (with a copy to the ENGINEER) fixing the date on which the Contract time will commence to run and on which the CONTRACTOR shall start to perform his obligation under the Contract Documents. The Notice to Proceed will be given within 30 days following the execution of the Contract by the OWNER.

**16. SUBSTANTIAL COMPLETION**

“Substantial Completion” shall be that degree of completion of the Project or a defined portion of the Project, as evidenced by the ENGINEER’s written notice of Substantial Completion, sufficient to Provide the OWNER, at his discretion, the full-time use of the Project or defined portion of the Project for the purposes for which it was intended. “Substantial Completion” of an operating facility shall be that degree of completion that has Provided a minimum of 7 continuous days of successful, trouble-free, operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the ENGINEER. All equipment contained in the work, plus all other components necessary to enable the OWNER to operate the facility in a manner that was intended, shall be complete on the substantial completion date.

**17. WORK**

The word “work” within these Contract Documents shall include all material, labor, tools, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good Practice to Provide a complete and satisfactory system or structure. As used herein, “Provide” shall be understood to

mean “furnish and install, complete in-place “.

## **CONTRACT DOCUMENTS**

### **18. INTENT OF CONTRACT DOCUMENTS**

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Documents is to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect on the first published date of the Invitation to Bid, except as may be otherwise specifically stated. However, no Provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any ENGINEER’s consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the Provisions of Article LIMITATIONS ON ENGINEER’S RESPONSIBILITIES.

### **19. DISCREPANCIES AND OMISSIONS**

Any discrepancies or omissions found in the Contract Documents shall be reported to the ENGINEER immediately. The ENGINEER will clarify discrepancies or omissions, in writing, within a reasonable time.

In resolving inconsistencies among two or more sections of the Contract Documents, Precedence shall be given in the following order:

- A. CONTRACT
- B. PROPOSAL
- C. SUPPLEMENTARY CONDITIONS
- D. INVITATION TO BID
- E. INSTRUCTIONS TO BIDDERS
- F. GENERAL CONDITIONS
- G. SPECIFICATIONS
- H. DRAWINGS

Addenda shall take Precedence over all sections referenced therein. Figure dimensions on Drawings shall take precedence over scale dimensions. Detailed Drawings shall take precedence over general Drawings.

### **20. CHANGES IN THE WORK**

The OWNER, without notice to the Sureties and without invalidating the Contract, may order changes in the work within the general scope of the Contract by altering, adding to, or deducting from the work, the Contract being adjusted accordingly. All such work shall be executed under the conditions of the original Contract, except as specifically adjusted at the time of ordering such change.

In giving instructions, the ENGINEER may order minor changes in the work not involving extra cost and not inconsistent with the purposes of the Project, but otherwise, except in an emergency endangering life and Property, additions or

deductions from the work shall be performed only in pursuance of an approved Change Order from the OWNER, countersigned by the ENGINEER.

If the work is reduced by alterations, such action shall not constitute a claim for damages based on loss of anticipated Profits.

**21. EXAMINATION AND VERIFICATION  
OF CONTRACT DOCUMENTS**

The CONTRACTOR shall thoroughly examine and become familiar with all of the various parts of these Contract Documents and determine the nature and location of the work, the general and local conditions, and all other matters, which can in any way affect the work under this Contract. Failure to make an examination necessary for this determination shall not release the CONTRACTOR from the obligations of this Contract. No verbal agreement or conversation with any officer, agent, or employee of the OWNER or with the ENGINEER either before or after the execution of this Contract shall affect or modify any of the terms or obligations herein contained.

**22. DOCUMENTS TO BE KEPT  
ON THE JOBSITE**

The CONTRACTOR shall keep one copy of the Contract Documents on the job- site, in good order, available to the ENGINEER and to his representatives.

The CONTRACTOR shall maintain on a daily basis at the jobsite, and make available to the ENGINEER on request, one current record set of the Drawings which have been accurately marked to indicate all modifications in the completed work that differ from the design information shown on the Drawings. Upon Substantial completion of the work, the CONTRACTOR shall give the ENGINEER one complete set of these marked up record Drawings.

**23. ADDITIONAL CONTRACT DOCUMENTS**

Copies of Contract Documents or Drawings may be obtained on request from the ENGINEER and by paying the actual cost of reproducing the Contract Documents or Drawings.

**24. OWNERSHIP OF CONTRACT DOCUMENTS**

All portions of the Contract Documents, and copies thereof furnished by the ENGINEER are instruments of service for this Project. They are not to be used on other work and are to be returned to the ENGINEER on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the ENGINEER will be at the risk of the user and without liability or legal expense to the ENGINEER. Such user shall hold the ENGINEER harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adaptation shall entitle the ENGINEER to further compensation at rates to be agreed upon by the user and the ENGINEER.

**THE ENGINEER**

**25. AUTHORITY OF THE ENGINEER**

The ENGINEER will be the OWNER's representative during the construction period. His authority and responsibility will be limited to the Provisions set forth in these Contract Documents. The ENGINEER will have the Authority to reject work that does not conform to the Contract Documents. However, neither the ENGINEER's authority to act under this Provision, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the ENGINEER to the CONTRACTOR, any SUBCONTRACTOR, their respective Sureties, any of their agents or employees, or any other person performing any of the work.

**26. DUTIES AND RESPONSIBILITIES  
OF THE ENGINEER**

The ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the Progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. He will not make comprehensive or continuous review or observation to check quality or quantity of the work, and he will not be responsible for construction means, methods, techniques, sequences, or Procedures, or for safety Precautions and Programs in connection with the work. Visits and observations made by the ENGINEER shall not relieve the CONTRACTOR of his obligation to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety Precautions, in conformance with the intent of the Contract.

The ENGINEER will make recommendations to the OWNER, in writing, on all claims of the OWNER or the CONTRACTOR arising from interpretation or execution of the Contract Documents. Such recommendations will be of factual and/or technical nature, and will not include the legal interpretation of the Contract Documents. Any necessary legal interpretation of the Contract Document will be made by the OWNER. Such recommendation shall be necessary before the CONTRACTOR can receive additional money under the terms of the Contract. Changes in work ordered by the ENGINEER shall be made in compliance with Article CHANGES IN THE WORK.

One or more Project representatives may be assigned to observe the work. It is understood that such Project representatives shall have the authority to issue notice of nonconformance and make decisions within the limitations of the authority of the ENGINEER. The CONTRACTOR shall furnish all reasonable assistance required by the ENGINEER or Project representatives for Proper observation of the work. The above-mentioned Project representatives shall not relieve the CONTRACTOR of his obligations to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety Precautions, in conformance with the intent of the Contract.

**27. LIMITATIONS ON ENGINEER'S  
RESPONSIBILITIES**

ENGINEER will not be responsible for CONTRACTOR's means, methods, techniques, sequences, or Procedures of construction, or the safety Precautions and Programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the work in accordance with the Contract Documents.

ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any SUBCONTRACTOR, any supplier, or of any other person or organization performing or furnishing any of the work.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "Proper", or "satisfactory", or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the Provisions of this Article.

**28. REJECTED WORK**

Any defective work or nonconforming materials or equipment that may be discovered at any time prior to expiration of the warranty period shall be removed and replaced by work which shall conform to the Provisions of the Contract Documents. Any material condemned or rejected shall be removed at once from the Project site.

Failure on the part of the ENGINEER to condemn or reject bad or inferior work or to note nonconforming materials or equipment on CONTRACTOR submittals shall not be construed to imply acceptance of such work. The OWNER shall reserve and retain all of its rights and remedies at law against the CONTRACTOR and its Surety for correction of any and all

latent defects discovered after the guarantee period.

## **29. LINES AND GRADES**

Lines and grades shall be established as provided in the supplementary conditions. All stakes, marks, and other reference information shall be carefully preserved by the CONTRACTOR, and in case of their careless or unnecessary destruction or removal by him or his employees, such stakes, marks, and other information shall be replaced at the CONTRACTOR's expense.

## **30. SUBMITTALS**

After checking and verifying all field measurements and after complying with applicable Procedures specified in Division I, GENERAL REQUIREMENTS, CONTRACTOR shall submit to ENGINEER, in accordance with the schedule for submittals for review, shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment), which shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submittal. All submittals shall be identified as ENGINEER may require. The data shown shall be complete with respect to quantities, dimensions specified, performance and design criteria, materials, and similar data to enable ENGINEER to review the information. CONTRACTOR shall also submit to ENGINEER for review, with such Promptness as to cause no delay in work, all samples required by the Contract Documents. All samples shall have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each submittal, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other submittals and with the requirements of the work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to ENGINEER for review and approval of each variation.

ENGINEER will review submittals with reasonable Promptness, but ENGINEER's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or Procedures of construction (except where a specific means, method, technique, sequence, or Procedure of construction is indicated in or required by the Contract Documents) or to safety Precautions or Programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of shop drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on Previous submittals.

ENGINEER's review of submittals shall not relieve CONTRACTOR from the responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated therein or accompanying the shop drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the Provisions herein.

Where a shop drawing or sample is required by the specifications, any related work performed Prior to ENGINEER's review and approval of the pertinent submission shall be at the sole expense and responsibility of the CONTRACTOR.

**31. DETAIL DRAWINGS AND INSTRUCTIONS**

The ENGINEER will furnish, with reasonable Promptness, additional instructions by means of Drawings or otherwise, if, in the ENGINEER's opinion, such are required for the Proper execution of the work. All such Drawings and instructions will be consistent with the Contract Documents, true developments thereof, and reasonably inferable there from.

**THE CONTRACTOR AND HIS EMPLOYEES**

**32. CONTRACTOR, AN INDEPENDENT AGENT**

The CONTRACTOR shall independently perform all work under this Contract and shall not be considered as an agent of the OWNER or of the ENGINEER, nor shall the CONTRACTOR's SUBCONTRACTORS or employees be subagents of the OWNER or of the ENGINEER.

**32. (a) ASSIGNMENT OF CONTRACT**

Assignment of any part or the whole of this Contract shall be subject to review and approval of the City Commission.

**33. SUBCONTRACTING**

Unless modified in the Supplementary Conditions, within 10 days after the execution of the Contract, the CONTRACTOR shall submit to the ENGINEER the names of all SUBCONTRACTORS Proposed for the work, including the names of any SUBCONTRACTORS that were submitted with the Proposal. The CONTRACTOR shall not employ any SUBCONTRACTORS to which the OWNER may object to as lacking capability to properly perform work of the type and scope anticipated.

The CONTRACTOR is as fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relationship between any SUBCONTRACTOR and the OWNER or ENGINEER.

**34. INSURANCE AND LIABILITY**

**A. GENERAL**

The CONTRACTOR shall provide (from insurance companies acceptable to the OWNER) the insurance coverage designated hereinafter and pay all costs before commencing work under this Contract. The CONTRACTOR shall furnish the OWNER with certificates of insurance specified herein showing the type, amount class of operations covered, effective dates, and date of expiration of policies, and containing substantially the following statement:

“The insurance covered by this certificate shall not be canceled or materially altered, except after 30 days' written notice has been received by the OWNER.”

In case of the breach of any Provision of this Article, the OWNER, at his option, may take out and maintain, at the expense of the CONTRACTOR, such insurance as the OWNER may deem Proper and may deduct the cost of such insurance from any monies which may be due or become due the CONTRACTOR under this Contract.

**B. CONTRACTOR AND SUBCONTRACTOR INSURANCE**

The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been reviewed by the OWNER, nor shall the CONTRACTOR allow any SUBCONTRACTOR to commence work on his subcontract until insurance specified below has been obtained. Review of the insurance by the OWNER shall not relieve or decrease the liability of the CONTRACTOR hereunder.

**C. COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**

The CONTRACTOR shall maintain during the life of this Contract the statutory amount of Workmen's Compensation Insurance, in addition, Employer's Liability Insurance in an amount as specified in the Supplementary Conditions, for each occurrence, for all of his employees to be engaged in work on the Project under this Contract. In case any such work is subcontracted, the CONTRACTOR shall require the SUBCONTRACTOR to provide similar Workmen's Compensation and Employer's Liability Insurance for all of the SUBCONTRACTOR's employees to be engaged in such work.

**D. GENERAL LIABILITY INSURANCE (INCLUDING AUTOMOBILE)**

The CONTRACTOR shall maintain during the life of this Contract such general liability, completed operations and Products liability, and automobile liability insurance as will Provide coverage for claims for damages for personal injury, including accidental death, as well as for claims for Property damage, which may arise directly or indirectly from performance of the work under this Contract. The general liability policy shall include contractual liability assumed by the CONTRACTOR under Article INDEMNITY. Coverage for Property damage shall be on a "broad form" basis with no exclusions for "X, C & U". The amount of insurance to be provided shall be as specified in the Supplementary Conditions.

In the event any work under this Contract is performed by a SUBCONTRACTOR, the CONTRACTOR shall be responsible for any liability directly or indirectly arising out of the work performed by the SUBCONTRACTOR; to the extent such liability is not covered by the SUBCONTRACTOR's insurance.

The OWNER and ENGINEER, their officers, agents, and employees shall be named as Additional Insured's on the CONTRACTOR's and any SUBCONTRACTOR's general liability and automobile liability insurance policies for any claims arising out of work performed under this Contract.

**E. BUILDERS RISK ALL RISK INSURANCE**

Unless otherwise modified in the Supplementary Conditions, the CONTRACTOR shall secure and maintain during the life of this Contract, Builders Risk All Risk Insurance coverage in an amount equal to the full value of the facilities under construction. Such insurance shall include coverage for earthquake, landslide, flood, collapse, loss due to the results of faulty workmanship or design, and all other normally covered risks, and shall provide for losses to be paid to the CONTRACTOR, OWNER, and ENGINEER as their interests may appear.

The OWNER and ENGINEER, their officers, agents, and employees shall be named as additional insureds on the CONTRACTOR's and any SUBCONTRACTOR's Builders Risk All Risk insurance policies for any claims arising out of work performed under this Contract.

This insurance shall include a waiver of subrogation as to the ENGINEER, the OWNER, the CONTRACTOR, and their respective officers, agents, employees and SUBCONTRACTORS.

**F. NO PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out any of the Provisions hereof in exercising any authority granted by the Contract, there will be no personal

liability upon any public official.

**35. INDEMNITY**

To the maximum extent permitted by law, the CONTRACTOR shall indemnify and defend the OWNER and the ENGINEER, and their officers, employees, agents, and sub-consultants, from all claims and losses, including attorney's fees and litigation costs arising out of Property losses or health, safety, personal injury, or death claims by the CONTRACTOR, its SUBCONTRACTORS of any tier, and their employees, agents, or invitees regardless of the fault, breach of Contract, or negligence of the OWNER or ENGINEER, excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the OWNER or the ENGINEER and regardless of whether or not the CONTRACTOR is or can be named a party in a litigation.

**36. EXCLUSION OF CONTRACTOR CLAIMS**

In performing its obligations, the ENGINEER and its consultants may cause expense for the CONTRACTOR or its SUBCONTRACTORS and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the ENGINEER, its officers, employees, agents, and consultants for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed.

**37. TAXES AND CHARGES**

The CONTRACTOR shall withhold and pay any and all sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws.

**38. REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS**

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes shall apply. All parties to this Contract shall determine the contents of all applicable statutes and comply with their Provisions throughout the performance of the Contract.

**39. CODES, ORDINANCES, PERMITS AND LICENSES**

The CONTRACTOR shall keep himself fully informed of all local codes and ordinances, as well as state and federal laws, which in any manner affect the work herein specified. The CONTRACTOR shall at all times comply with said codes and ordinances, laws, and regulations, and Protect and indemnify the OWNER, the ENGINEER and their respective employees, and its officers and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. All permits, licenses and inspection fees necessary for Prosecution and completion of the work shall be secured and paid for by the CONTRACTOR, unless otherwise specified.

**40. SUPERINTENDENCE**

The CONTRACTOR shall keep at the project site, competent supervisory personnel. The CONTRACTOR shall designate, in writing, before starting work, a Project superintendent who shall be an employee of the CONTRACTOR and shall have complete authority to represent and to act for the CONTRACTOR. ENGINEER shall be notified in writing prior to any change in superintendent assignment. The CONTRACTOR shall give efficient supervision to the work, using his best skill and attention. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, and Procedures, and for providing adequate safety Precautions and coordinating all portions of the work under the Contract. It is specifically understood and agreed that the ENGINEER, its employees and agents, shall not have control or charge of and shall not be responsible for the construction means, methods, techniques, procedures, or for providing adequate safety

Precautions in connection with the work under Contract.

**41. RECEPTION OF ENGINEER'S COMMUNICATIONS**

The superintendent shall receive for the CONTRACTOR all communications from the ENGINEER. Communications of major importance will be confirmed in writing upon request from the CONTRACTOR.

The ENGINEER may schedule Project meetings for the purposes of discussing and resolving matters concerning the various elements of the work. Time and place for these meetings and the names of persons required to be Present shall be as determined by the ENGINEER. CONTRACTOR shall comply with these attendance requirements and shall also require his SUBCONTRACTORS to comply.

**42. SAFETY**

The CONTRACTOR shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees) and Property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety Provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR's failure to thoroughly familiarize himself with the aforementioned safety Provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The CONTRACTOR shall develop and maintain for the duration of this Contract, a safety Program that will effectively incorporate and implement all required safety Provisions. The CONTRACTOR shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety Program. The duty of the ENGINEER to conduct construction review of the work does not include review or approval of the adequacy of the CONTRACTOR's safety Program, safety supervisor, or any safety measures taken in, on, or near the construction site. The CONTRACTOR, as a part of his safety Program, shall maintain at his office or other well-known place at the jobsite, safety equipment applicable to the work as Prescribed by the aforementioned authorities, all articles necessary for giving first-aid to the injured, and shall establish the Procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the ENGINEER and the OWNER. In addition, the CONTRACTOR must promptly report in writing to the ENGINEER all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the CONTRACTOR or any SUBCONTRACTOR on account of any accident, the CONTRACTOR shall promptly report the facts in writing to the ENGINEER, giving full details of the claim.

**43. PROTECTION OF WORK AND PROPERTY**

The CONTRACTOR shall at all times safely guard and Protect from damage the OWNER's Property, adjacent Property, and his own work from injury or loss in connection with this Contract. All facilities required for Protection by federal, state, or municipal laws and regulations and local conditions must be provided and maintained.

The CONTRACTOR shall Protect his work and materials from damage due to the nature of the work, the elements, carelessness of other CONTRACTORS, or from any cause whatever until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under these Contract Documents, or from any unforeseen obstruction or defects which may be encountered in the Prosecution of the work, or from the action of the elements, shall be sustained by the CONTRACTOR.

**44. RESPONSIBILITY OF CONTRACTOR  
TO ACT IN AN EMERGENCY**

In case of an emergency which threatens loss or injury of Property, and/or safety of life, the CONTRACTOR shall act, without previous instructions from the OWNER or ENGINEER, as the situation may warrant. The CONTRACTOR shall notify the ENGINEER thereof immediately thereafter. Any claim for compensation by the CONTRACTOR, together with substantiating documents in regard to expense, shall be submitted to the OWNER through the ENGINEER and the amount of compensation shall be determined by agreement.

**45. MATERIALS AND APPLIANCES**

Unless otherwise stipulated, the CONTRACTOR shall Provide and pay for all materials, labor, water, tools, equipment, heat, light, fuel, power, transportation, construction equipment and machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the Project, the OWNER and ENGINEER assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable federal, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

**46. CONTRACTORS' AND MANUFACTURERS'  
COMPLIANCE WITH STATE SAFETY, OSHA, AND OTHER CODE REQUIREMENTS**

The completed work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the state and federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the work subject to such safety regulations shall be fabricated, furnished, and installed (including OWNER-furnished equipment) in compliance with these requirements. CONTRACTORS and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. CONTRACTORS shall notify all equipment suppliers and SUBCONTRACTORS of the Provisions of this Article.

**47. SUBSTITUTION OF MATERIALS**

Except for OWNER-selected equipment items, and items where no substitution is clearly specified, whenever any material, article, device, Product, fixture, form, type of construction, or Process is indicated or specified by patent or Proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or Process desired. This Procedure is not to be construed as eliminating from competition other Products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "or equal". The CONTRACTOR may, in such cases, submit complete data to the ENGINEER for consideration of another material, type, or Process that shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved in writing. The ENGINEER will be the sole judge of the substituted article or material.

**48. TESTS, SAMPLES, AND OBSERVATIONS**

The CONTRACTOR shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by the ENGINEER. When required, the CONTRACTOR shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

The OWNER, ENGINEER, and authorized government agents, and their representatives shall at all times be Provided safe

access to the work wherever it is in Preparation or Progress, and the CONTRACTOR shall Provide facilities for such access and for observations, including maintenance of temporary and permanent access.

If the Specifications, laws, ordinances, or any public authority require any work, to be specially tested or approved, the CONTRACTOR shall give timely notice of its readiness for observations. If any work should be covered up without approval or consent of the ENGINEER, it shall, if required by the ENGINEER, be uncovered for examination at the CONTRACTOR's expense.

Reexamination of questioned work may be ordered by the ENGINEER, and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found to be in accordance with the Contract Documents, the OWNER will pay the cost of uncovering, exposure, observation, inspection, testing and reconstruction. If such work is found to be not in accordance with the Contract Documents, the CONTRACTOR shall correct the defective work, and the cost of reexamination and correction of the defective work shall be paid by the CONTRACTOR.

#### **49. ROYALTIES AND PATENTS**

The CONTRACTOR shall pay all royalty and licenses fees, unless otherwise specified. The CONTRACTOR shall defend all suits or claims for infringement of any patent rights and shall save the OWNER and the ENGINEER harmless from any and all loss, including reasonable attorneys' fees, on account thereof.

#### **50. CONTRACTOR'S RIGHT TO TERMINATE CONTRACT**

If the work should be stopped under an order of any court or other public authority for a period of more than 3 months, through no act or fault of the CONTRACTOR, its SUBCONTRACTORS, or respective employees or if the ENGINEER should fail to make recommendation for payment to the OWNER or return payment request to CONTRACTOR for revision within 30 days after it is due, or if the OWNER should fail to pay the CONTRACTOR within 30 days after time specified in Article PARTIAL PAYMENTS, any sum recommended by the ENGINEER, then the CONTRACTOR may, upon 15 days' written notice to the OWNER and the ENGINEER, stop work or terminate this Contract and recover from the OWNER payment for all acceptable work performed and reasonable termination expenses, unless said default has been remedied.

#### **51. CORRECTION OF DEFECTIVE WORK DURING WARRANTY PERIOD**

The CONTRACTOR hereby agrees to make, at his own expense, all repairs or replacements necessitated by defects in materials or workmanship, Provided under terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within 2 years after the date of final acceptance of the work or within 2 years after the date of substantial completion established by the ENGINEER for specified items of equipment, or within such longer period as may be Prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. Unremedied defects identified for correction during the warranty period but remaining after its expiration shall be considered as part of the obligations of the warranty. Defects in material, workmanship, or equipment which are remedied as a result of obligations of the warranty shall subject the remedied portion of the work to an extended warranty period of 2 years after the defect has been remedied.

The CONTRACTOR further assumes responsibility for a similar guarantee for all work and materials provided by SUBCONTRACTORS or manufacturers of packaged equipment components. The effective date for the start of the guarantee or warranty period for equipment qualifying as substantially complete is defined in Article SUBSTANTIAL COMPLETION, AND Article SUBSTANTIAL COMPLETION DATE, in these General Conditions.

The CONTRACTOR also agrees to hold the OWNER and the ENGINEER harmless from liability of any kind arising from damage due to said defects. The CONTRACTOR shall make all repairs and replacements promptly upon receipt of written order for same from the OWNER. If the CONTRACTOR fails to make the repairs and replacements promptly, or in an emergency where delay would cause serious risk, or loss, or damage, the OWNER may have the defective work corrected or

the rejected work removed and replaced, and the CONTRACTOR and his Surety shall be liable for the cost thereof.

## **PROGRESS OF THE WORK**

### **52. BEGINNING OF THE WORK**

Following execution of the Contract, the CONTRACTOR shall meet with the OWNER and ENGINEER relative to his arrangements for prosecuting the work.

### **53. SCHEDULES AND PROGRESS REPORTS**

Prior to starting the construction, the CONTRACTOR shall Prepare and submit to the ENGINEER, a Progress schedule showing the dates on which each part or division of the work is expected to be started and finished, and a Preliminary schedule for submittals. The Progress schedule for submittals shall be brought up to date and submitted to the ENGINEER at the end of each month or at such other times the ENGINEER may request.

The CONTRACTOR shall forward to the ENGINEER, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work. These Progress reports shall indicate the date of the purchase order, the current percentage of completion, estimated delivery, and cause of delay, if any.

If the completion of any part of the work or the delivery of materials is behind the submitted Progress schedule, the CONTRACTOR shall submit in writing a plan acceptable to the OWNER and ENGINEER for bringing the work up to schedule.

The OWNER shall have the right to withhold Progress payments for the work if the CONTRACTOR fails to update and submit the Progress schedule and reports as specified.

### **54. PROSECUTION OF THE WORK**

It is expressly understood and agreed that the time of beginning, rate of Progress, and time of completion of the work are the essence of this Contract. The work shall be prosecuted at such time, and in or on such part or parts of the Project as may be required, to complete the Project as contemplated in the Contract Documents and the Progress schedule.

If the CONTRACTOR desires to carry on work at night or outside the regular hours, he shall give timely notice to the ENGINEER to allow satisfactory arrangements to be made for observing the work in Progress.

### **55. OWNER'S RIGHT TO RETAIN IMPERFECT WORK**

If any part or portion of the work completed under this Contract shall Prove defective and not in accordance with the Drawings and Specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the OWNER shall have the right and authority to retain such work but will make such deductions in the final payment therefore as may be just and reasonable.

### **56. OWNER'S RIGHT TO DO WORK**

Should the CONTRACTOR neglect to Prosecute the work in conformance with the Contract Documents or neglect or refuse at his own cost to remove and replace work rejected by the ENGINEER, then the OWNER may notify the Surety of the condition, and after 10 days' written notice to the CONTRACTOR and the Surety, or without notice if an emergency or danger to the work or public exists, and without Prejudice to any other right which the OWNER may have under Contract, or

otherwise, take over that portion of the work which has been improperly or non-timely executed, and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the CONTRACTOR.

#### **57. OWNER'S RIGHT TO TRANSFER EMPLOYMENT**

If the CONTRACTOR should abandon the work or if he should persistently or repeatedly refuse or should fail to make prompt payment to SUBCONTRACTORS for material or labor, or to persistently disregard laws, ordinances, or to prosecute the work in conformance with the Contract Documents, or otherwise be guilty of a substantial violation of any Provision of the Contract or any laws or ordinance, then the OWNER may, without Prejudice to any other right or remedy, and after giving the CONTRACTOR and Surety 10 days' written notice, transfer the employment for said work from the CONTRACTOR to the Surety. Upon receipt of such notice, such Surety shall enter upon the Premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under this contract and employ by Contract or otherwise, any qualified person or persons to finish the work and Provide the materials therefore, in accordance with the Contract Documents, without termination of the continuing full force and effect of this contract. In case of such transfer of employment to such Surety, the Surety shall be paid in its own name on estimates according to the terms hereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.

If, after the furnishing of said written notice to the Surety, the CONTRACTOR and the Surety still fail to make reasonable Progress on the performance of the work, the OWNER may terminate the employment of the CONTRACTOR and take possession of the Premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient and charge the cost thereof to the CONTRACTOR and the Surety. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the expense of completing the Contract, including compensation for additional managerial and administrative services, shall exceed such unpaid balance, the CONTRACTOR and the Surety shall pay the difference to the OWNER.

#### **58. DELAYS AND EXTENSION OF TIME**

If the CONTRACTOR is delayed in the Progress of the work by any act or neglect of the OWNER or the ENGINEER, or by any separate CONTRACTOR employed by the OWNER, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of Nature, and if the CONTRACTOR, within 48 hours of the start of the occurrence, gives written notice to the OWNER of the cause of the potential delay and estimate of the possible time extension involved, and within 10 days after the cause of the delay has been remedied, the CONTRACTOR gives written notice to the OWNER of any actual time extension requested as a result of the aforementioned occurrence, then the Contract time may be extended by change order for such reasonable time as the ENGINEER determines. It is agreed that no claim shall be made or allowed for any damages, loss, or expense which may arise out of any delay caused by the above referenced acts or occurrences other than claims for the appropriate extension of time. No extension of time will be granted to the CONTRACTOR for delays occurring to parts of the work that have no measurable impact on the completion of the total work under this Contract. No extension of time will be considered for weather conditions reasonably anticipated for the area in which the work is being performed. Reasonably anticipated weather conditions will be based on official records of monthly Precipitation and other historical data. Adverse weather conditions, if determined to be of a severity that would impact Progress of the work, may be considered as cause for an extension of Contract completion time.

Delays in delivery of equipment or material purchased by the CONTRACTOR or his SUBCONTRACTORS, including OWNER-selected equipment shall not be considered as a just cause for delay, unless the OWNER determines that for good cause the delay is beyond the control of the CONTRACTOR. The CONTRACTOR shall be fully responsible for the timely ordering, scheduling, complete the work is the per-diem rate, as stipulated in the Proposal. The said amount is hereby agreed upon as a reasonable estimate of the costs, which may be accrued by the OWNER after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the CONTRACTOR. The OWNER shall have the right to deduct such damages from any amount due, or that may become due the CONTRACTOR, or the amount of such damages shall be due and collectible from the CONTRACTOR or Surety.

**59. DIFFERING SITE CONDITIONS**

The CONTRACTOR shall promptly, and before the conditions are disturbed, give a written notice to the OWNER and ENGINEER of:

- A. subsurface or latent physical conditions at the site which differ materially from those indicated in this contract,
- B. unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The ENGINEER will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, and equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.

No request by the CONTRACTOR for an equitable adjustment to the Contract under this Article will be allowed, unless the CONTRACTOR has given the written notice required; Provided that the time prescribed above for giving written notice may be extended by the OWNER.

No request by the CONTRACTOR for an equitable adjustment to the Contract for differing site conditions will be allowed if made after final payment under this Contract.

**60. LIQUIDATED DAMAGES**

Should the CONTRACTOR fail to complete the work, or any part thereof, in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as Provided in the Contract, the CONTRACTOR shall reimburse the OWNER for the additional expense and damage for each calendar day, Sundays and legal holidays included, that the Contract remains uncompleted after the Contract completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per-diem rate, as stipulated in the Proposal. The said amount is hereby agreed upon as a reasonable estimate of the costs which may be accrued by the OWNER after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the CONTRACTOR. The OWNER shall have the right to deduct such damages from any amount due, or that may become due the CONTRACTOR, or the amount of such damages shall be due and collectible from the CONTRACTOR or Surety.

**61. OTHER CONTRACTS**

The OWNER reserves the right to let other Contracts in connection with the work. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Contract depends for Proper execution or results upon the work of any other CONTRACTOR, utility service company or OWNER, the CONTRACTOR shall inspect and Promptly report to the ENGINEER in writing any patent or apparent defects to deficiencies in such work that render it unsuitable for such Proper execution and results. The CONTRACTOR's failure to so report shall constitute and acceptance of the work by others as being fit and Proper for integration with work under this Contract, except for latent or non-apparent defects and deficiencies in the work.

**62. USE OF PREMISES**

The CONTRACTOR shall confine his equipment, the storage of materials and the operation of his workers to limits shown on the Drawings or indicated by law, ordinances, permits, or directions of the ENGINEER, and shall not unreasonably encumber the Premises with his materials. The CONTRACTOR shall provide, at his own expense, the necessary rights-of-way and access to the work, which may be required outside the limits of the OWNER's Property and shall furnish the ENGINEER copies of permits and agreements for use of the Property outside that provided by the OWNER.

The CONTRACTOR shall not load nor permit any part of the structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the work or adjacent Property to stresses or Pressures that will endanger it.

**63. SUBSTANTIAL COMPLETION DATE**

The ENGINEER may issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date that the OWNER will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the CONTRACTOR from completing the remaining work within the specified time and in full compliance with the Contract Documents. See SUBSTANTIAL COMPLETION under DEFINITIONS of these General Conditions.

**64. PERFORMANCE TESTING**

Operating equipment and systems shall be performance tested in the Presence of the ENGINEER to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by the ENGINEER. Schedule such testing with the ENGINEER at least one week in advance of the planned date for testing.

**65. OWNER'S USE OF PORTIONS OF THE WORK**

Following issuance of the written notice of Substantial Completion, the OWNER may initiate operation of the facility. Such use shall not be considered as final acceptance of any portion of the work, nor shall such use be considered as cause for an extension of the Contract completion time, unless authorized by a Change Order issued by the OWNER.

**66. CUTTING AND PATCHING**

The CONTRACTOR shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together Properly and fit it to receive or be received by work of other CONTRACTORS shown upon or reasonably implied by the Drawings.

**67. CLEANING UP**

The CONTRACTOR shall, at all times, keep Property on which work is in Progress and the adjacent Property free from accumulations of waste material or rubbish caused by employees or by the work. Upon completion of the construction, the CONTRACTOR shall remove all temporary structures, rubbish, and waste materials resulting from his operations.

**PAYMENT**

**68. PAYMENT FOR CHANGE ORDERS**

The OWNER's request for quotations on alterations to the work shall not be considered authorization to proceed with the work expediting, delivery, and installation of all equipment and materials. Within a reasonable period after the

CONTRACTOR submits to the OWNER a written request for an extension of time, the ENGINEER will Present his written opinion to the OWNER as to whether an extension of time is justified, and, if so, his recommendation as to the number of days for time extension. The OWNER will make the final decision on all requests for extension of time.

Prior to the issuance of a formal Change Order, nor shall such request justify any delay in existing work. Quotations for alterations to the work shall include substantiating documentation with an itemized breakdown of CONTRACTOR and SUBCONTRACTOR costs, including labor, material, rentals, approved services, overhead, and profit. OWNER may require detailed cost data in order to substantiate the reasonableness of the proposed costs.

Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the CONTRACTOR for the work or alteration defined in the Change Order. By signing the Change Order, the CONTRACTOR acknowledges that the stipulated compensation includes payment for the work or alteration plus all payment for the interruption of schedules, extended overhead, delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject Change Order.

At the OWNER's option, payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in A, B, or C below, as applicable:

**A. UNIT PRICES**

Those unit Prices stipulated in the Proposal shall be utilized where they are applicable. In the event the Change Order results in a change in the original quantity that is materially and significantly different from the original bid quantity, a new unit Price shall be negotiated upon demand of either party. Unit Prices for new items included in the Change Order shall be negotiated and mutually agreed upon.

**B. LUMP SUM**

A total lump sum for the work negotiated and mutually acceptable to the CONTRACTOR and the OWNER. Lump sum quotations for modifications to the work shall include substantiating documentation with an itemized breakdown of CONTRACTOR and SUBCONTRACTOR costs, including labor, material, rentals, approved services, overhead, and Profit, all calculated as specified under "C" below.

**C. COST REIMBURSEMENT WORK**

The term "cost reimbursement" shall be understood to mean that payment for the work will be made on a time and expense basis, that is, on an accounting of the CONTRACTOR's forces, materials, equipment, and other items of cost as required and used to do the work.

If the method of payment cannot be agreed upon Prior to the beginning of the work, and the OWNER directs by written Change Order that the work be done on a cost reimbursement basis, then the CONTRACTOR shall furnish labor, and furnish and install equipment and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor including foremen for those hours they are assigned and participating in the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by the OWNER.
2. Material delivered and used on the designated work, including sales tax, if paid by the CONTRACTOR or his SUBCONTRACTOR.
3. Rental or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100. Rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies,

repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

4. Additional bond, as required and approved by the OWNER.
5. Additional insurance (other than labor insurance) as required and approved by the OWNER.

In addition to items 1 through 5 above, an added fixed fee for general overhead and Profit shall be negotiated and allowed for the CONTRACTOR (or approved SUBCONTRACTOR) actually executing the Cost Reimbursement work.

An additional fixed fee shall be negotiated and allowed the CONTRACTOR for the administrative handling of portions of the work that are executed by an approved SUBCONTRACTOR. No additional fixed fee will be allowed for the administrative handling of work executed by a SUBCONTRACTOR of a SUBCONTRACTOR, unless by written permission from the OWNER.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, Profit, and any other general expense. The CONTRACTOR's records shall make clear distinction between the direct costs of work paid for on a cost reimbursement basis and the costs of other work. The CONTRACTOR shall furnish the ENGINEER report sheets in duplicate of each day's cost reimbursement work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the CONTRACTOR, SUBCONTRACTOR or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the CONTRACTOR or his authorized agent.

The OWNER reserves the right to furnish such materials and equipment as he deems expedient and the CONTRACTOR shall have no claim for profit or added fees on the cost of such materials and equipment. To receive partial payments and final payment for cost reimbursement work, the CONTRACTOR shall submit to the ENGINEER, detailed and complete documented verification of the CONTRACTOR's and any of his SUBCONTRACTORS' actual costs involved in the cost reimbursement work. Such costs shall be submitted within 30 days after said work has been performed.

## **69. PARTIAL PAYMENTS**

### **A. GENERAL**

Nothing in this Article shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work, should such work be later found not to comply with the Provisions of the Contract Documents. All estimated quantities of work for which partial payments have been made are subject to review and correction on the final estimate. Payment by the OWNER and acceptance by the CONTRACTOR of partial payments based on periodic estimates of quantities of work performed shall not, in any way, constitute acceptance of the estimated quantities used as a basis for computing the amounts of the partial payments.

### **B. ESTIMATE**

At least 30 days before each Progress payment falls due, as specified in the Supplementary Conditions, the CONTRACTOR shall submit to the ENGINEER a detailed estimate of the amount earned during the Preceding month for the separate portions of the work, and request payment. As used in this Article, the words "amount earned" means the value, on the date of the estimate for partial payment, of the work completed in accordance with the Contract Documents, and the value of approved materials delivered to the Project site suitable stored and Protected Prior to incorporation into the work.

ENGINEER will, within 7 days after receipt of each request for payment, either indicate in writing a recommendation of

payment and present the request to OWNER, or return the request to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may, within 7 days, make the necessary corrections and resubmit the request.

ENGINEER may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such an extent as may be necessary in ENGINEER's opinion to protect the OWNER from loss because:

1. The work is defective, or completed work has been damaged requiring correction or replacement;
2. Written claims have been made against OWNER or Liens have been filed in connection with the work;
3. The Contract Price has been reduced because of Change Orders;
4. OWNER has been required to correct defective work or complete the work in accordance with Article OWNER'S RIGHT TO DO WORK;
5. Of CONTRACTOR's unsatisfactory Prosecution of the work in accordance with the Contract Documents; or
6. CONTRACTOR's failure to make payment to SUBCONTRACTORS or for labor, materials, or equipment.

**C. DEDUCTION FROM ESTIMATE**

Unless modified in the Supplementary Conditions, deductions from the estimate will be as described below:

1. The OWNER will deduct from the estimate, and retain as part security, 10 percent of the amount earned for work satisfactorily completed. A deduction and retainage of 10 percent will be made on the estimated amount earned for approved items of material delivered to and properly stored at the jobsite but not incorporated into the work. When the work is 50 percent complete, the OWNER may reduce the retainage to 5 percent of the dollar value of all work satisfactorily completed to date provided the CONTRACTOR is making satisfactory progress and there is no specific cause for a greater retainage. The OWNER may reinstate the retainage up to 10 percent if the OWNER determines, at his discretion, that the CONTRACTOR is not making satisfactory progress or where there is other specific cause for such withholding.

**D. QUALIFICATION FOR PARTIAL PAYMENT FOR MATERIALS DELIVERED**

Unless modified in the Supplementary Conditions, qualification for partial payment for materials delivered but not yet incorporated into the work shall be as described below:

1. Materials, as used herein, shall be considered to be those items which are fabricated and manufactured material and equipment. No consideration shall be given to individual purchases of less than \$200 for any one item.
2. To receive partial payment for materials delivered to the site, but not incorporated in the work, it shall be necessary for the CONTRACTOR to include a list of such materials on the Partial Payment Request. At his sole discretion, the ENGINEER may approve items for which partial payment is to be made. Partial payment shall be based on the CONTRACTOR's actual cost for the materials as evidenced by invoices from the supplier. Proper storage and Protection shall be provided by the CONTRACTOR, and as approved by the ENGINEER. Final payment shall be made only for materials actually incorporated in the work and, upon acceptance of the work, all materials remaining for which advance payments had been made shall revert to the CONTRACTOR, unless otherwise agreed, and

partial payments made for these items shall be deducted from the final payment for the work.

3. CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests, and encumbrances.
4. If requested by the ENGINEER, the CONTRACTOR shall provide, with subsequent pay requests, invoices receipted by the supplier showing payment in full has been made.

**E. PAYMENT**

After deducting the retainage and the amount of all previous partial payments made to the CONTRACTOR from the amount earned, the amount due will be made payable to the CONTRACTOR. Recommendations for payment received by the OWNER less than 9 days Prior to the scheduled day for payment will not be Processed or paid until the following month.

**70. CLAIMS FOR EXTRA WORK**

In any case where the CONTRACTOR deems additional time or compensation will become due him under this Contract for circumstances other than those defined in Article DELAYS AND EXTENSION OF TIME, the CONTRACTOR shall notify the ENGINEER, in writing, of his intention to make claim for such time or compensation before he begins the work on which he bases the claim, in order that such matters may be settled, if possible, or other appropriate action taken. The notice of claim shall be in duplicate, in writing, and shall state the circumstances and the reasons for the claim, but need not state the amount. If such notification is not given or if the ENGINEER is not afforded proper facilities by the CONTRACTOR for keeping strict account of actual cost, then the CONTRACTOR hereby agrees to waive the claim for such additional time or compensation. Such notice by the CONTRACTOR, and fact that the ENGINEER has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

No extension of time will be granted to the CONTRACTOR for delays resulting from extra work that have no measurable impact on the completion of the total work under this Contract. Claims for additional time or compensation shall be made in itemized detail and submitted, in writing, to the OWNER and ENGINEER within 10 days following completion of that portion of the work for which the CONTRACTOR bases his claim. Failure to make the claim for additional compensation in the manner and within the time specified above shall constitute waiver of that claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Article PAYMENT FOR CHANGE ORDERS.

**71. RELEASE OF LIENS OR CLAIMS**

The CONTRACTOR shall indemnify and hold harmless the OWNER from all claims for labor and materials furnished under this Contract. Prior to the final payment, the CONTRACTOR shall furnish to the OWNER, as part of his final payment request, a certification that all of the CONTRACTOR's obligations on the project have been satisfied and that all monetary claims and indebtedness have been paid. The CONTRACTOR shall furnish complete and legal effective releases or waivers, satisfactory to the OWNER, of all liens arising out of or filed in connection with the work.

**72. FINAL PAYMENT**

Upon completion of all the work under this Contract, the CONTRACTOR shall notify the ENGINEER, in writing, that he has completed his part of the Contract and shall request final payment. Upon receipt of such notice the ENGINEER will inspect and, if acceptable, submit to the OWNER his recommendation as to acceptance of the completed work and as to the final estimate of the amount due the CONTRACTOR. Upon approval of this final estimate by the OWNER and compliance by the CONTRACTOR with Provisions in Article **RELEASE OF LIENS OR CLAIMS**, and other Provisions as may be applicable, the OWNER shall pay to the CONTRACTOR all monies due him under the Provisions of these Contract Documents.

**73. NO WAIVER OF RIGHTS**

Neither the inspection by the OWNER, through the ENGINEER or any of his employees, nor any order by the OWNER for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the OWNER or ENGINEER, nor any extension of time, nor any possession taken by the OWNER or its employees, shall operate as a waiver of any Provision of this Contract, or any power herein reserved to the OWNER, or any right to damages herein Provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the OWNER's rights under the warranty.

**74. ACCEPTANCE OF FINAL PAYMENT  
CONSTITUTES RELEASE**

The acceptance by the CONTRACTOR of the final payment shall release the OWNER and the ENGINEER, as representatives of the OWNER, from all claims and all liability to the CONTRACTOR for all things done or furnished in connection with the work, and every act of the OWNER and others relating to or arising out of the work except claims Previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or his Sureties from obligations under this Contract and the Performance Bond, Payment Bond, and other bonds and warranties, as herein provided.

**SUPPLEMENTARY CONDITIONS**

REVISIONS AND ADDITIONS TO THE GENERAL CONDITIONS

The General Conditions are hereby revised as follows:

ARTICLE 9 "ENGINEER"

Add the following:

Wherever in these Documents the word "Engineer" appears, it shall be understood to mean the Owner's representative, Atkins North America, Inc, overseeing the project for the City.

ARTICLE 34 "INSURANCE & LIABILITY"

Delete Article 34 "INSURANCE & LIABILITY" (A), (B), (C), and (D) in their entirety and substitute the following:

Contractor shall maintain limits no less than those stated below:

CONTRACTOR is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONTRACTOR shall provide the minimum limits of liability insurance coverage as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Professional Liability	\$2,000,000	Per Claim / Aggregate
Additional Umbrella Liability	\$2,000,000	Occurrence / Aggregate

CONTRACTOR shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as an additional insured on a PRIMARY and NON-CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of City of Key West on all policies. CONTRACTOR will maintain the General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the additional insured endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

Notwithstanding any other provision of the Contract, the CONTRACTOR shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the CONTRACTOR who is performing any labor, services, or material under the Contract. Further, CONTRACTOR shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

CONTRACTOR's insurance policies shall be endorsed to give 30 days written notice to the City of Key West in the event of cancellation or material change, using form CG 02 24, or its equivalent.

Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.

CONTRACTOR will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONTRACTOR will notify City of Key West immediately by telephone at (305) 809-3963 any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONTRACTOR.

Add the following Article:

#### G. SURETY AND INSURER QUALIFICATIONS

All bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or insurance company, having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said Surety or Insurance Company shall be duly licensed and qualified to do business in the State of Florida. If requested, Contractor shall Provide Proof of Florida Licensure for all insurance companies. The City of Key West shall be named as Additional Insured on the insurance certificates.

#### ARTICLE 35 "INDEMNITY"

Delete Article 35 "INDEMNITY" in its entirety and substitute the following:

#### INDEMNITY

To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents, and employees (herein called the "indemnitees") from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnitees for indemnification shall be limited to the amount of CONTRACTOR's insurance or \$1 million

per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

#### ARTICLE 39 "CODES, ORDINANCES, PERMITS, AND LICENSES"

Add the following:

A. PERMIT FOR WORK WITHIN THE FEDERAL, COUNTY, AND/OR STATE RIGHTS-OF-WAY

The Contractor will obtain from the county and/or state the necessary permit for work within the rights-of-way. The Contractor shall abide by all regulations and conditions stipulated in the permits, and such conditions and requirements are hereby made a part of these Supplementary Conditions, as fully and completely as though the same were fully set forth herein.

The Contractor shall prepare, submit, and have approved at his expense traffic maintenance plans required by federal, state, county, and local agencies having jurisdiction.

B. PERMIT FOR WORK WITHIN LOCAL RIGHTS-OF-WAY

The Contractor shall obtain from the City of Key West the necessary permits for work within the rights-of-way. The Contractor shall abide by all regulations and conditions, including maintenance of traffic.

C. NOISE ORDINANCE

City of Key West has a noise ordinance that allows working hours between 8:00 AM to 7:00 PM, Monday through Friday. No work should be performed during weekends or City Holidays, State Holidays and National Holidays. Any construction operations outside these hours and these days will require a variance from the City of Key West City Manager.

D. "LICENSES"

1. Within 10 days of Notice of Award, the successful Bidder must represent that he holds all applicable, county, and City of Key West licenses and permits required to do business as a contractor with respect to the work described in the Contract Documents.

2. Further, the successful Bidder must, within 10 days of Notice of Award, furnish documentation showing that, as a minimum, he has complied with the provisions of Chapter 18 of the Code of Ordinances of the City of Key West in order to enter into the Agreement contained in the Contract Documents.
3. Specifically, within 10 days after Notice of Award, the successful Bidder must demonstrate that he holds, as a minimum, the following licenses and certificates:
  - a.) City of Key West Tax License Receipt;
  - b.) A valid Certificate of Competency issued by the Chief Building Official of Key West, Florida
  - c.) A valid occupational license issued by the City of Key West, Florida.

#### E. WORK DURING HOLIDAYS

There shall be no work during City Holidays, State Holidays and National Holidays. Any construction operations during these days shall be approved by the City of Key West.

#### ARTICLE 40 "SUPERINTENDENCE"

Add the following sub article:

The CONTRACTOR shall keep at the project site, competent supervisory personnel, able to read, write and speak English to effectively communicate with City staff.

#### ARTICLE 42 "SAFETY"

Add the following sub article:

#### OCCUPATIONAL SAFETY AND HEALTH

The Contractor shall observe and comply with all applicable local, state, and federal occupational safety and health regulations during the prosecution of work under this Contract. In addition, full compliance by the Contractor with the U.S. Department of Labor's Occupational Safety and Health Standards, as established in Public Law 91-596, will be required under the terms of this Contract.

#### ARTICLE 57 "OWNERS RIGHT TO TRANSFER EMPLOYMENT"

Add the following Article:

#### TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

- A. Owner shall have the right to terminate this Contract without cause by written notice of Termination to the Contractor. In the event of such termination for convenience, the Contractor's recovery against the Owner shall be limited to that portion of the

Contract amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred. Contractor shall not be entitled to any other or further recovery against the Owner, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

- B. The Owner shall have the right to suspend all or any portions of the Work upon giving the Contractor prior written notice of such suspension. If all or any portion of the Work is so suspended, the Contractor shall be entitled to reasonable costs, expenses and time extension associated with the suspension.

#### ARTICLE 60 "LIQUIDATED DAMAGES"

Delete Article "LIQUIDATED DAMAGES" in its entirety and substitute the following:  
LIQUIDATED DAMAGES

Should the Contractor fail to complete the work or any part thereof in the time agreed upon in the Contract Documents or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the Owner for the additional expense and damage for each calendar day, Sundays and legal holidays included, that project outlined in Contract Documents remains uncompleted after the completion date. Liquidated damages shall be assessed. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate as stipulated in the Proposal. The said amount is hereby agreed upon as a reasonable estimate of the costs which may be accrued by the Owner after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty but as liquidated damages, which have accrued against the Contractor. The Owner shall have the right to deduct such damages from any amount due or that may become due the Contractor or the amount of such damages shall be due and collectible from the Contractor or Surety.

#### ARTICLE 69 "PARTIAL PAYMENTS"

Delete the first paragraph of Sub Article B. "ESTIMATE" and substitute the following:

No more than once each month the Contractor shall submit to the Engineer a detailed estimate of the amount earned during the preceding month for the separate portions of the work and request payment. As used in this Article the words "amount earned" means the value, on the date of the estimate, for partial payment of the work completed in accordance with the Contract Documents and the value of approved materials delivered to the project site suitably stored and protected prior to incorporation into the work. Payment will be made by the Owner to the Contractor within 40 days' receipt of the written recommendation of payment from the Engineer.

#### Sub Article C. "DEDUCTION FROM ESTIMATE"

Delete third sentence in its entirety and substitute add the following;

1. When the work is 90 per cent complete, the OWNER may reduce the retainage to 5 percent of the dollar value of all work satisfactorily completed to date provided the CONTRACTOR is making satisfactory progress and there is no specific cause for greater retainage.

Delete Sub Article E. "PAYMENT" in its entirety and substitute the following:

After deducting the retainage and the amount of all previous partial payments made to the Contractor from the amount earned the amount due will be made payable to the Contractor. Recommendations for payment received by the Owner less than 40 days prior to the scheduled day for payment will not be processed or paid until the following month.

## ARTICLE 72 "FINAL PAYMENT"

Add the following;

### A. Acceptance and Final Payment

Whenever the Contractor has completely performed the work provided for under the Contract and the Engineer has performed a final inspection and made final acceptance and subject to the terms of the Engineer will prepare a final estimate showing the value of the work as soon as the Engineer makes the necessary measurements and computations. The Engineer will correct all prior estimates and payments in the final estimate and payment. The OWNER will pay the estimate, less any sums that the OWNER may have deducted or retained under the provisions of the Contract, as soon as practicable after final acceptance of the work, provided the Contractor has met the requirements of (1) through (6) below.

- 1 The Contractor has agreed in writing to accept the balance due or refund the overpayment, as determined by the OWNER, as full settlement of his account under the Contract and of all claims in connection therewith, or the Contractor, accepted the balance due or refunded the overpayment, as determined by the OWNER, with the stipulation that his acceptance of such payment or the making of such refund does not constitute any bar, admission, or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and the OWNER. To receive payment based on a FINAL PAYMENT CERTIFICATE, The Contractor further agrees, by submitting a FINAL PAYMENT CERTIFICATE that any pending or future arbitration claim or suit is limited to those particulars, including the itemized amounts, defined in the original FINAL PAYMENT CERTIFICATE , and that he will commence with any such arbitration claim or suit within 15 calendar days from and after the time of final PAYMENT of the work and that his failure to file a formal claim within this period constitutes his full acceptance of the Engineer's final estimate and payment. The overpayment refund check from the Contractor, if required, will be considered a part of any Acceptance Letter executed.
- 2 The Contractor has properly maintained the project, as specified hereinbefore.

- 3 The Contractor has furnished a sworn affidavit to the effect that the Contractor has paid all bills and no suits are pending (other than those exceptions listed, if any) in connection with work performed under the Contract and that the Contractor has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of the OWNER in the performance of the Contract.
- 4 The surety on the contract bond consents, by completion of their portion of the affidavit and surety release subsequent to the Contractor's completion of his portion, to final payment to the Contractor and agrees that the making of such payment does not relieve the surety of any of its obligations under the bond.
- 5 The Contractor has furnished all required sand quality tests and analysis reports to the Engineer.
- 6 Final payment will not be released until the Owner receives verification from the Engineer that all work has been completed in accordance with the attached drawings and permits.

## **FEDERAL REQUIREMENTS**

The following Federal requirements are incorporated into this Proposal

- A. **ACCESS BY THE GRANTEE, SUB GRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** The CONTRACTOR shall allow access by the grantee, sub grantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
- B. **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by granted number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.
- C. **DISADVANTAGED BUSINESS ENTERPRISES (DBE) CONTRACTORS:** The CONTRACTOR agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this regard, CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. The CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.
- D. **ENERGY POLICY AND CONSERVATION ACT:** The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### E. EQUAL EMPLOYMENT OPPORTUNITY:

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

- i. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- iii. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- iv. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- v. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vi. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- vii. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.
  
- viii. CONTRACTOR shall:
  - 1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
  - 2. Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
  - 3. Divide work, when economically feasible, into smaller tasks to permit maximum participation by small and minority businesses, and women's business enterprises.
  - 4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  - 5. Provide documentation of compliance with 1-4 above.

F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE

- i. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  
- ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
  
- iii. Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency (FEMA) shall upon its own action or upon written request of an

authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- iv. Subcontracts. The CONTRACTOR Or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

#### G. CLEAN AIR ACT

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

#### H. FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

#### I. DEBARMENT AND SUSPENSION:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt.180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates

(defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- ii. The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### J. BYRD ANTI-LOBBYING AMENDMENT,

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

- i. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- ii. Attach Certification for Contracts, Grants, Loans, and Cooperative Agreements submitted with bid if exceeding \$100,000 using the form on page 33 of this document.

#### K. PROCUREMENT OF RECOVERED MATERIALS

- i. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
  - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (ii) Meeting contract performance requirements; or
  - (iii) At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

L. **RETENTION OF ALL RECORDS:** The CONTRACTOR is required to retain all records for seven (7) years after grantees or sub grantees make final payments and all other pending matters are closed.

**M. ADDITIONAL FEDERAL REQUIREMENTS**

- i. **REMEDIES** – In the event of a breach by CONTRACTOR of the terms and conditions of this Agreement CITY shall be entitled to recover any and all monetary damages arising therefrom including the recovery of reasonable attorney fees at all trial and appellate levels.
- ii. **ACCESS TO RECORDS**
  1. The CONTRACTOR agrees to provide the City of Key West, (City Manager), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  2. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  3. The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iii. **DHS SEAL, LOGO AND FLAGS:** the CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
- iv. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS:** The CONTRACTOR will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- v. **NO OBLIGATION:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.
- vi. **FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS:** The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

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**PART 4**

**SPECIFICATIONS**

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# GENERAL REQUIREMENTS

## PART 1 PROJECT DESCRIPTION

### 1.1 GENERAL

- A. A brief description of the work is stated in the Invitation to Bid. To determine the full scope of the project or any particular part of the project, coordinate the applicable information in the several parts of these Contract Documents.
- B. The work under this Contract shall be performed by the CONTRACTOR as required by the OWNER. The CONTRACTOR will receive a Notice to Proceed for the work authorized in this contract. The CONTRACTOR shall complete all work within the number of calendar days stipulated in the Notice to Proceed unless an extension in the time of completion is granted by the ENGINEER, as stated in the Instructions to Bidders. Upon completion of the work and compliance with applicable provisions in the Contract Documents and acceptance by the FDEP the CONTRACTOR will receive final payment for all work done.
- C. The following additional information, though not all-inclusive, is given to assist the CONTRACTOR in their evaluation of the work required to meet the project objectives.
- D. This project will provide the OWNER with: The purchase, delivery, placement, grading, and tilling of specified sand, field engineering and environmental protection for Smathers Beach. The sand must be placed as shown on the drawings and as stated in the permits.
- E. The work is likely to be influenced by the tides. The tides can have an effect on the timing and work schedule. No extra claims shall be made for the tides or for other natural causes.
- F. The CONTRACTOR shall become familiar with the site and take such into consideration in planning and scheduling work. No extra claims shall be made for work required to achieve conditions beyond those obtainable under normal operation to accomplish the work.

### 1.2 PERMITS

- A. All conditions of the FDEP & USACE permits and USFWS Biological Opinion must be adhered to and acceptance of the project by the FDEP & USACE must be obtained before final payment will be made.

### 1.3 AS-BUILTS (Will be surveyed and prepared by ENGINEER)

## 1.4 ENGINEER

- A. Questions should be directed in writing to Atkins North America; Attention Mark Henry, Project Manager, at [mark.henry@atkinsglobal.com](mailto:mark.henry@atkinsglobal.com). Responses will be in the form of addenda to the Documents, as outline in INSTRUCTIONS TO BIDDERS.

## PART 2 SEQUENCE OF OPERATIONS

### 2.1 MOBILIZATION AND DEMOBILIZATION

- A. CONTRACTOR shall be responsible for mobilization and demobilization of labor, materials and equipment. Payment for mobilization and demobilization will be based on the unit price indicated in the Proposal for mobilization and demobilization.

### 2.2 SCHEDULING

- A. A schedule of work shall be given to the OWNER stating: date work is to start and anticipated completion date. These dates shall be within the time frame established by the Contract Documents. **CONTRACTOR shall complete the project in 90 calendar days from Notice to Proceed.** Plan the work and carry it out with minimum interference to the operation of the existing facilities. Prior to starting the work confer with the ENGINEER and OWNER's representative to develop an approved work schedule that will permit the facilities to function normally as practical. It may be necessary to do certain parts of the construction work outside normal working hours in order to avoid undesirable conditions. The CONTRACTOR shall do this work at such times and at no additional cost to the OWNER. Do not make connections between existing work and new work until necessary inspection and tests have been completed on the new work and it is found to conform in all respects to the requirements of the Contract Documents.
- B. In order to meet the overall objectives of the project certain elements of work may have to be completed or substantially completed in a given sequence that will be outlined by the ENGINEER.
- C. No work shall be started until the CONTRACTOR has sufficient manpower, equipment, and material to complete the project. No work shall commence without express consent of the ENGINEER.

### 2.3 COORDINATION

- A. CONTRACTOR shall cooperate in the coordination of their separate activities in a manner that will provide the least interference with the OWNER's operations and other SUB CONTRACTORS working in the area and in the interfacing and connection of the separate elements of the overall project work. CONTRACTOR shall coordinate with the beach cleaner to avoid interfering with his work.
- B. If any difficulty or dispute should arise in the accomplishment of the above, the problem shall be brought immediately to the attention of the ENGINEER.

- C. All CONTRACTORS working on the site are subject to this requirement for cooperation and all shall abide by the ENGINEER's decision in resolving project coordination problems without additional cost to the OWNER.
- D. WORK WILL BE INFLUENCED BY TURTLE NESTING SEASON AND NO WORK SHALL BE PERFORMED BEFORE A REPRESENTATIVE OF SAVE – A-TURTLE, OR CITY REPRESENTATIVE HAS WALKED THE BEACH AND CLEARED IT FOR WORK.
- E. Coordination between the City and Contractor concerning locations of wedding parties and times shall be performed to ensure work is not delayed.

### **PART 3 SITE CONDITIONS**

#### **3.1 SITE INVESTIGATION AND REPRESENTATION**

- A. The CONTRACTOR acknowledges satisfaction as to the general nature and location of the work, the general and local conditions, particularly those bearing upon availability of transportation, availability of labor, water, electric power, roads, and uncertainties of weather, tides, or similar physical conditions, the character of equipment and facilities needed preliminary to and during the prosecution of the work, and all other matters which can in any way affect the work or the cost thereof under this contract.
- B. Failure by the CONTRACTOR to become acquainted with the physical conditions and all the available information will not relieve the CONTRACTOR from responsibility for properly estimating the difficulty or cost of successfully performing the work.
- C. The CONTRACTOR warrants that as a result of examination and investigation of all the aforesaid data, the CONTRACTOR can perform the work in a good and workmanlike manner and to the satisfaction of the OWNER. The OWNER assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of this Contract, unless (1) such representations are expressly stated in the Contract, and (2) the Contract expressly provides that the responsibility therefore is assumed by the OWNER.

#### **3.2 INFORMATION ON SITE CONDITIONS**

- A. General: Any information obtained by the ENGINEER regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable and similar data will be available for inspection at the office of the ENGINEER upon request. Such information is offered as supplementary information only. Neither the ENGINEER nor the OWNER assumes any responsibility for the completeness or interpretation of such supplementary information.

### 3.3 SUBSURFACE INVESTIGATION

- A. No test holes or borings have been made by the OWNER.
- B. The CONTRACTOR shall examine the site and may make arrangements with the OWNER to conduct his own subsurface investigation.

### 3.4 UTILITIES

- A. The CONTRACTOR shall be responsible for determining, at his cost, the locations and elevations of all utilities in each project areas and shall be responsible for contacting each utility for location and notification prior to commencing work.

### 3.5 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTIES AND SERVICE

- A. Where the CONTRACTOR's operations could cause damage or inconvenience to telephone, television, power, water, or sewer systems, the operations shall be suspended until all arrangements necessary for the protection of these utilities and services have been made by the CONTRACTOR.
- B. Notify all utility offices, which are affected by the construction operation at least 48 hours in advance. Under no circumstances expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities. Hand digging is required in the tolerance zone. If the CONTRACTOR fails to adhere to State Statutes and the Florida Administrative Code the appropriate law enforcement agencies will be contacted
- C. The CONTRACTOR shall be solely and directly responsible to the OWNER and operators of such properties for any damage, injury, expense, loss inconvenience, delay, suits, actions, or claims of any character brought because of any injuries or damage that may result from the construction operations under this Contract.
- D. Neither the OWNER nor its officers or agents shall be responsible to the CONTRACTOR for damages as a result of the CONTRACTOR's failure to protect utilities encountered in the work.
- E. In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no case shall interruption of any water or utility service be allowed to exist outside working hours unless prior approval is granted.
- F. In the event the CONTRACTOR encounters water service lines that interfere with the work he may, by obtaining prior approval of the property OWNER, Florida Keys Aqueduct Authority or Fire Department, as applicable, and the ENGINEER cut the service, dig through, and restore the service with similar and equal materials at the CONTRACTOR's expense.

- G. The CONTRACTOR shall replace, at his own expense, all existing utilities or structures removed or damaged during construction unless otherwise provided for in these Contract documents or ordered by the ENGINEER.

### 3.6 INTERFERING STRUCTURES

- A. Take necessary precautions to prevent damage to existing structures whether on the surface, aboveground, or underground.
- B. Protect underground and above ground existing structures from damage, whether or not they lie within the limits of the easements obtained by the OWNER. Where such existing fences, gates, sheds, buildings, or any other structure must be removed in order to properly carry out the construction, or are damaged during construction, restore to their original condition to the satisfaction of the property OWNER involved at the CONTRACTOR's own expense. Notify the ENGINEER of any damaged underground structure and make repairs or replacements before backfilling.
- C. Without additional compensation the CONTRACTOR may remove and replace in a condition as good as or better than original such small miscellaneous structures as fences, tables, and signposts that interfere with the CONTRACTOR's operations.

### 3.7 FIELD RELOCATION

- A. During the progress of construction, it is expected that minor relocations of the work will be necessary. Such relocations shall be made only by direction of the ENGINEER. If existing structures are encountered which prevent the construction and which are not properly shown on any Drawings that may be issued, notify the ENGINEER before continuing with the construction that may be issued in order that the ENGINEER may make such field revisions as necessary to avoid conflict with the existing structures. If the CONTRACTOR shall fail to so notify the ENGINEER when an existing structure is encountered and shall proceed with the construction despite this interference he shall do so at his own risk.

### 3.8 LAND MONUMENTS:

- A. The CONTRACTOR shall notify the ENGINEER prior to disturbing any existing federal, state, county, city, and private land monuments. CONTRACTOR shall hire a licensed land surveyor to research and reference all private and government land monuments prior to construction. Private and government land monuments shall be preserved or replaced by a licensed surveyor at the CONTRACTOR's expense. When government monuments are encountered the CONTRACTOR shall notify the ENGINEER at least 2 weeks in advance of the proposed construction in order that the ENGINEER will have ample opportunity to notify the proper authority to reference these monuments for later replacement.

## **PART 4      TEMPORARY CONSTRUCTION UTILITIES AND FACILITIES**

### **4.1      TEMPORARY WATER**

- A.      The CONTRACTOR shall make his own arrangements to obtain suitable water and shall pay all costs.

### **4.2      TEMPORARY ELECTRIC POWER**

- A.      The CONTRACTOR shall make arrangements to obtain and pay for electrical power used until final acceptance by the OWNER.

### **4.3      SAFETY REQUIREMENTS FOR TEMPORARY ELECTRIC POWER**

- A.      Temporary electric power installation shall meet the construction safety requirements of OSHA, state and other governing agencies.

### **4.4      SANITARY FACILITIES**

- A.      The CONTRACTOR shall provide and maintain sanitary facilities for his employees and his SUB-CONTRACTORS' employees that will comply with the regulations of the local and state departments of health and as directed by the ENGINEER.

### **4.5      STORAGE OF MATERIALS**

- A.      Materials shall be so stored as to ensure the preservation of their quality and fitness for the work. When considered necessary they shall be stored on the City's "Bridle Path" across from Smathers Beach as directed by the ENGINEER. Stored materials shall be located so as to facilitate prompt inspection. Private property shall not be used for storage purposes without the written permission of the OWNER or lessee.
- B.      Delicate instruments and materials subject to vandalism shall be placed under locked cover and, if necessary, provided with temperature control as recommended by the manufacturer.

## **PART 5      SAFETY AND CONVENIENCE**

### **5.1      SAFETY EQUIPMENT**

- A.      The CONTRACTOR shall do all work necessary to protect the general public from hazards, including but not limited to, surface irregularities or unramped grade changes in pedestrian sidewalk or walkway. Barricades, lanterns, and proper signs shall be furnished in sufficient amount to safeguard the public and the work. All barricades and signs shall be, in the opinion of the ENGINEER, clean and serviceable.

- B. During construction, the CONTRACTOR shall construct and at all times maintain satisfactory and substantial temporary chain link fencing, solid fencing, railing, barricades or steel plates, as applicable, at all openings, obstructions, or other hazards in sidewalks and walkways. All such barriers shall have adequate warning lights as necessary, or required, for safety. All lights shall be regularly maintained and in a fully operational state at all times. To be determined by Engineer.

## 5.2 ACCIDENT REPORTS

- A. In addition, the CONTRACTOR must promptly report in writing to the ENGINEER all accidents whatsoever arising out of or in connection with the performance of the work whether on or adjacent to the site, giving full details and statements of witness. If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the ENGINEER.
- B. If a claim is made by anyone against the CONTRACTOR or any SUB-CONTRACTOR on account of any accident the CONTRACTOR shall promptly report the facts in writing to the ENGINEER, giving full details of the claim.

## 5.3 SAFE ACCESS BY FEDERAL, STATE, AND LOCAL GOVERNMENT OFFICIALS

- A. Authorized representatives of the state, federal, or local governmental agencies shall at all times have safe access to the work and the CONTRACTOR shall provide proper facilities for such access and inspection. (i.e. hard hats, safety glasses, hearing protection)
- B. THE SIDEWALK ALONG SOUTH ROOSEVELT BOULEVARD SHALL BE KEPT OPEN, CLEAN AND SAFE AT ALL TIMES. CLEANUP OPERATIONS SHALL FOLLOW IMMEDIATELY BEHIND THE WORKSITE AND SHALL BE KEPT IN AN ORDERLY AND CLEAN CONDITION AT ALL TIMES.
- C. Comply with all rules and regulations of the state, county, and city authorities regarding closing or restricting the use of public streets or highways. No public or private road shall be closed, except by express permission of the OWNER. Conduct the work so as to assure the least possible obstruction to traffic and normal commercial pursuits. Protect all obstructions within traveled roadways by installing approved signs, barricades, and lights where necessary for the safety of the public. The convenience of the general public and residents adjacent to the project and the protection of person and property are of prime importance and shall be provided for in an adequate and satisfactory manner.
- D. When flaggers and guards are required by regulation or when deemed necessary for safety, they shall be furnished with approved orange wearing apparel and other regulation traffic-control devices in accordance with FDOT provisions. All flaggers must be D.O.T. certified.

## 5.5 TRAFFIC CONTROL

- A. Traffic control on all city, county and state highway rights-of-way shall meet the requirements of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, as well as FDOT Standard Details for Maintenance of Traffic, in accordance with The Manual for Uniform Traffic Control and Safe Practices.
- B. The CONTRACTOR shall provide an 11 x 17 inch engineered drawing of his intended maintenance of traffic (MOT) scheme to the ENGINEER for review approval prior to commencement of work. This shall include barrier details, barricade type, and location. MOT impacting South Roosevelt Boulevard may require FDOT approval and/or an FDOT right of way permit procured by the CONTRACTOR.

## 5.6 PROTECTION OF PROPERTY

- A. Protect stored materials located adjacent to the proposed work. Notify property owners affected by the construction at least 48 hours in advance of the time construction begins. During construction operations construct and maintain such facilities as may be required to provide access by all property owners to their property. No person shall be cut off from access to his residence or place of business for a period exceeding 8 hours unless the CONTRACTOR has made special arrangements with the affected persons.
- A. The CONTRACTOR shall identify and isolate his work zone in such a manner as to exclude all personnel not employed by him, the ENGINEER, and the OWNER.

## 5.7 FIRE PREVENTION AND PROTECTION

- A. The CONTRACTOR shall perform all work in a fire-safe manner. He shall supply and maintain on the site adequate fire-fighting equipment capable of extinguishing incipient fires. The CONTRACTOR shall comply with applicable federal, state, and local fire-prevention regulations. Where these regulations do not apply, applicable parts of the National Fire Prevention Standard for Safeguarding Building Construction Operations (NFPA No. 241) shall be followed.

## 5.8 ACCESS FOR POLICE, FIRE, AND POSTAL SERVICE

- A. Notify the City ENGINEER and City Liaison a minimum of 48 hours before closing any street, sidewalk or bike path or portion thereof. No closing shall be made without the OWNER's approval. Notify said departments when the streets are again passable for emergency vehicles. Do not block off emergency vehicle access to the beaches, consecutive arterial crossings or dead-end streets in excess of 300 linear feet without special written permission from City ENGINEER. Conduct operations with the least interference to fire equipment access, and at no time prevent such access.

- B. The CONTRACTOR shall leave a night emergency telephone number or numbers with the police department, the ENGINEER and the OWNER, so that contact may be made easily at all times in case of barricade and flare trouble or other emergencies.

## **PART 6 PRESERVATION, RESTORATION, AND CLEANUP**

### **6.1 SITE RESTORATION AND CLEANUP**

- A. At all times during the work keep the premises clean and orderly. Upon completion of the day's work repair all damage caused by equipment and leave the project clean and free of rubbish or excess materials of any kind.
- B. Stockpile excavated materials in a manner that will cause the least damage to adjacent lawns, grassed areas, gardens, shrubbery, or fences, regardless of whether these are on private property or on state, county, or city rights-of-way. Remove all materials from storage areas and leave these surfaces in a condition equivalent to their original condition.
- C. Upon completion of sand placement and grading, beaches must be tilled according to FDEP permit requirements and as directed by the ENGINEER.

### **6.2 FINISHING OF SITE, BORROW, AND STORAGE AREAS**

- A. Upon completion of the project, all areas used by the CONTRACTOR shall be properly cleared of all temporary structures, rubbish, and waste materials and properly graded to drain and blend in with the abutting property. Areas used for the deposit of waste materials shall be finished to properly drain and blend with the surrounding terrain. The finished surface shall conform to the original surface, and shall be free draining and free from holes, ruts, rough spots, or other surface features detrimental to the area.

### **6.3 STREET CLEANUP DURING CONSTRUCTION**

- A. Thoroughly clean all spilled dirt, gravel, or other foreign material caused by the construction operations from all streets, roads and bike paths at the conclusion of each day's operation. Sidewalks and bike paths shall be kept clear of material and available for pedestrian use at all times.

### **6.4 DUST PREVENTION**

- A. Give all unpaved or disturbed areas used in the construction an approved dust-preventive treatment or periodically water to prevent dust. Applicable environmental regulations for dust prevention shall be strictly enforced.

## PART 7 SUBMITTALS DURING CONSTRUCTION

### 7.1 GENERAL

- A. Requirements in this section are in addition to any specific requirements for submittals specified in other sections of these Contract Documents. The CONTRACTOR is required to provide a submittal log at the pre-construction conference.
- B. Submittals to the ENGINEER shall be addressed to:
  - 1. Atkins North America  
Attn: Mark Henry  
800 Waterford Way  
Suite 700  
Miami, FL 33126  
[mark.henry@atkinsglobal.com](mailto:mark.henry@atkinsglobal.com)
- C. Submitted data shall be fully sufficient in detail for determination of compliance with the Contract Documents.
- D. Review, acceptance, or approval of substitutions, or equal, schedules, shop drawings, lists of materials, and procedures submitted or requested by the CONTRACTOR shall not add to the Contract amount and all additional costs which may result there from shall be solely the obligation of the CONTRACTOR.
- E. It shall not be the responsibility of the OWNER to provide Engineering or other services to protect the CONTRACTOR from additional costs accruing from such approvals.
- F. No equipment or material for which listings, drawings, or descriptive material is required shall be installed until the ENGINEER has on hand copies of such approved lists and the appropriately stamped final shop drawings.
- G. The review of drawings by the ENGINEER will be limited to general design requirements only and shall in no way relieve the CONTRACTOR from responsibility for errors or omissions contained therein.
- H. Submittals will be acted upon by the ENGINEER as promptly as possible and returned to the CONTRACTOR not later than 20 working days.
- I. Should the CONTRACTOR propose any item on his shop drawings or incorporate an item into the work and that item should subsequently prove to be defective or otherwise unsatisfactory, (regardless of the ENGINEER's preliminary review), the CONTRACTOR shall, at his own expense replace the item with another item that will perform satisfactorily.

### 7.1.5 SUBMITTALS

Submittals shall be provided by the CONTRACTOR to the ENGINEER in a timely manner so as not to interfere with overall construction schedule.

### 7.2 AS-BUILT DRAWINGS (will be surveyed and prepared by ENGINEER)

## **PART 8 PAYMENT**

### GENERAL

A. Payment for the work in this section will be included as part of the applicable lump sum/unit prices stated in the Proposal.

\* \* \* \* \*

## SCOPE OF WORK

### 1. GENERAL

#### 1.1 DESCRIPTION:

- A. For **Base Bid Project**, Furnish and place approximately 20,000 tons of sand along the approximately 3,040 linear feet Smathers Beach as specified in the drawings and permits and subject to direction from the Engineer.

For **Additive Alternates** (if accepted):

1. Furnish and place approximately 490 tons of sand along approximately 237 linear feet South Beach;
2. Furnish and place approximately 80 tons of sand along approximately 35 linear feet Dog Beach; and ,
3. Furnish and place approximately 190 tons of sand along approximately 168 linear feet Simonton Beach .

See Part 7 of ITB #18-006 for all project drawings.

In addition to provisions stipulated in other portions of the Contract Documents, the Contractor shall:

1. The Contractor shall be responsible for securing approved maintenance of traffic plans from the state, county & city permits as necessary; and any other permits for proper execution and completion of the work. South Roosevelt Boulevard is a FDOT owned road.
  2. Give required notices to everyone in the adjacent condominium complexes and hotel with times of work 5 days prior to mobilization.
- B. The Contractor shall ensure that construction complies with all applicable local, state, and federal codes. The Contractor must adhere to all FDEP and USACE permit requirements for the base project. Federal or state permits are not required for the additive alternates projects.
- C. Provide an experienced, qualified, and competent Superintendent to oversee the work. Prior to starting construction, the proposed Superintendent's qualifications shall be submitted in writing to the City for approval. The approved Superintendent shall be expected to remain for the duration of the Project, unless the City or Engineer deem him inadequate and requests his removal or the Contractor cannot continue his services to the project for a reason or reasons that shall be communicated in writing to the City. A replacement Superintendent shall be required to follow the same approval process as required for the original.

- D. It shall be the Contractor's responsibility to request City Commission approval (minimum two weeks in advance) for entrance to the site for work on Saturdays, Sundays, holiday, and weekday hours other than 8:00 am until 7:00 pm.
- E. The Contractor shall submit a site Safety and Health Plan as per OSHA 1910.120.

## 1.2 CONTRACTOR'S USE OF PREMISES

- A. Work shall be scheduled as to not interfere with on-going area activities.
- B. Assume full responsibility for the protection and safekeeping of products under this Contract.
- C. Obtain and pay for the use of additional storage or work areas if needed for operation.
- D. Contractor shall provide drinking water and toilet facilities for construction personnel; the City will not provide.

## 1.3 SITE PREPARATION

- A. The Contractor is responsible for the removal and disposal of any trash or debris within the area of sand placement before construction begins.

## 1.4 SUBMITTALS: Submittals required for prior to sand placement:

1. Submit technical data required by Engineer from sand source and sand grain size specification with sample.
2. The Contractor shall submit a proposed schedule and the completion date for the proposed work
3. Submittals for all equipment to be used for sand placement.
4. Submit a letter from Save-a-Turtle confirming coordination of work schedule not to conflict with their observation walks in the morning.
5. Submit a schedule of work showing coordination of sand placement on the beach and the beach cleaner.
6. Submit copies of all signs and permits/cards to be posted on the jobsite.
7. Submit quantity and manufacturer, manufacturer's instructions and installation methods for turbidity curtains.
8. Submit name of tilling sub contractor and methodology.
9. Environmental protection plan

10. Testing company at site and quarry.

11. All quarry sand testing

The submitted sand sample and documents shall be considered the contractor's certification of the material he will provide throughout the project.

ACCEPTANCE OF MATERIALS: All materials shall be subject to inspection for suitability, as the Engineer may elect, upon delivery, prior to, and during incorporation into the work. Moisture content of sand shall not exceed 5% as determined either by testing by the Contractor or inspection by the Engineer. Weight checks of all empty trucks will be conducted locally once by the Contractor and thereafter periodically at the Engineers request.

## 2. PRODUCTS:

### 2.1 SAND:

**The sand must be from an approved upland mine and meet the specifications as noted on the attached FDEP and USACE permits. See also Part 5 Sand Specification.**

## 3. EXECUTION SITE PREPARATION:

A. The contractor shall fully acquaint himself with the site to preclude any misunderstanding and to facilitate a trouble-free installation. It shall be the responsibility of the contractor to obtain all such information as it is made available as to not interfere with other work at the site

B. Layout: The Contractor shall layout sand placement according to attached plans and layout must be approved by the Engineer.

### SAND PLACEMENT

A. Placement: The sand shall be placed according to the plans and subject to direction by the Engineer. The Contractor shall begin placement after the Engineer's approval of field-staked locations has been obtained and when favorable weather and seasonal conditions are normal and proper for such work. All sand placement and equipment operation shall be by experienced work persons, according to the best trade practices governed by the State of Florida as specified herein.

## 4. INSPECTION & ACCEPTANCE:

A. Acceptance: the Contractor shall notify the Engineer in writing of completion of construction. *Within 14 days* after completion of work, an inspection for acceptance will be made.

- B. Final Acceptance: Before final acceptance, the terms of the Contract Documents must be met and the project site must be in the condition stipulated in the contract documents.

## 5. PAYMENT

Payment for sand will be based on tons of sand placed and on the as-built surveys. Weight tickets and survey will determine quantity of sand placed. Tickets must be given to ENGINEER'S representative at the time of delivery. All other items will be paid by the unit price bid upon completion.

## FIELD ENGINEERING

### PART 1 – GENERAL

#### 1.01 DESCRIPTION:

##### A. Work Included:

1. Provide field engineering services required for the Project, including:
  - a. Survey work, performed by a licensed surveyor, required in execution of the work.
  - b. Civil, Structural or other professional engineering services specified or required to execute the Contractor's construction methods.

##### B. Related Work:

1. General & Supplementary Conditions of the Contract
2. Scope of the Work
3. Field Engineering
4. Environmental Protection.

#### 1.02 QUALITY ASSURANCE:

- A. Qualifications of surveyor or engineer: Surveyor shall be fully knowledgeable in surveying methods and use the care and standards of the profession utilizing industry standard surveying techniques; surveyor may be a staff surveyor; a licensed surveyor is not required.

#### 1.03 SUBMITTALS:

- A. Submit name and address of proposed surveyor and/or Contractor's Engineer to the City.
- B. Upon request of the Engineer, submit documentation to verify accuracy of field engineering work.

### PART 2 - PRODUCTS

NOT USED

## PART 3 - EXECUTION

### 3.01 SURVEY REFERENCE POINTS:

- A. Verify all elevations before construction begins.
- B. Require Surveyor to set project control points prior to starting site work. Preserve all benchmarks during construction. Make no changes or relocations without prior written notice to the Engineer.

### 3.02 PROJECT SURVEY REQUIREMENTS:

- A. Establish a minimum of two permanent benchmarks on the site, referenced to data by survey control points.
- B. Locate and lay out by instrumentation lines and levels of:
  - 1. Water level, mean high water.
  - 2. Controlling lines and elevations levels required for placement.
- C. Periodically verify layouts and locations as the work progresses.
- D. Maintain a complete accurate log of all control and survey work as it progresses.

### 3.03 EXAMINATION AND PREPARATION OF SITE

- A. Before starting operations, Contractor shall examine site of work to acquaint himself with conditions to be encountered.
- B. Compare actual site with drawings and specifications.
- C. Report discrepancies affecting work or cost thereof to the City.
- D. Verify exact locations of sewers, water mains, gas mains, above or below ground electrical wires and conduits and structures, which may interfere with work.
- E. No extra compensation will be allowed for any extra work made necessary due to conditions or obstacles encountered during progress of work, which could have been determined by examination of site or by contacting Owners of pipelines and conduits before starting operations.

### 3.04 LINES AND GRADES

- A. Prior to staking out work, Contractor shall verify established base line, benchmarks, and control points.
- B. Contractor shall furnish and maintain lines and grades.

- C. Contractor shall take immediate steps to correct errors or inconsistencies in lines and grades of work to be in conformity with Contract Documents.
- D. Contractor shall be fully responsible for accuracy of lines and grades of work and control and checking and immediate correction of it.

### 3.05 RESTORATION

- A. Items to remain which are disturbed, damaged, or removed when performing required work or for convenience of Contractor or to expedite his operations shall be restored, repaired, reinstalled, or replaced with new work and refinished, as appropriate, so as to be left in as good condition as existed before work commenced and such restoration shall be considered incidental to the work.

## **PART 4 PAYMENTS**

- A. Payment for the work in this section will be made under the applicable unit price item for sand placement in the proposal.

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## TESTING SERVICES

### **PART 1 GENERAL**

#### **1.1 WORK INCLUDED**

- A. The CONTRACTOR shall employ and pay for the services of a qualified commercial independent testing laboratory acceptable to the ENGINEER and the OWNER to perform specified services.
- B. Inspection, sampling, and testing is required for:
  - 1. Sand specification testing.
  - 2. Additional quality checks as required by the ENGINEER.
- C. Employment of a testing laboratory shall in no way relieve the CONTRACTOR of his obligation to perform work in accordance with the Contract.

### **PART 2 PRODUCTS**

#### **2.1 SUBMITTALS**

- A. Submit three copies of reports of inspections and tests to ENGINEER promptly upon completion of inspections and tests, including:
  - 1. Date issued.
  - 2. Project title and Engineer's job number.
  - 3. Testing laboratory name and address.
  - 4. Name and signature of inspector.
  - 5. Date of inspection or sampling.
  - 6. Record of temperature and weather.
  - 7. Date of test.
  - 8. Location of inspection or test.
  - 9. Identification of product and specification section.
  - 10. Type of inspection or test.
  - 11. Observation regarding compliance with the Contract Documents.
- B. This report shall be signed and sealed by a Registered Professional Engineer Licensed in the State of Florida and qualified to perform such service.

### **PART 3 EXECUTIONS**

#### **3.1 LABORATORY DUTIES - LIMITATIONS OF AUTHORITY**

- A. Cooperate with the ENGINEER and CONTRACTOR; provide qualified personnel promptly on notice.
- B. Perform specified inspections, sampling, and testing of materials.

- C. Notify the ENGINEER and CONTRACTOR immediately of irregularities or deficiencies of work, which are observed during performance of services.

**PART 4      PAYMENTS**

- A. Payment for the work in this section will be made under the applicable line item in the proposal.

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## ENVIRONMENTAL PROTECTION

### PART 1 – GENERAL

#### 1.01 DESCRIPTION OF WORK:

- A. Contractor shall be responsible for conducting all work in such a manner that any and all environmental impacts or damages not specifically authorized by the contract and its controlling State and Federal permits are avoided. Should accidental or incidental damages occur, CONTRACTOR shall be responsible for all corrective measures at CONTRACTOR'S expense. CONTRACTOR shall save and hold harmless the CITY from all such violations. CONTRACTOR shall adhere to the following sections at a minimum in order to avoid such environmental damages. CONTRACTOR shall be responsible for all actions and compliance of any Subcontractors to CONTRACTOR.
- B. Permits: The CONTRACTOR shall comply with all conditions of the state and federal permits.
- C. Environmental Damage: The CONTRACTOR shall immediately notify ENGINEER and City of any environmental damages or violations that may occur during project mobilization/demobilization and construction.

#### 1.02 LOCAL SITE CONDITIONS:

- A. The CONTRACTOR shall secure the work area limits from public access. CONTRACTOR shall cordon off resources within the work area that are to be protected. Such resources may include landscape material, structures, or utilities. CONTRACTOR shall be responsible for the replacement or repair of any damaged resources.
- B. At no time shall the CONTRACTOR be permitted to excavate, place fill on, traverse in any way, or place or store any equipment or material below mean high water or on seagrass or hardbottom resources outside the area designated for construction.
- C. CONTRACTOR shall avoid, contain, and control all other potential damages to the local resources including but not limited to fuel, oil, or other chemical or solid waste in the form of leaks, spills, or fugitive materials and trash. In the event of an impact of this type, CONTRACTOR shall take corrective actions immediately.
- D. CONTRACTOR shall supply communications, sanitary facilities, fresh water, shade structure, and all other necessary actions immediately.

#### 1.03 ENVIRONMENTAL PROTECTION PLAN:

- A. Within 10 calendar days after the date of Notice of Award and prior to the Notice to Proceed to the CONTRACTOR, the CONTRACTOR shall submit in writing an

Environmental Protection Plan to the ENGINEER. The Notice to Proceed will not be issued until the Environmental Protection Plan is reviewed and approved by the ENGINEER. Approval of the CONTRACTOR'S plan will not relieve the CONTRACTOR of his responsibility for adequate and continuing control of pollutants and other environmental protection measures. The Environmental Protection Plan shall include but not be limited to the following:

(1) Methods for protection of features and habitats to be preserved within authorized work areas. The CONTRACTOR shall prepare a listing of methods to protect resources needing protection, i.e., all vegetation, trees, shrubs, vines, grasses and ground cover, landscape features, air and water quality, fish and wildlife, soil, historical, archeological and cultural resources, sea grasses, sea turtles, intransigent/transient vertebrate/invertebrates at hardbottom, all coral formations, human beachgoers, manatees and all marine hardbottom areas.

(2) Procedures to be implemented to provide the required environmental protection and to comply with the applicable permits, laws and regulations, The CONTRACTOR shall provide written assurance that immediate corrective action will be taken to correct pollution of the environmental due to accident, natural causes or failure to follow the procedures set out in accordance with the Environmental Protection Plan.

(3) Drawings showing locations of any proposed material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials.

(4) A protection and avoidance plan for adjacent sea grasses and hardbottom areas.

(5) Work area plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas.

(6) The location of the solid disposal area.

(7) A statement as to the person who shall be responsible for implementation of the Environmental Protection Plan. The CONTRACTOR personnel responsible shall report directly to the CONTRACTOR'S top management and shall have the authority to act for the CONTRACTOR in all environmental protection matters.

(8) A statement acknowledging that the CONTRACTOR shall be responsible for environmental protection, including all of the CONTRACTOR'S personnel and subcontractors.

(9) The Environmental Protection Plan shall be dated and endorsed by the individual of top management in charge of the construction.

#### 1.05 SUPERSEDING REQUIREMENTS:

In the event of differences between these requirements and pollution control laws,  
FT 19001801 94 ITB #18-006: SMATHERS BEACH  
Environmental Protection

rules or regulations of other State, Federal, or local agencies, the more restrictive laws, rules, or regulations shall apply.

## PART 2 – PRODUCTS

Submittals for turbidity barriers, storm water protection (MS4), and manatee signs.

## PART 3 – EXECUTION

### 3.01 TURBIDITY:

- A. CONTRACTOR shall control and confine turbidity to the immediate work area. A turbidity control plan must be submitted with the proposal. The turbidity control plan must provide details of measures to control turbidity within the sand placement zone at the beach site. The turbidity control plan shall include monitoring sufficient to assure compliance with state water quality standards contained in Chapter 62-302 of the Florida Administrative Code and the authorized permits for the beach.
- B. Waters of the beach sites are within areas designated as Outstanding Florida Waters. Chapter 62-302 provides that turbidity not be allowed to exceed background levels for this classification of waters. Turbidity Barriers with floats and anchored bases shall be used to contain turbidity at the Smathers beach site.
- C. Floating Turbidity Barriers and Staked Turbidity Barriers: This work shall consist of installing, maintaining, and removal of turbidity barriers necessary to contain turbidity that may occur as the result of filling or other construction activities which may cause turbidity to occur in the waters of the State. This may entail the deployment of turbidity barriers around isolated areas of concern such as seagrass beds. Such areas will be identified by the City and barriers will be put in place prior to the commencement of any work that could impact the area of concern. The type barrier used, the deployment and maintenance of the barrier will be such as to minimize dispersion of turbid waters from the construction site. Alternate methods or materials may be approved by the City provided that compliance with applicable permit conditions and State water quality standards are maintained.

Turbidity barriers will be used on Smathers Beach surrounding all fill below MHW. Turbidity barriers can only be removed after turbidity is below required limits and when directed by the Engineer. This will not relieve the Contractor of the responsibility for operating in such a manner as to avoid or minimize the degradation of the water quality of the surrounding waters.

Installation of all control devices shall be in a timely manner to insure the control of silt and the protection of ocean waters, or any adjacent property.

### 3.02 EXTENT OF FUGITIVE MATERIALS:

- A. CONTRACTOR shall control all fugitive materials including trash, chemicals, lubricants, oils, gas, debris, and dredged materials as noted above. Fugitive materials as applied

herein shall include all materials at the beach site, the pier site or along the transit route. In the event of a fugitive materials event, including but not limited to, release due to automobile accidents and all other circumstances, CONTRACTOR shall take immediate corrective actions.

- B. The Contractor shall take sufficient precautions to prevent pollution of waters, with fuels, oils, bitumens, calcium, chloride, or other harmful materials (in accordance with local, State and Federal Requirements). Also, he shall conduct and schedule his operations so as to avoid or otherwise minimize pollution or siltation of such waters, and to avoid damage or interference to marine plants and organisms.

### 3.03 TRANSIT:

- A. Debris materials shall be hauled from the beach to the disposal site in clean, sealed trucks. CONTRACTOR is responsible for assuring that such trucks do not leak or spill materials onto the public rights of way of the CITY or upon other non-designated properties. CONTRACTOR is responsible for assuring that the size and weight of such loaded trucks do not exceed the load bearing capacity of all substrata along the transit route including curbs, inlet or manhole covers, roads, sidewalks and underground utilities.

### 3.04 MANATEES:

- A. The CONTRACTOR shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water related activities for the presence of manatees and shall implement appropriate precautions to ensure protection of the manatees.
- B. All construction personnel are to be advised that there are civil and criminal penalties for harming, harassing, or killing manatees. The CONTRACTOR may be held responsible for any manatee harmed, harassed, or killed as a result of construction activities.
- C. Prior to the commencement of construction, the CONTRACTOR shall construct and display at least two temporary signs in accordance with the criteria contained in the permit. If required by permit.
- D. CONTRACTOR shall assure that turbidity barriers are properly secured so that manatees cannot become entangled and that the barriers are monitored frequently enough to avoid manatee entrapment.
- E. If manatees are seen within 100 yards of the dredging activity all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include restricting the operation of all equipment to no closer than 50 feet from any manatee, up to and including the termination of operations until such time as the manatee has cleared the area.
- F. Any collision or impact with a manatee shall be reported immediately to the CITY,

the Florida Marine Patrol (1-800-dialfmp) and the FDEP (904-922-4330).

G. CONTRACTOR shall maintain a daily log of all activities pursuant to this section and shall prepare a report at the termination of operations. Submit such report to the CITY.

### 3.05 SEA TURTLES:

A. The Contractor shall comply with the Sea Turtle protection provisions of the permit and coordinate all work with Save-a-Turtle personnel and the City.

### 3.06 MAINTENANCE:

A. General. The Contractor shall, at his expense, provide routine maintenance of permanent and temporary water pollution and turbidity control features until the project is completed and accepted. Control features shall be reconstructed due to the Contractor's negligence or carelessness or, in the case of temporary control features, failure by the Contractor to install permanent control features until the project is completed and accepted.

## PART 4 PAYMENTS

A. Payment for the work in this section will be made under the applicable sand placement unit price line item in the proposal.

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**PART 5**

**SAND SPECIFICATION**

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## Beach Fill Material

### CONTRACTOR WILL OBTAIN SAND FROM A PERMITTED-APPROVED MINE

Five upland mine sand sources are approved by FDEP and USACE to provide beach fill material for Smathers Beach. Sand from these sources may also be used to supply beach fill material to rebuild the berms at South, Dog and Simonton beaches. The CONTRACTOR shall submit which mine it intends to use with his Bid. The approved sand sources and sand type are (in no specific order):

1. E.R. Jahna Industries, Inc. - Ortona Sand Mine, located at 8561 W State Road 78 Moore Haven, FL 33471.  
Product Name - Beach "C" Sand.
2. Vulcan Materials Co. - Witherspoon Sand Plant, located at 11655 W SR 78, Moorehaven FL 33471  
Product Name - N/A
3. Cemex - Davenport Sand Mine, located at 2200 Hwy 17-92 N., Davenport, Florida 33897.  
Product Name - Medium Beach Sand
4. Cemex - Lake Wales Sand Mine, located at 524 Story Rd, Lake Wales, FL 33853.  
Product Name - Medium Beach Sand
5. Stewart Mining Industries - Stewart Mine, located at 2301 Edwards Grove Road, Immokalee, Florida. 34142.  
Product Name - Beach Sand - Key West Beaches

Sand will be the following requirements:

**Definition of Sand (Material) Mean Grain Size.** The design requires the contractor to provide clean, debris-free, rock-free sand of an average mean grain size in the range as outlined in the permits. The city also requires the sand source used for the renourishment project to be relatively uniform throughout the project area. The term "mean" in these specifications refers to the measure of the individual grains in each and every sample or load used to nourish the beach, rather than to a comparison of distinct samples or loads. The contractor shall understand that by agreeing to provide a specified mean grain size, he is agreeing to provide material whose various individual grains average the specified grain size, as measured in individual random samples and quantified by the method of calculation (moment method) described in these specifications. The contractor shall understand that this requirement applies to all of the material provided, and that the material shall be considered unacceptable if some of the material features a mean grain size (as calculated by the moment method) which is lower or higher than the specified average grain size range.

**Characteristics of Fill Material.** In order to provide the greatest stability on the beach as well as the best aesthetics and softness, the contractor must provide sand consisting entirely of the highest quality material (free of debris, sharp rocks and pebbles, concrete rubble, and clay). The sand must be rounded or semi-angular in shape and white or nearly white in color (i.e., similar to, and not darker than, the existing beach). Quarried (not manufactured) sand from an approved mine is the only acceptable material. All material used must meet all requirements of these plans and specifications and permits,

specifically the compliance specifications for sediment from upland sand source(s) outlined in Table 1 of the FDEP-approved SEDIMENT QUALITY CONTROL/QUALITY ASSURANCE PLAN (See Part 6 of ITB #18-006 for all project permits). The fill material must be consistent with what the upland mine sources provided for approval in the 2013 FDEP permit for Smathers Beach.

Prior to placement of sand, the contractor shall submit documentation to certify the type and source of material, including an analysis of the sand mean grain size as identified in the specifications (computed by the moment method). The contractor shall also certify that all of the sand to be used will be consistent with the analysis. The contractor shall provide samples of the proposed material from the supplier. No material that is inconsistent with the samples provided or that originates from another source may be used. In addition to the mean grain size standard discussed above, the characteristics of acceptable and are summarized below.

**Calculation of Grain Size.** The Mean Grain Size and Phi Standard Deviation (sorting value) shall be determined by Method of Moments Statistics calculated from sieve analysis of the proposed sand source. A Certified Testing Laboratory shall perform laboratory testing in accordance with ASTM-D422-63. The mean grain size and phi standard deviation are statistical measures of the textural character of a sample of sand, corresponding to the mean and standard deviation of a statistically normal population (example: sand grain sizes). Laboratory sieving of sand provides the data for calculation of the mean grain size and phi standard deviation. There are several methods of calculating these statistics. For the purposes of this contract, Mean Grain Size and Phi Standard Deviation shall be calculated by the Method of Moments. The method of calculation is included in this section. The Average Mean Grain Size refers to the average of the Mean Grain Size calculated for individual samples sieved in the laboratory.

**Grain Size Reporting.** The grain size distribution information shall be based upon ASTM-D422, using U.S. Standard sieves of square mesh woven wire cloth separated at 0.5  $\phi$  intervals (-4.0  $\phi$  to 4.0  $\phi$  and also the No. 200 & 230 sieve). All title information shall be filled out with project name, date, sample number, location sample obtained, unified soil classification, percent silt passing the No. 200 sieve (0,074 mm), percent silt passing the No. 230 sieve (0.063mm) and Method of Moments Mean Grain Size and Phi Standard Deviation. Each curve shall state what Mean Grain Size class the sample meets. A tabulation of the laboratory results of the cumulative percent retained on each sieve by weight shall be provided with each gradation curve. Samples from the project site shall be identified with the Acceptance section, and a station and range location.

**Certified Testing Laboratory.** Certified Testing Laboratory refers to a geotechnical testing laboratory qualified under ASTM E329-95c standards and certified by AASHTO (American Association of State Highway and Transportation Officials) National Voluntary Accreditation Program; or MMRL (ASSHTO Material Reference Laboratory) accreditation; and personnel qualified by NICET (National Institute for Certification of Engineering Technicians).

**Consistency of Material.** The contractor shall obtain from the sand supplier certification that the material is consistent with the criteria. If the supplier moves to another source in

the mine or quarry, then the contractor shall obtain a separate certification that the alternative material continues to be in compliance with the criteria. If the engineer believes he or she has noted a change in the sand consistency, the engineer can request certification from the contractor that the sand is consistent with the accepted sample(s). In addition, the contractor shall measure (at his or her expense) grain size (mean and sorting) on a random sample anytime at the request of the engineer. If any individual measurement fails to achieve these criteria, then another random sample from the same load shall be measured in the same manner, and if this fails then the sand and sand source shall be considered unacceptable and not eligible for payment. The contractor shall provide such material that all sand used for the beach nourishment shall be consistent with these specifications. The results of measurements on multiple loads may not be averaged in any manner in order to argue a composite measurement of the sand characteristics consistent with these specifications.

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**PART 6**

**USACE & FDEP  
PERMITS**

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# USACE PERMIT

# DEPARTMENT OF THE ARMY PERMIT

**Permittee:** City of Key West  
c/o James Scholl, City Manager  
3140 Flagler Avenue  
Key West, FL 33040

**Permit No:** SAJ-1998-01677 (SP-MLC)

**Issuing Office: U.S. Army Engineer District, Jacksonville**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The project is to periodically place beach compatible sand along 3,000 feet of Smathers Beach over a 10-year period. Nourishment is on an as-needed basis and in response to erosion events. Five Florida-based upland sand sources may be utilized:

1. E.R. Jahna Industries, Inc. - Ortona Sand Mine, located at 8561 W State Road 78 Moore Haven, FL 33471.
2. Vulcan Materials Co. - Witherspoon Sand Plant, located at 11655 W SR 78, Moorehaven FL 33471
3. Cemex - Davenport Sand Mine, located at 2200 Hwy 17-92 N., Davenport, Florida 33897.
4. Cemex – Lake Wales Sand Mine, located at 524 Story Rd, Lake Wales, FL 33853.
5. Stewart Mining Industries – Stewart Mine, located at 2301 Edwards Grove Road, Immokalee, Florida. 34142.

Fill material will be transported to the beach via the uplands. The work described above is to be completed in accordance with the 13 pages of drawings, date stamped July 11, 2017, and 5 attachments affixed at the end of this permit instrument.

**Project Location:** The project site, known as Smathers Beach, is located along 3,000 linear feet of beach on the southern coast of Key West, in Section 05, Township 68 South, Range 25 East, Key West, Monroe County, Florida (RE# 00064660-000100 and 00064660-000200).

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**Directions to site:** From US-1 (Overseas Highway), entering Key West, take South Roosevelt Boulevard. Proceed approximately 2.5 miles along South Roosevelt Boulevard, Smathers Beach will be on the left hand side.

**Approximate Central Coordinates:** Latitude: 24.551528 °North  
Longitude: -81.770611° West

### **Permit Conditions**

#### **General Conditions:**

1. The time limit for completing the work authorized ends on September 28, 2027 . If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

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6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

1. **REPORTING ADDRESS:** The Permittee shall submit all reports, notifications, documentation and correspondence required by the general and special conditions of this permit to the following address:

a. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Special Projects and Enforcement Branch, 9900 SW 107th Ave., Suite 203, Miami, FL 33176-2785.

b. For electronic mail [CESAJ-ComplyDocs@usace.army.mil](mailto:CESAJ-ComplyDocs@usace.army.mil) (not to exceed 10 MB). The Permittee shall reference this permit number, SAJ-1998-01677(SP-MLC) on all submittals.

2. **COMMENCEMENT NOTIFICATION:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall provide a written notification of the date of commencement of authorized work to the Corps.

3. **Self-Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form (Attachment 3) and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.

4. **As-Built Certification:**

Within 60 days of completion or cessation of a period of 1 year or more of authorized work within each phase, the Permittee shall submit as-built drawings of the authorized work within that phase and complete "As-Built Certification By Professional Engineer" form (Attachment 4) to the Corps. Upon expiration of the construction window identified in General Condition 1, the Permittee shall submit a final as-built drawing and certification for all phases. The as-built drawings for each phase and the final submittal shall be signed and sealed by a registered professional engineer and include the following:

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a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all "earth disturbance," including wetland impacts and water management structures.

b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached "As-Built Certification By Professional Engineer" form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or "As-Built Certification By Professional Engineer" form does not constitute approval of any deviations by the Corps.

c. Include the Department of the Army permit number on all sheets submitted.

5. **POSTING OF PERMIT:** The Permittee shall ensure that all contractors, sub-contractors, and entities associated with the implementation of the project review, understand, and comply with the approved plans and special conditions made part of this permit. Complete copies of the permit and approved plans shall be available at the construction site at all times. Failure to comply with the approved plans and permit special conditions may subject the Permittee to enforcement action.

6. **AGENCY CHANGES/APPROVALS:** Should any other agency require and/or approve changes to the work authorized or obligated by this permit, the Permittee is advised a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee's responsibility to request a modification of this permit from the Miami Permits Section. The Corps reserves the right to fully evaluate, amend, and approve or deny the request for modification of this permit.

7. **TURBIDITY BARRIERS:** Prior to the initiation of any of the work authorized by this permit the Permittee shall install floating turbidity barriers with weighted skirts that extend to within one foot of the bottom around all work areas that are in, or adjacent to, surface waters. The turbidity barriers shall remain in place and be maintained until the authorized work has been completed and all erodible materials have been stabilized. Turbidity barriers shall be removed upon stabilization of the work area.

8. **ASSURANCE OF NAVIGATION AND MAINTENANCE:** The Permittee understands and agrees that, if future operations by the United States require the

removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

9. HISTORIC PROPERTIES:

- a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.
- b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.
- c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition ; and if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
- d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33

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CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist and from the Corps.

10. **FILL MATERIAL:** The Permittee shall use only clean fill material riprap boulders for this project. The material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

11. **BEST MANAGEMENT PRACTICE (BMP):** Environmental controls and BMP must be implemented to properly contain construction materials and prevent fugitive particulates from entering surrounding waters during the construction phase of the project.

12. The permittee shall comply with the special conditions specified in the Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization #0129031-005-JC issued by the Florida Department of Environmental Protection on July 12, 2013 (Attachment 2).

13. **Biological Opinion:** This permit does not authorize the Permittee to take an endangered species, in particular the names of endangered species. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed NMFS Statewide Programmatic Biological Opinion (2015-SPBO) (Service Log No. 41910-2011-F-0170; Service 2015) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Authorization under this permit is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with this permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

14. **Biological Opinion:** This permit does not authorize the Permittee to take an endangered species, in particular the names of endangered species. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed

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NMFS Programmatic Piping Plover Biological Opinion (P3BO) (Service Log No. O4EF1000-2013-F-0124; Service 2013b) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Authorization under this permit is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with this permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

15. Pre-, During, and Post-Construction Monitoring Report: Prior to initiating construction, at least once per month during construction, and within sixty (60) days from completion of the authorized work, the Permittee shall submit a pre-, during, and post-construction monitoring report outlining the impacts to submerged aquatic resources, if any, during the construction phase of the project. A copy of all reports will be submitted to the National Marine Fisheries Service's West Palm Beach office to the attention of Ms. Jocelyn Karazsia, at 400 North Congress Avenue, Suite 120, West Palm Beach, FL 33401. The format of the construction monitoring protocol will require prior approval from the Florida Keys National Marine Sanctuary and the National Marine Fisheries Service – Habitat Conservation Division.

16. If the Corps determines that the proposed reporting/mitigation is inappropriate, within sixty (60) days of notification by the Corps, the Permittee shall submit to the Corps an alternate compensatory mitigation proposal sufficient to create the functional lift required from the work authorized under this permit. The alternate compensatory mitigation proposal may be required to include additional mitigation to compensate for the temporal loss of resource functions associated with the project. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate compensatory mitigation proposal. Within one hundred twenty (120) days of Corps approval, the Permittee will complete the alternate compensatory mitigation proposal.

17. This Corps permit does not authorize you to damage, diminish, degrade, impair, destroy or otherwise harm any Florida Keys National Marine Sanctuary (FKNMS) trust resource. In order to legally conduct your work, you are provided a copy of the FKNMS letter of authorization #FKNMS-2017-071 dated August 10, 2017 (Attachment 5). You must understand and agree to comply with the provisions of this document. The FKNMS letter contains mandatory terms and conditions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with the FKNMS requirements, whose terms and conditions

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would constitute noncompliance with your Corps permit. The FKNMS is the appropriate authority to determine compliance with the terms and conditions of its requirements and with the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432).

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344)

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

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PAGE 9 of 12

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

PERMIT NUMBER: SAJ-1998-01677 Smathers Beach  
PERMITTEE: City of Key West  
PAGE 10 of 12

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

J.K. Scholl  
(PERMITTEE)

27 SEPT 2017  
(DATE)

J. K. SCHOLL, CITY MANAGER  
(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Ingrid Gilbert

Digitally signed by  
GILBERT.INGRID.N.1275434589  
DN: c=US, o=U.S. Government,  
ou=DoD, ou=PKI, ou=USA,  
cn=GILBERT.INGRID.N.1275434589  
Date: 2017.09.28 10:40:53 -04'00'

for (DISTRICT ENGINEER)  
Jason A. Kirk, P.E.  
Colonel, U.S. Army  
District Commander

28 Sep 2017  
(DATE)

PERMIT NUMBER: SAJ-1998-01677 Smathers Beach  
PERMITTEE: City of Key West  
PAGE 11 of 12

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE-SIGNATURE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(NAME-PRINTED)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(CITY, STATE, AND ZIP CODE)

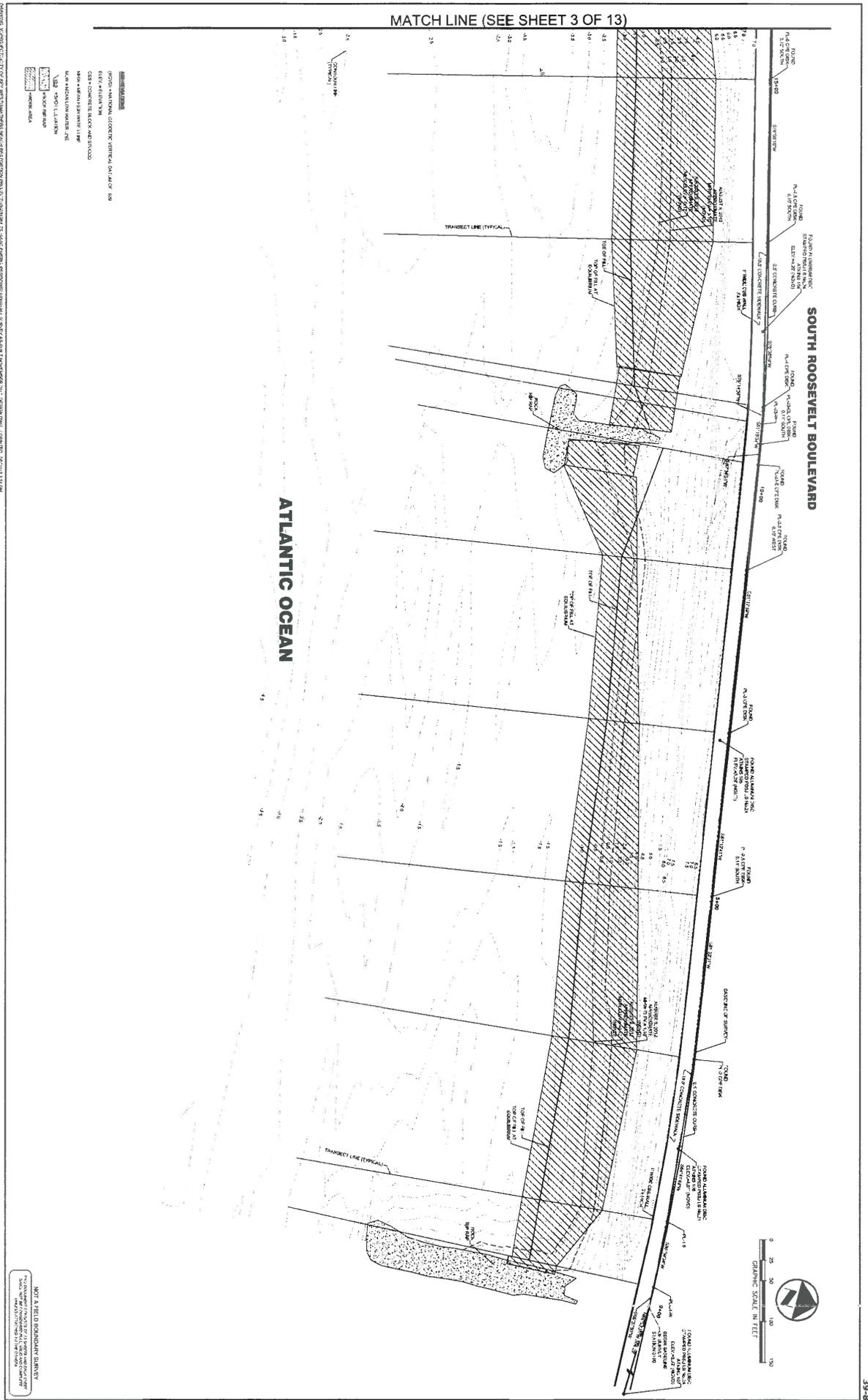
PERMIT NUMBER: SAJ-1998-01677 Smathers Beach  
PERMITTEE: City of Key West  
PAGE 12 of 12

***Attachments to Department of the Army  
Permit Number SAJ-1998-01677***

1. PERMIT DRAWINGS: 13 pages, date stamped July 11, 2017
2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. 18 pages.
3. SELF-CERTIFICATION FORM: 1 page
4. AS-BUILT CERTIFICATION FORM: 2 pages
5. FKNMS authorization #FKNMS-2017-071, dated August 10, 2017



PERMIT # 129031005



**ATKINS** 2001 N.W. 10TH AVE MIAMI FL 33132 (785) 582-2200  
 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

**CLIENT** CITY OF KEY WEST FLORIDA

**PROJECT** SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA

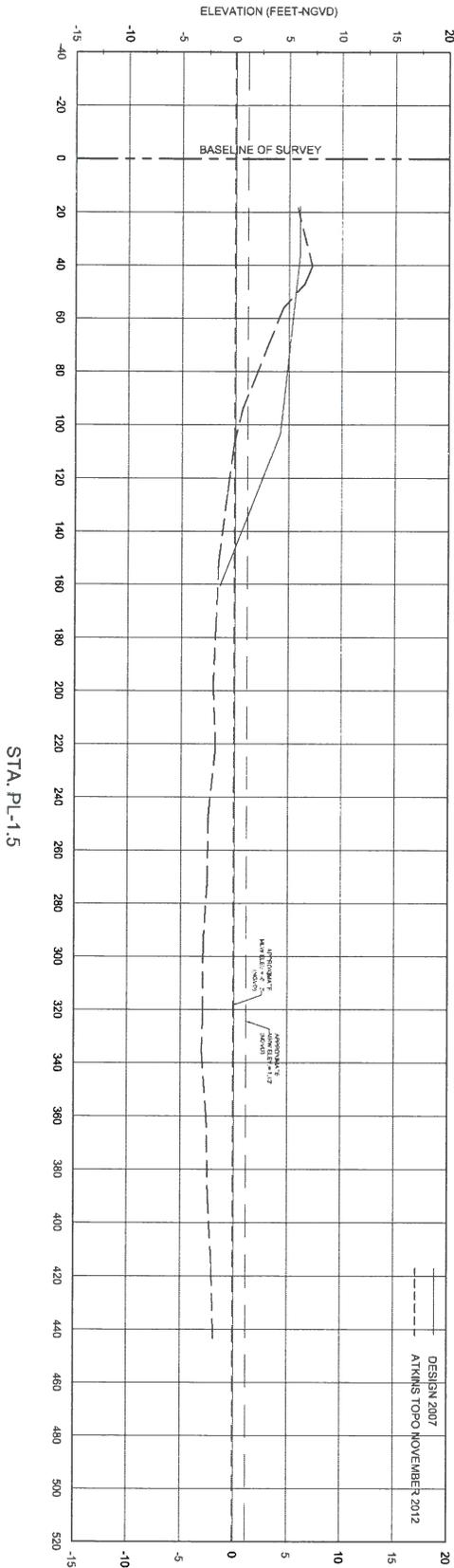
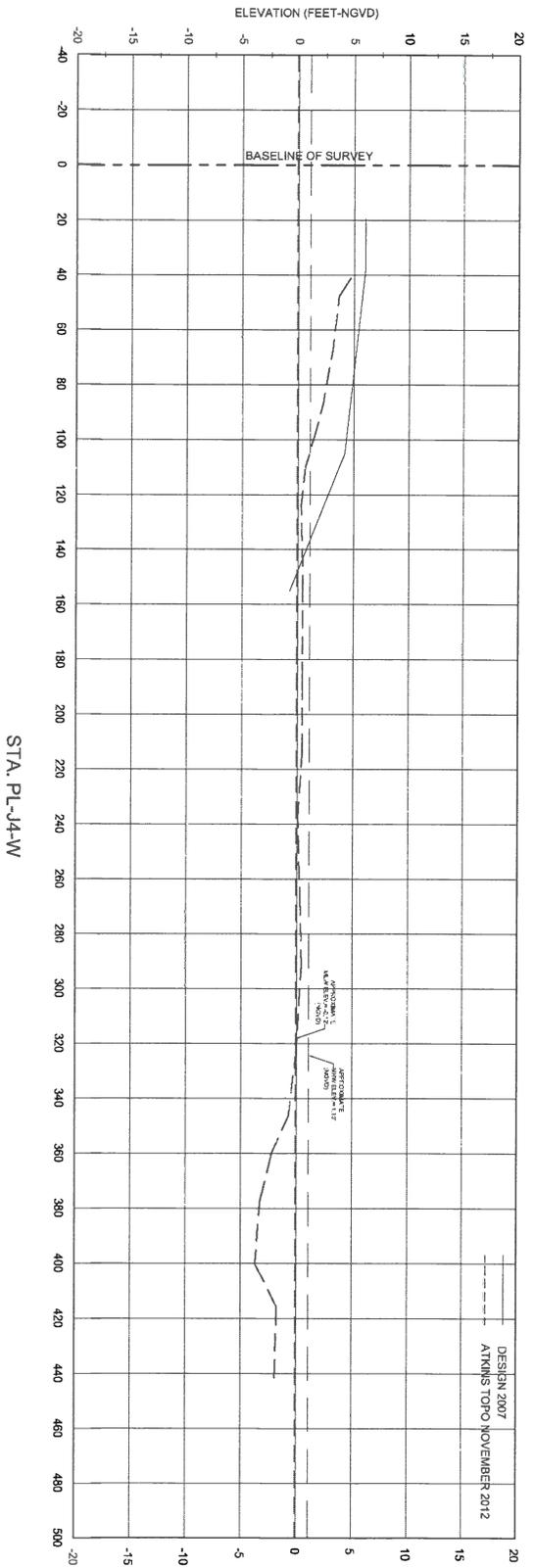
**TASK** NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE

<b>ORIGINAL:</b>	6
1. ORIGINAL DESIGN	7
2. REVISIONS	8
3. REVISIONS	9
4. REVISIONS	10
5. REVISIONS	11
6. REVISIONS	12

**JOB NO.** 100000123  
**DRAWN** [Name]  
**CHECKED** [Name]  
**DATE** 05/05  
**SHEET:** 2 OF 13

US Army Corps of Engineers, SAJ-1998-01677  
 July 11, 2017, Page 2 of 13

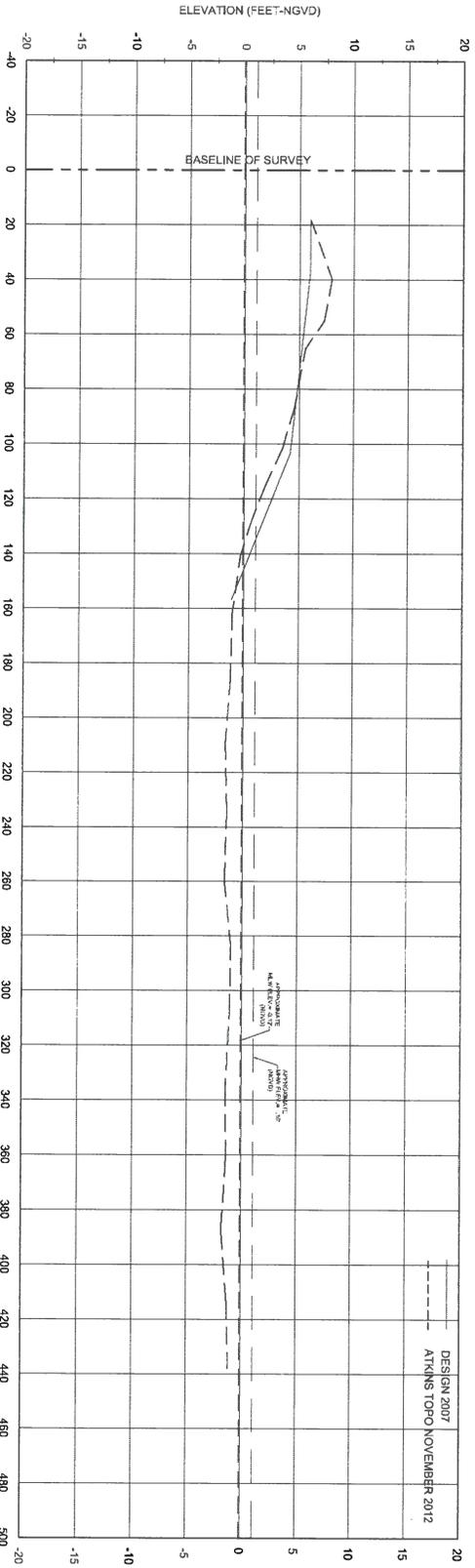
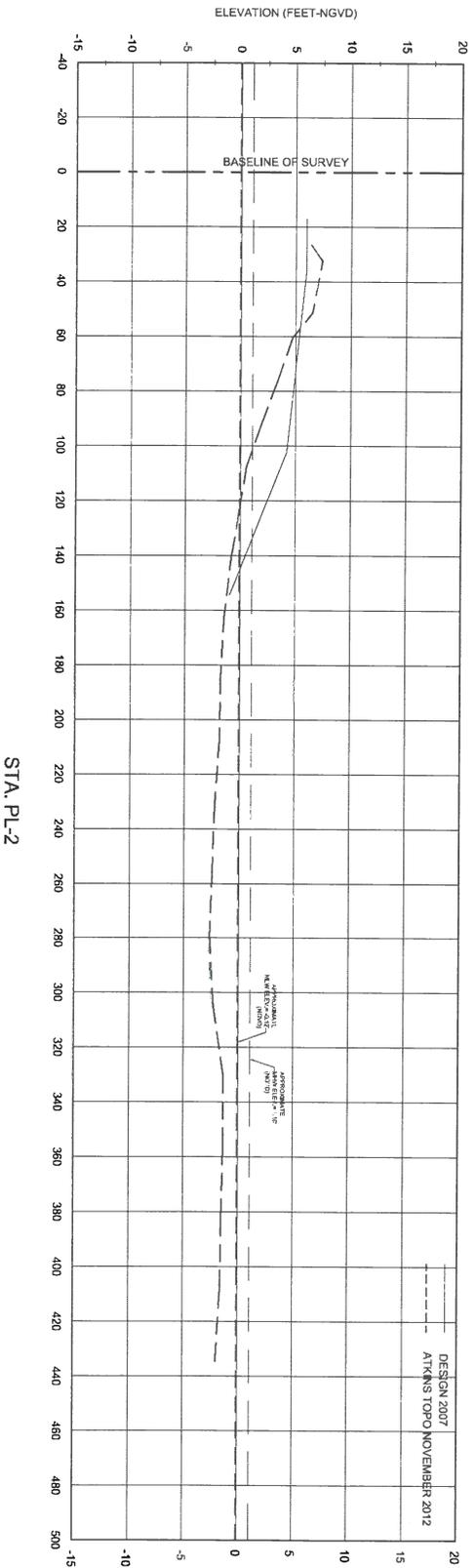




HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

 <p><b>ATKINS</b> 2001 N.W. 107th Ave Miami, FL 33157 (305) 595-7275</p> <p>ATKINS NORTH AMERICA, INC. FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24</p>				<p><b>CLIENT</b> CITY OF KEY WEST FLORIDA</p>	<p><b>PROJECT</b> SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA</p>	<p><b>TASK</b> NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE</p>	<p><b>ORIGINAL</b> 1. ORIGINAL 2. REVISIONS</p>	<p>6. _____ 7. _____ 8. _____ 9. _____ 10. _____ 11. _____ 12. _____</p>	<p><b>JOB NO.</b> 10000000000000000000 <b>DRAWN</b> JAC <b>DESIGNED</b> JAC <b>CHECKED</b> JAC <b>DATE</b> 08/15/12 <b>SHEET</b> 4 OF 13</p>
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VERTICAL SCALE 1"=5'

**ATKINS**  
2007 N.W. 10TH AVE  
SUITE 200  
33411 WOODLAND BLVD  
MIAMI, FL 33156  
(305) 592-7272  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER L234



CLIENT  
**CITY OF KEY WEST  
FLORIDA**

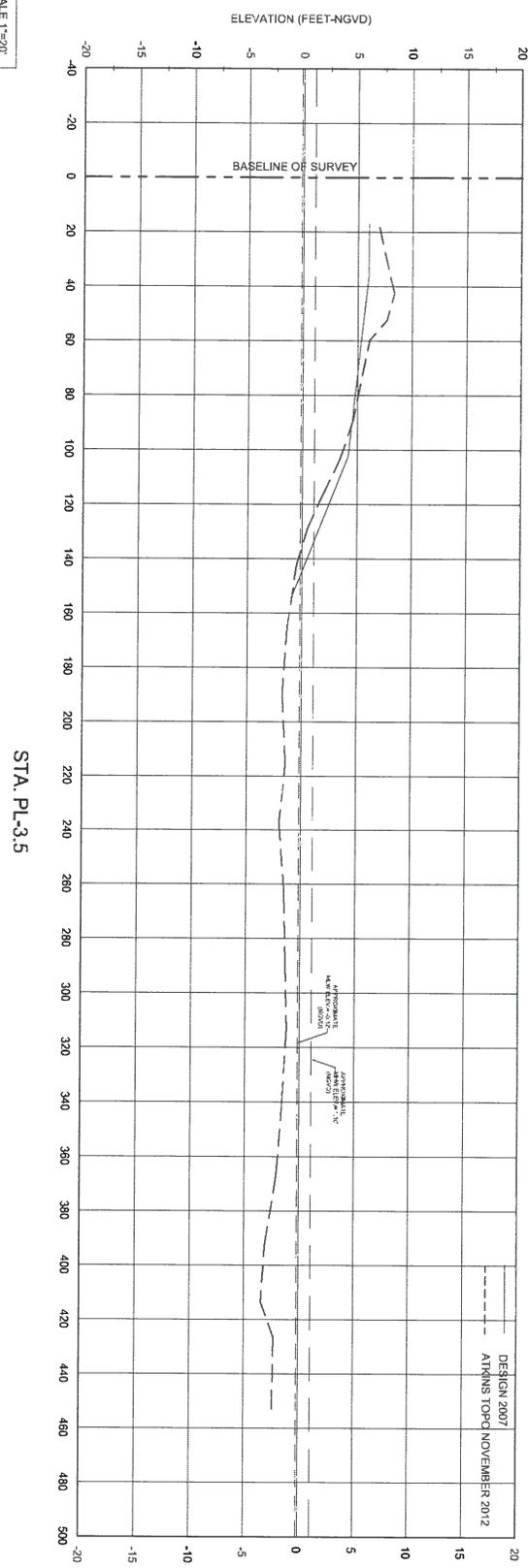
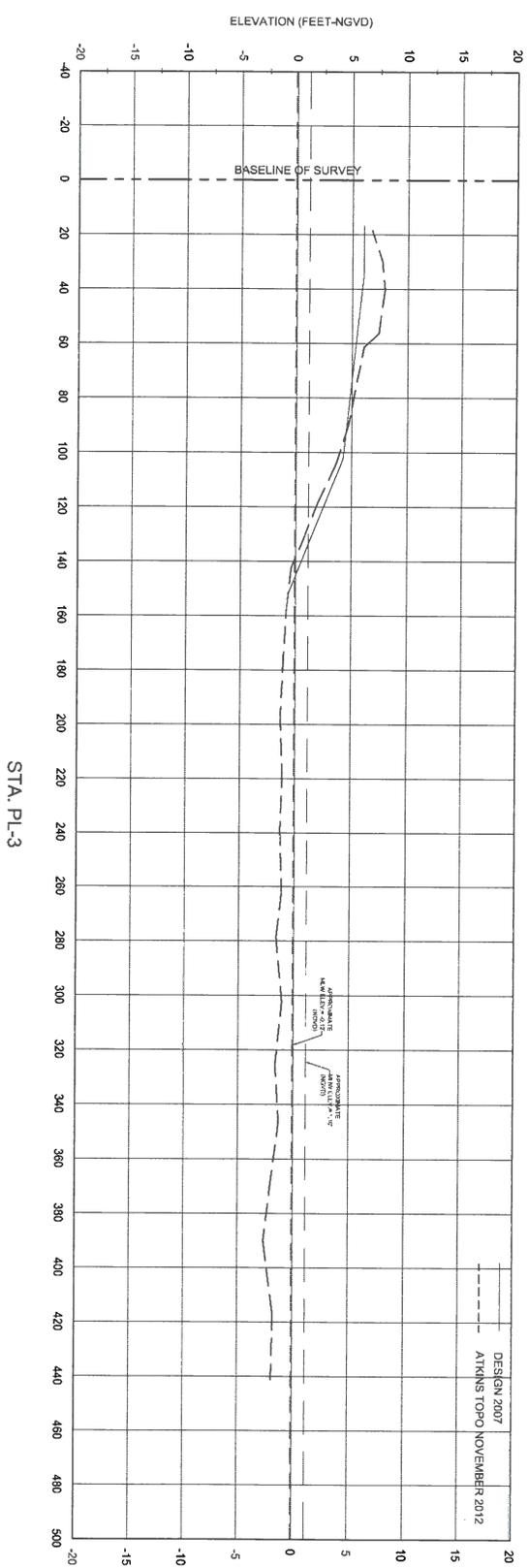
PROJECT  
**SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA**

TASK  
**NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE**

ORIGINAL	REVISIONS
1. ORIGINAL (11/2012)	6. _____
2. 2007 SURVEY (11/2012)	7. _____
3. 2007 SURVEY (11/2012)	8. _____
4. _____	9. _____
5. _____	10. _____
	11. _____
	12. _____

JOB NO.	DRAWN	DESIGNED	CHECKED	DATE
1000000001	2/22	2/22	2/26	2/26

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IT IS NOT TO BE USED FOR CONSTRUCTION



HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

**ATKINS** 2007 N.W. 10TH AVE  
33178-6007  
(407) 998-7719  
ATKINS NORTH AMERICA, INC.  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

**CLIENT**  
CITY OF KEY WEST  
FLORIDA

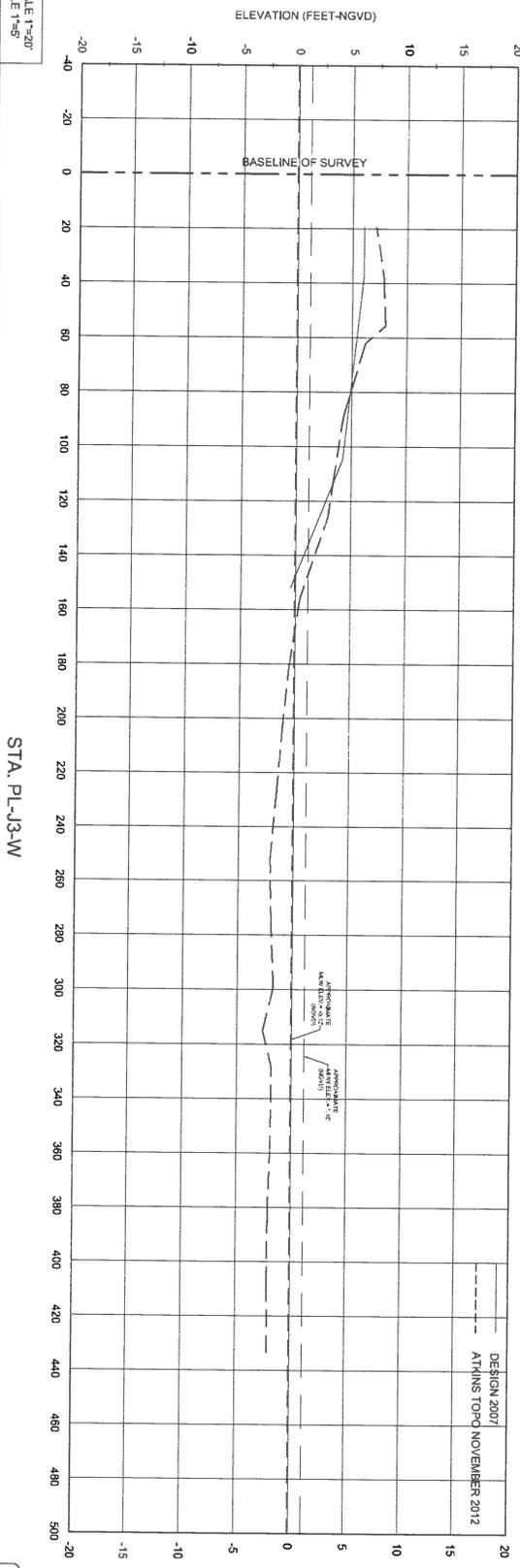
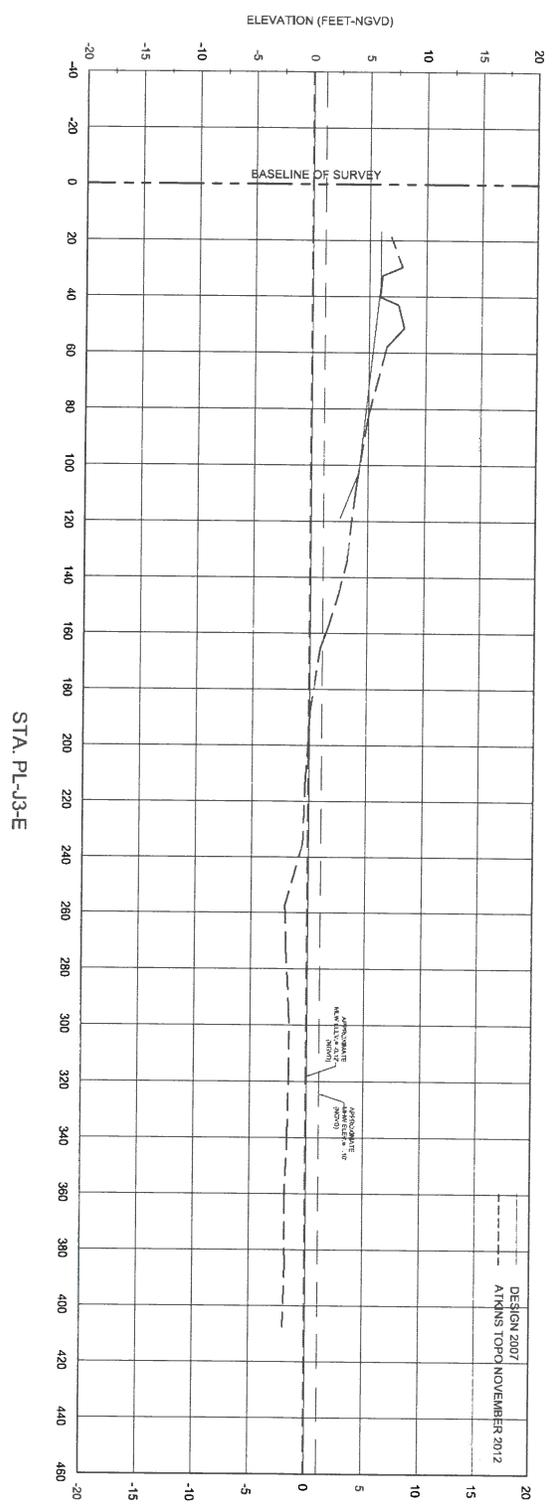
**PROJECT**  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

**TASK**  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

<b>ORIGINAL</b>	6.	
<b>REVISIONS:</b>	7.	
1. ORIGINAL, 11/1/2012	8.	
2. ADDITIONAL DATA, 11/1/2012	9.	
3. ADDITIONAL DATA, 11/1/2012	10.	
4. ADDITIONAL DATA, 11/1/2012	11.	
5. ADDITIONAL DATA, 11/1/2012	12.	

**JOB NO.** 1008000001  
**DRAWN** 2/22  
**DESIGNED** 2/22  
**CHECKED** 3/26  
**DATE** 11/1/2012  
**SHEET** 6 OF 13

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(305) 992-7275

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

CLIENT  
CITY OF KEY WEST  
FLORIDA

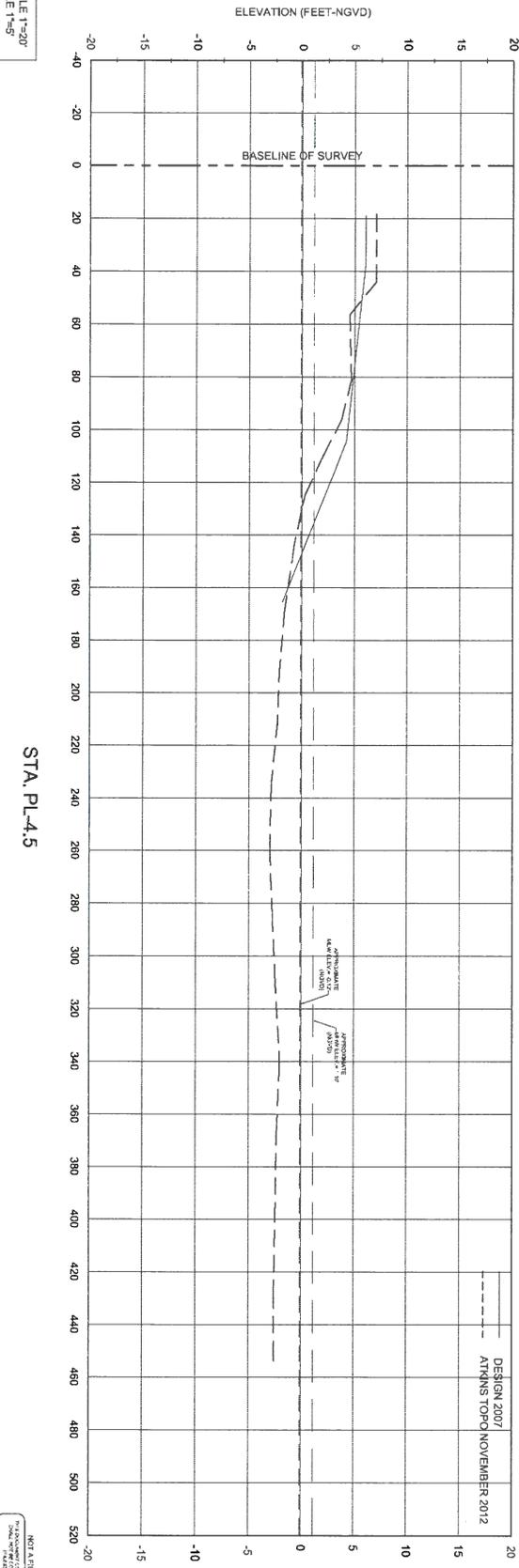
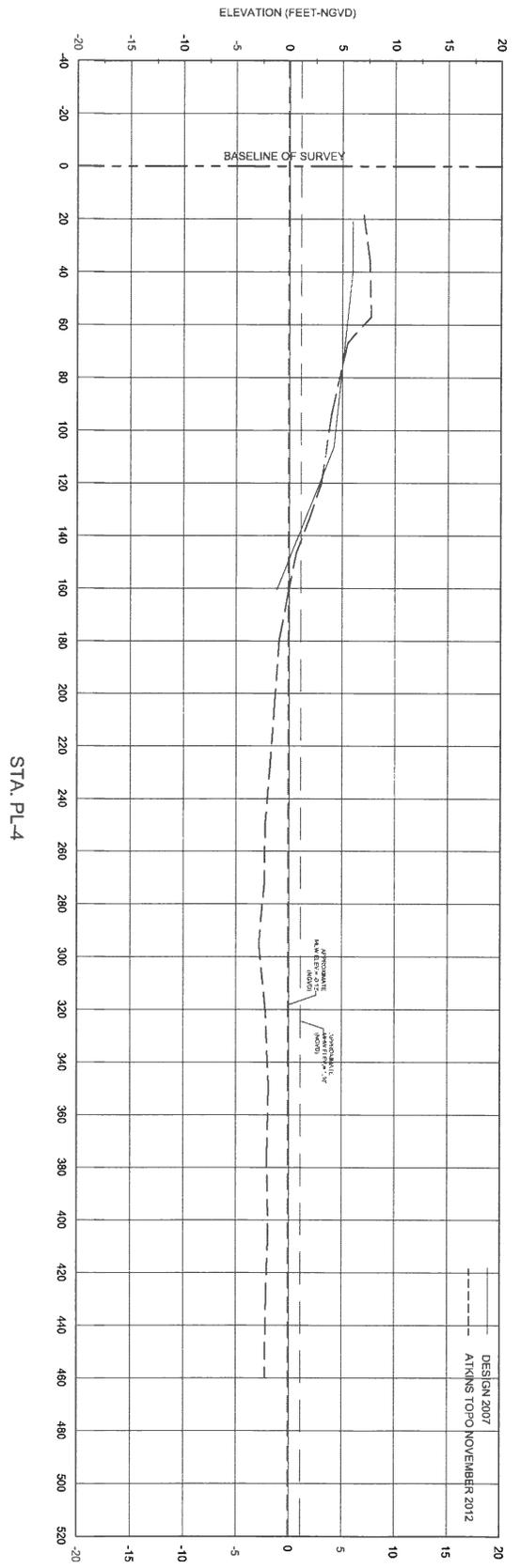
PROJECT  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

TASK  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

ORIGINAL: 6. \_\_\_\_\_  
REVISIONS: 7. \_\_\_\_\_  
1. \_\_\_\_\_ 8. \_\_\_\_\_  
2. \_\_\_\_\_ 9. \_\_\_\_\_  
3. \_\_\_\_\_ 10. \_\_\_\_\_  
4. \_\_\_\_\_ 11. \_\_\_\_\_  
5. \_\_\_\_\_ 12. \_\_\_\_\_

JOB NO. 08080303  
DRAWN: JED  
DESIGNED: JED  
CHECKED: JED  
QC: JED  
DATE: 11/15/12  
SHEET 7 OF 13

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(305) 592-2775

ATKINS NORTH AMERICA, INC.  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB94

CLIENT  
CITY OF KEY WEST  
FLORIDA

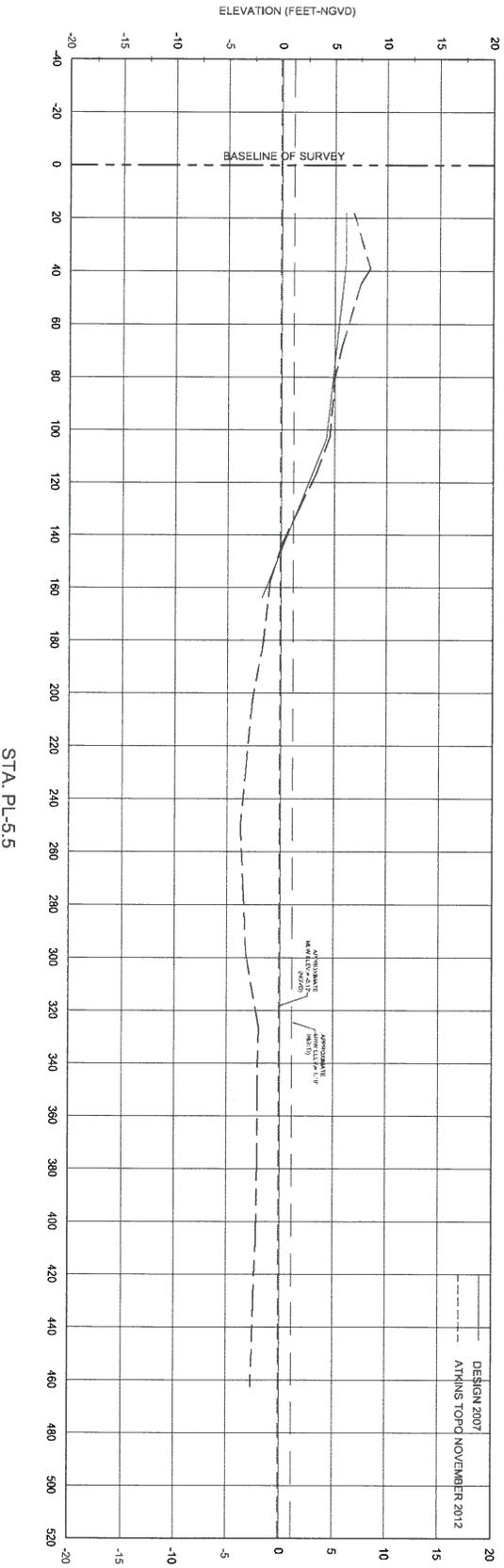
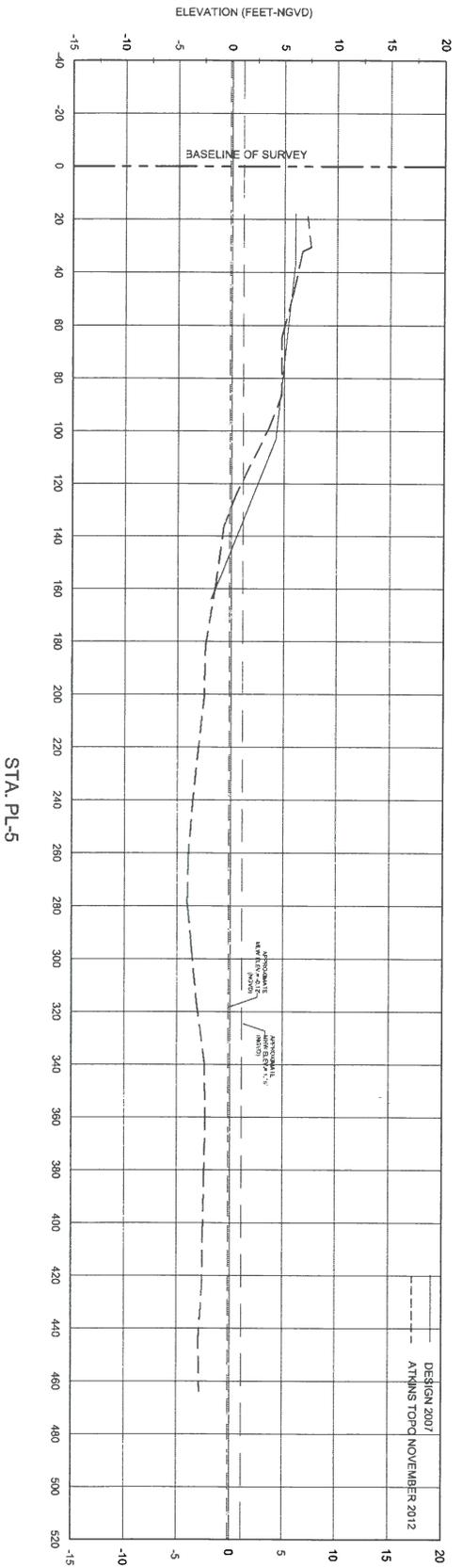
PROJECT  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

TASK  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

ORIGINAL	6.
REVISIONS:	7.
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2. SUBMITTAL (11/20/12)	9.
3. SUBMITTAL (11/20/12)	10.
4. SUBMITTAL (11/20/12)	11.
5. SUBMITTAL (11/20/12)	12.

JOB NO. 108862634  
DRAWN: SJK  
DESIGNED: SJK  
CHECKED: SJK  
DATE: 11/20/12  
SHEET: 8 OF 13

NOT A FIELD REVISION DRAWING  
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HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

ATKINS  
2001 N.W. 107th AVE  
MIRAGE, FL 33181  
(305) 869-2725

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

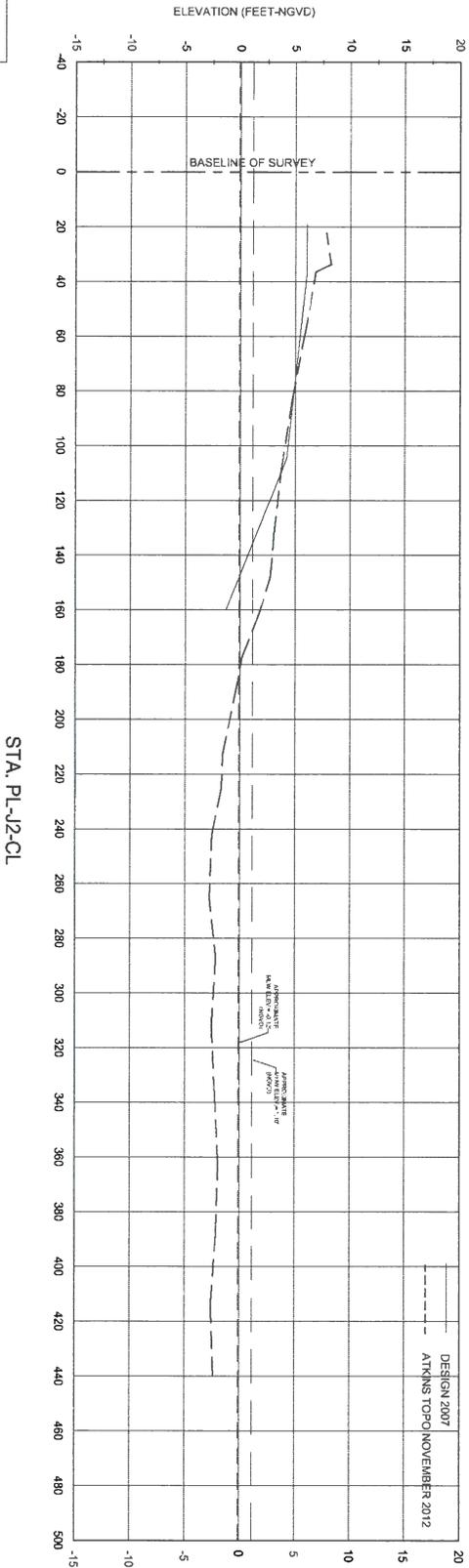
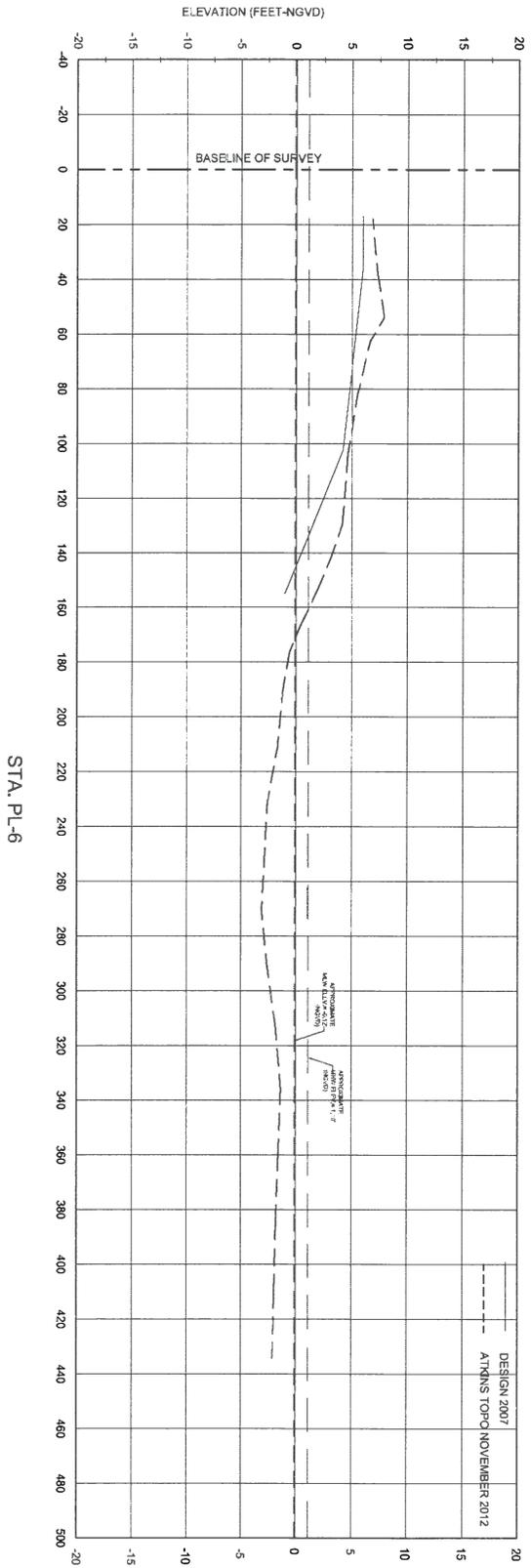
CITY OF KEY WEST  
FLORIDA

SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

ORIGINAL: _____	6	DESIGNED BY: _____
REVISIONS:	7	CHECKED BY: _____
1. _____	8	DATE: _____
2. _____	9	SCALE: _____
3. _____	10	SHEET: 9 OF 13
4. _____	11	
5. _____	12	

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 (305) 592-7275

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 FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB94

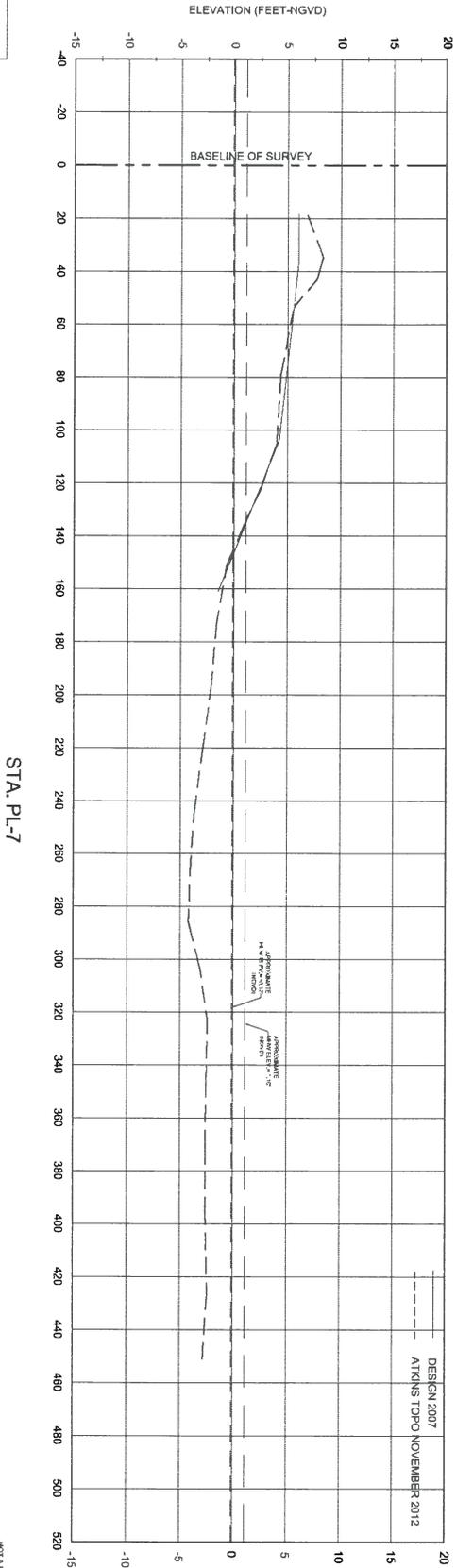
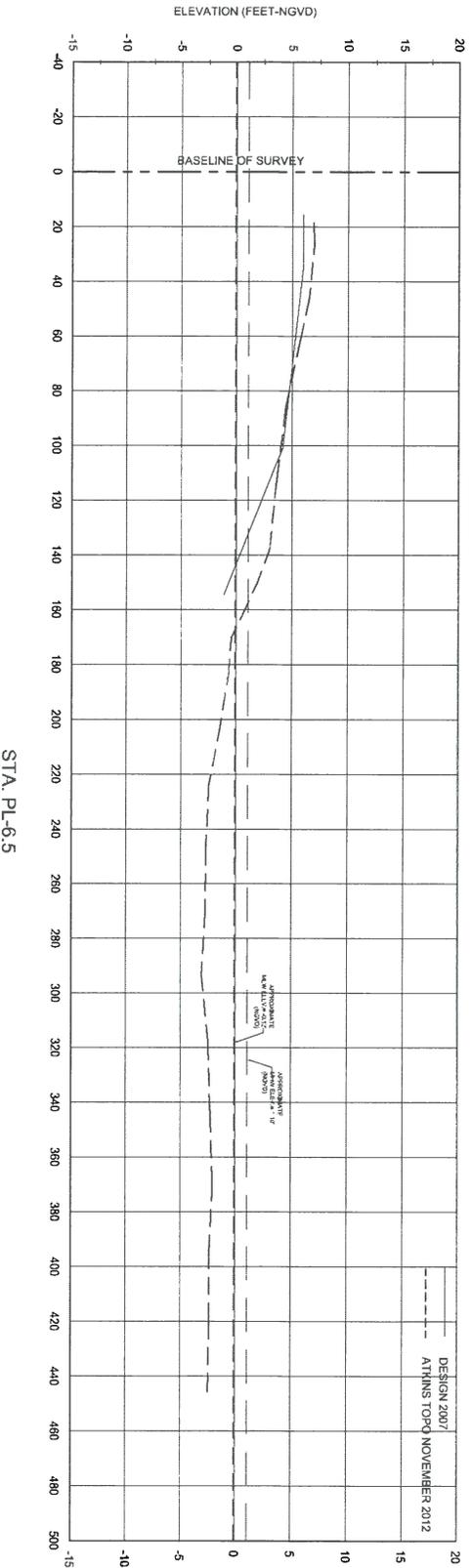
CLIENT: CITY OF KEY WEST, FLORIDA

PROJECT: SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA

TASK: NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE

JOB NO.: 10089818.0006  
 DRAWN: [Name]  
 CHECKED: [Name]  
 QC: [Name]  
 SHEET: 10 OF 13

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HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

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2001 NW 10TH AVE  
FT. LAUDERDALE, FL 33322-2676  
(754) 865-7775

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

CLIENT: CITY OF KEY WEST, FLORIDA

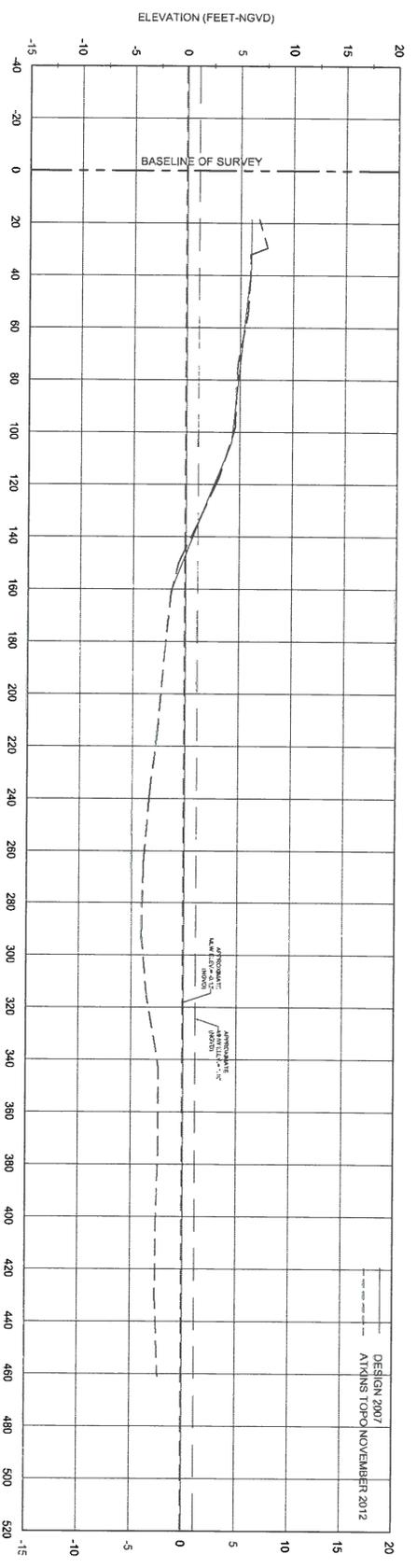
PROJECT: SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA

TASK: NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE

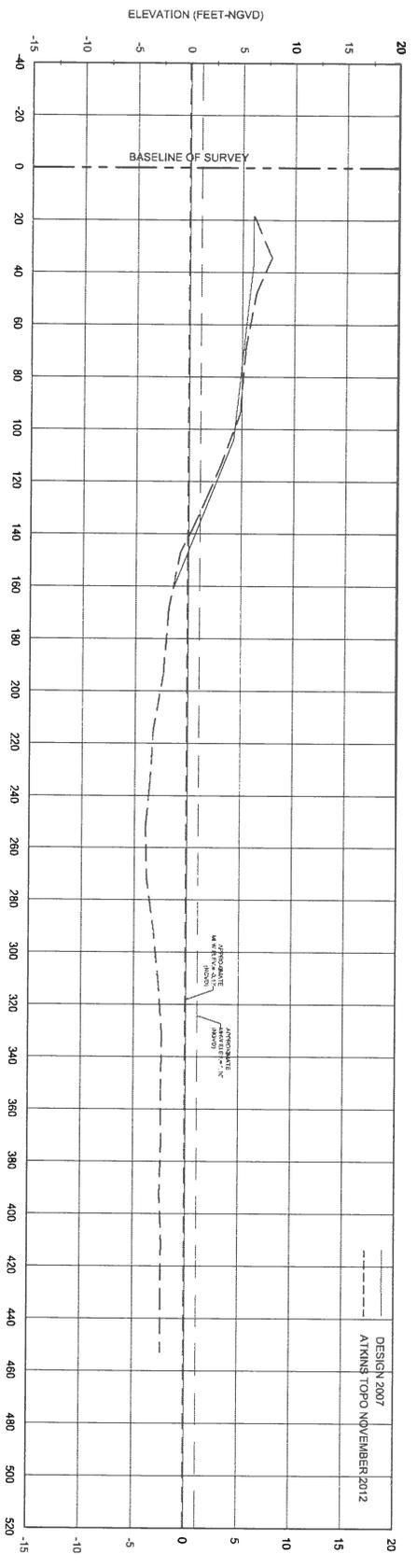
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11	11/15/12	...	...
12	11/15/12	...	...

NOT A FIELD BOUNDARY SURVEY

JOB NO. SSM08-12-01  
DRAWN: ZJC  
DESIGNED: ZJC  
CHECKED: ZJC  
IN CHARGE: ZJC  
DATE: 11/15/12  
SHEET: 11 OF 13



STA. PL-7.5



STA. PL-8

HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

**ATKINS** 2801 N.W. 107th Ave  
Miami, FL 33172-2807  
(305) 992-7775

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

CLIENT: CITY OF KEY WEST, FLORIDA

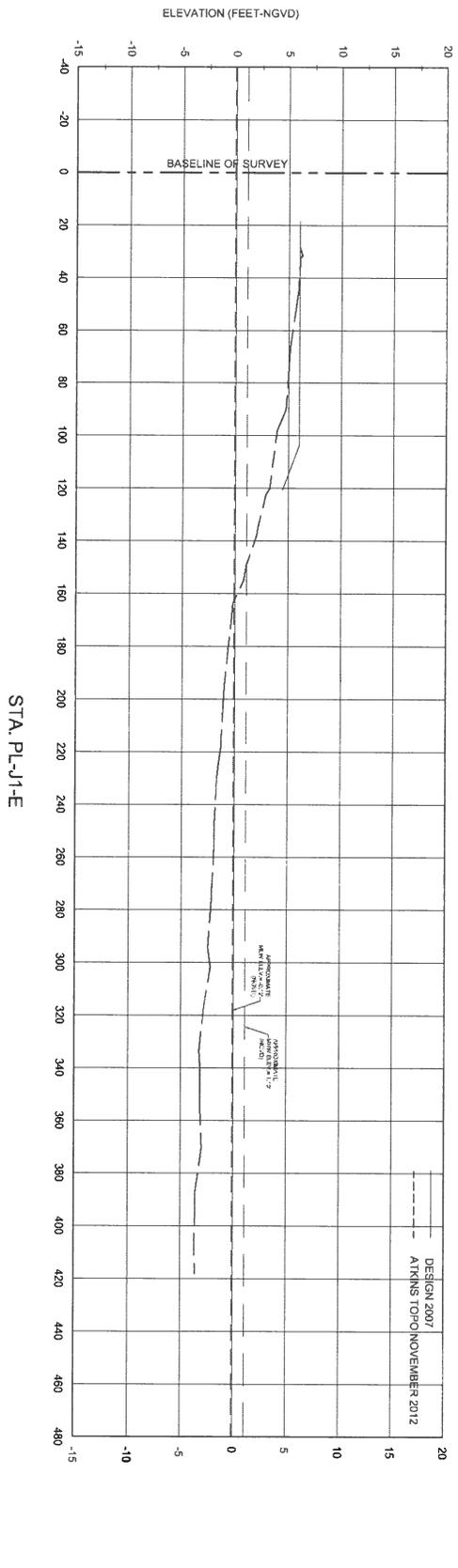
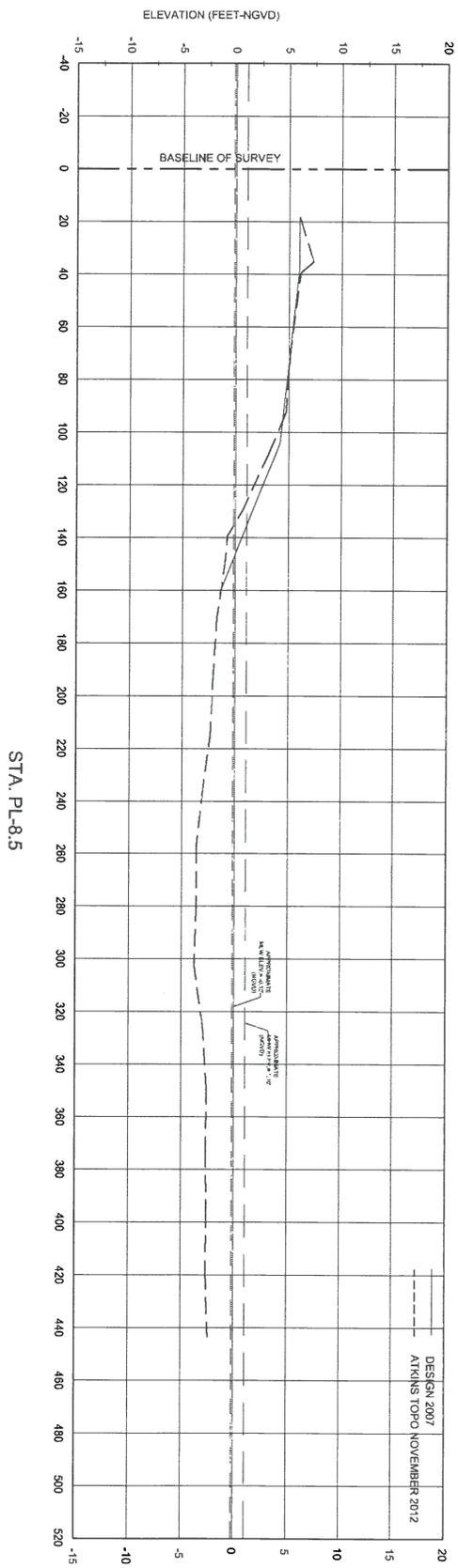
PROJECT: SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA

TASK: NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE

NOT A FIELD MONITORING SURVEY  
FOR THE PURPOSES OF THE PERMIT  
THESE DATA ARE FOR INFORMATION ONLY  
AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE

NO.	DATE	DESCRIPTION
1	11/15/12	ORIGINAL
2	11/15/12	REVISIONS
3	11/15/12	REVISIONS
4	11/15/12	REVISIONS
5	11/15/12	REVISIONS
6	11/15/12	REVISIONS
7	11/15/12	REVISIONS
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9	11/15/12	REVISIONS
10	11/15/12	REVISIONS
11	11/15/12	REVISIONS
12	11/15/12	REVISIONS
13	11/15/12	REVISIONS

JOB NO. 129031005  
DRAWN: [Name]  
CHECKED: [Name]  
DATE: 11/15/12  
SHEET: 12 OF 13



HORIZONTAL SCALE 1"=30'  
VERTICAL SCALE 1"=5'

**ATKINS**  
2001 N.W. 107th Ave  
Miami, FL 33157  
(305) 595-7230  
ATKINS NORTH AMERICA, INC.  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24

**CLIENT**  
CITY OF KEY WEST  
FLORIDA

**PROJECT**  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

**TASK**  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

ORIGINAL	REVISIONS:	DATE	BY	CHKD	APP'D
1	1	11/15/12	JL	JL	JL
2	2	11/15/12	JL	JL	JL
3	3	11/15/12	JL	JL	JL
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10	10	11/15/12	JL	JL	JL
11	11	11/15/12	JL	JL	JL
12	12	11/15/12	JL	JL	JL

**JOB NO.** 10830A.02.1  
**DRAWN** JL  
**DESIGNED** JL  
**CHECKED** JL  
**DATE** 11/15/12  
**SHEET** 13 OF 13

**See FDEP permit for  
Water Quality Certification  
(18 pages)**

**Attachment 4: SELF-CERTIFICATION STATEMENT OF COMPLIANCE**

**Permit Number: SAJ-1998-01677**

Permittee's Name & Address (please print or type): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Location of the Work: \_\_\_\_\_

\_\_\_\_\_

Date Work Started: \_\_\_\_\_ Date Work Completed: \_\_\_\_\_

**PROPERTY IS INACCESSIBLE WITHOUT PRIOR NOTIFICATION: YES \_\_\_\_\_ NO \_\_\_\_\_**

**TO SCHEDULE AN INSPECTION PLEASE CONTACT \_\_\_\_\_**  
**AT \_\_\_\_\_**

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Acreage or Square Feet of Impacts to Waters of the United States: \_\_\_\_\_

Describe Mitigation completed (if applicable): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

\_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

Attachment 3:

**AS-BUILT CERTIFICATION BY PROFESSIONAL ENGINEER**

Submit this form and one set of as-built engineering drawings to the U.S. Army Corps of Engineers, Enforcement Section, 9900 SW 107th Avenue, Suite 203, Miami, FL, 33176. If you have questions regarding this requirement, please contact the Enforcement Branch at 904-232-3131.

1. Department of the Army Permit Number: SAJ-1998-01677(SP-MLC)

2. Permittee Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

3. Project Site Identification (physical location/address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. As-Built Certification: I hereby certify that the authorized work, including any mitigation required by Special Conditions to the permit, has been accomplished in accordance with the Department of the Army permit with any deviations noted below. This determination is based upon on-site observation, scheduled, and conducted by me or by a project representative under my direct supervision. I have enclosed one set of as-built engineering drawings.

\_\_\_\_\_  
Signature of Engineer

\_\_\_\_\_  
Name (*Please type*)

\_\_\_\_\_  
(FL, PR, or VI) Reg. Number

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP

(Affix Seal)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**

**Florida Keys National Marine Sanctuary**

33 East Quay Road  
Key West, FL 33040

August 10, 2017

Ms. Megan Clouser  
Department of the Army Jacksonville District Corps of Engineers  
Miami Regulatory Office  
9900 Southwest 107<sup>th</sup> Avenue, Suite 203  
Miami, FL 33176

Dear Ms. Clouser:

NOAA Florida Keys National Marine Sanctuary (FKNMS or sanctuary) has reviewed Department of the Army Corps of Engineers (DA Corps) application no. SAJ-1998-01677 (SP-MLC), dated July 25, 2014. The applicant, City of Key West, is requesting a permit to conduct beach renourishment activities on an as-needed basis over a ten year time frame along 3000 feet of Smathers Beach in Key West, Monroe County, FL. Three Florida-based upland sand sources will be used – Ortona Sand Mine and Witherspoon Sand Plant in Moorehaven, FL, and Palmdale Sand Mine in Palmdale, FL. Fill material will be transported to the beach via the uplands. The project as proposed is prohibited by FKNMS regulations at 15 CFR §§ 922.163(a)(3) and (4).

NOAA previously provided notification to DA Corps on July 30, 2014 that application no. SAJ-1998-01677 (SP-MLC) fell within authorization #FKNMS-2007-125, which was issued on October 19, 2010. However, unanticipated seagrass losses at the eastern portion of the beach after a renourishment event in July 2013 and lack of a comprehensive monitoring program that could accurately detect cause and effect of such losses requires NOAA to re-examine the activity. In addition, since NOAA's previous authorization, five additional species of stony coral have been listed as threatened under the Endangered Species Act.

At this time, pursuant to 15 CFR § 922.49, NOAA does not object to the issuance of a DA Corps permit for the project as proposed if the attached measures are enacted by the applicant, the City of Key West, or its agent/contractor. These terms and conditions have been deemed reasonable to protect sanctuary resources and qualities per NOAA authority at 15 CFR § 922.49.

This determination is only applicable to DA Corps application no. SAJ-1998-01677 (SP-MLC). If any changes are made to the project description in the application, DA Corps shall notify NOAA and this letter of authorization will be rescinded. Upon such notification, NOAA shall re-review the project and special conditions and provide a supplementary determination. Further information on sanctuary permit review and authorization is set forth at 15 CFR § 922.49.



This project has been assigned authorization #FKNMS-2017-071. Please contact FKNMS Permit Coordinator Joanne Delaney at [Joanne.Delaney@noaa.gov](mailto:Joanne.Delaney@noaa.gov) if you have questions about NOAA's determination on this project or the attached conditions. Thank you for your continued cooperation with NOAA.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Sarah Fangman", with a long horizontal flourish extending to the right.

Sarah Fangman  
Superintendent

cc: Jocelyn Karazsia, Pace Wilbur, NOAA Fisheries Habitat Conservation Division  
Janet Muccino, City of Key West  
W. Mark Henry, ATKINS





**UNITED STATES DEPARTMENT OF COMMERCE**  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE

**Florida Keys National Marine Sanctuary**  
33 East Quay Road  
Key West, FL 33040

**NOAA Florida Keys National Marine Sanctuary  
Required Conditions for City of Key West Smathers Beach Renourishment  
Authorization #FKNMS-2017-071**

1. No renourishment activities are authorized within the sanctuary until the City of Key West or its agent applies for and obtains a NOAA FKNMS permit.
  - a. A signed Office of National Marine Sanctuaries permit application shall be submitted that provides the design template, methods of sand placement, comprehensive biological monitoring plan, and schedule of all monitoring events.
  - b. The comprehensive biological monitoring plan shall include all components of the *Florida DEP Standard Operating Procedures for Nearshore Hardbottom Monitoring of Beach Renourishment Projects* (February 2016) but additionally include seagrass monitoring, reference transects, and sediment analysis.
  - c. Application materials shall be submitted a minimum of 180 days prior to sand deposition event(s) to allow adequate time for NOAA review and documentation of compliance with all environmental law and regulation. Additional processing time may be necessary depending on the level of analysis required (e.g., NEPA).



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# **FDEP PERMIT**



# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING  
3900 COMMONWEALTH BOULEVARD  
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT  
GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

## CONSOLIDATED JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

### PERMITTEE:

City of Key West  
c/o Bogdan Vitas, Jr.  
3140 Flagler Avenue  
Key West, Florida 33040

### AGENT:

Atkins North America, Inc.  
c/o Mark Henry  
2001 Northwest 107 Avenue  
Miami, Florida 33172

### PERMIT INFORMATION:

Permit Number: 0129031-005-JC

Project Name: Smathers Beach Nourishment

County: Monroe

Issuance Date: July 12, 2013

Expiration Date: July 12, 2028

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### REGULATORY AUTHORIZATION:

This permit is issued under the authority of Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

### PROJECT DESCRIPTION:

The project consists of maintaining approximately 3,000 feet of Smathers Beach to a previously authorized design by periodic nourishment with beach compatible sand from an upland source.

### PROJECT LOCATION:

The nourishment site is located between 2,500 feet West and 500 feet East of DEP Virtual Monument V-412, in Monroe County, Section 5, Township 68 South, Range 25 East, Straits of Florida, Class III Waters, Florida Keys National Marine Sanctuary and Key West National Wildlife Refuge, Outstanding Florida Waters.

### PROPRIETARY AUTHORIZATION:

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement

**Joint Coastal Permit  
Smathers Beach Nourishment  
Permit No. 0129031-005-JC  
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Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253 and Chapter 258, F.S., Chapter 18-20, F.A.C., Chapter 18-21, F.A.C., and the policies of the Board of Trustees.

As staff to the Board of Trustees, the Department has reviewed the project described above, and has determined that the nourishment activity qualifies for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted, pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands.

**COASTAL ZONE MANAGEMENT:**

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

**WATER QUALITY CERTIFICATION:**

This permit constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

**OTHER PERMITS:**

Authorization from the Department does not relieve you from the responsibility of obtaining other permits (Federal, State, or local) that may be required for the project. When the Department received your permit application, a copy was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps will issue their authorization directly to you, or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date that your application was received by the Department, contact the nearest Corps regulatory office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.

**AGENCY ACTION:**

The above named Permittee is hereby authorized to construct the work outlined in the activity description and activity location of this permit and shown on the approved permit drawings, plans and other documents attached hereto. This agency action is based on the information submitted to the Department as part of the permit application, and adherence with the final details of that proposal shall be a requirement of the permit. **This permit and authorization to use sovereign submerged lands are subject to the General Conditions and Specific Conditions, which are a binding part of this permit and authorization.** Both the Permittee and their Contractor are responsible for reading and understanding this permit

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Smathers Beach Nourishment  
Permit No. 0129031-005-JC  
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(including the permit conditions and the approved permit drawings) prior to commencing the authorized activities, and for ensuring that the work is conducted in conformance with all the terms, conditions and drawings.

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**GENERAL CONDITIONS:**

1. All activities authorized by this permit shall be implemented as set forth in the plans and specifications approved as a part of this permit, and all conditions and requirements of this permit. The Permittee shall notify the Department in writing of any anticipated deviation from the permit prior to implementation so that the Department can determine whether a modification of the permit is required pursuant to section 62B-49.008, Florida Administrative Code.
2. If, for any reason, the Permittee does not comply with any condition or limitation specified in this permit, the Permittee shall immediately provide the Bureau of Beaches and Coastal Systems and the appropriate District office of the Department with a written report containing the following information: a description of and cause of noncompliance; and the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.
3. This permit does not eliminate the necessity to obtain any other applicable licenses or permits that may be required by federal, state, local, special district laws and regulations. This permit is not a waiver or approval of any other Department permit or authorization that may be required for other aspects of the total project that are not addressed in this permit.
4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of sovereignty land of Florida seaward of the mean high-water line, or, if established, the erosion control line, unless herein provided and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State. The Permittee is responsible for obtaining any necessary authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to commencing activity on sovereign lands or other state-owned lands.
5. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.
6. This permit does not convey to the Permittee or create in the Permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on

**Joint Coastal Permit  
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property which is not owned or controlled by the Permittee. The issuance of this permit does not convey any vested rights or any exclusive privileges.

7. This permit or a copy thereof, complete with all conditions, attachments, plans and specifications, modifications, and time extensions shall be kept at the work site of the permitted activity. The Permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
8. The Permittee, by accepting this permit, specifically agrees to allow authorized Department personnel with proper identification and at reasonable times, access to the premises where the permitted activity is located or conducted for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department and to have access to and copy any records that must be kept under conditions of the permit; to inspect the facility, equipment, practices, or operations regulated or required under this permit; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules. Reasonable time may depend on the nature of the concern being investigated.
9. At least forty-eight (48) hours prior to commencement of activity authorized by this permit, the Permittee shall submit to the Bureau of Beaches and Coastal Systems (JCP Compliance Officer) and the appropriate District office of the Department a written notice of commencement of construction indicating the actual start date and the expected completion date and an affirmative statement that the Permittee and the contractor, if one is to be used, have read the general and specific conditions of the permit and understand them.
10. If historic or archaeological artifacts, such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time on the project site, the Permittee shall immediately stop all activities in the immediate area that disturb the soil in the immediate locale and notify the State Historic Preservation Officer and the Bureau of Beaches and Coastal Systems (JCP Compliance Officer). In the event that unmarked human remains are encountered during permitted activities, all work shall stop in the immediate area and the proper authorities notified in accordance with Section 872.02, F.S.
11. Within 30 days after completion of construction or completion of a subsequent maintenance event authorized by this permit, the Permittee shall submit to the Bureau of Beaches and Coastal Systems (JCP Compliance Officer) and the appropriate District office of the Department a written statement of completion and certification by a registered professional engineer. This certification shall state that all locations and elevations specified by the permit have been verified; the activities authorized by the permit have been performed in compliance with the plans and specifications approved as a part of the permit, and all conditions of the permit; or shall describe any deviations

from the plans and specifications, and all conditions of the permit. When the completed activity differs substantially from the permitted plans, any substantial deviations shall be noted and explained on two paper copies and one electronic copy of as-built drawings submitted to the Bureau of Beaches and Coastal Systems (JCP Compliance Officer).

**SPECIFIC CONDITIONS:**

1. All reports or notices relating to this permit shall be sent to the Department's JCP Compliance Officer (e-mail address: JCPCompliance@dep.state.fl.us), unless otherwise specified by a specific condition.
2. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storage, stockpiling or access of equipment on, in, over or through seagrass (or other aquatic vegetation) beds or wetlands is prohibited unless within a work area or ingress/egress corridor specifically approved by this permit. Anchoring or spudding of vessels and barges within beds of aquatic vegetation or over hardbottom areas is also prohibited.
3. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
4. No work shall be conducted under this permit until the Permittee has received a written Notice to Proceed from the Department for each nourishment event. At least 45 days prior to the requested date of issuance of the Notice to Proceed, the Permittee shall submit a written request for a Notice to Proceed and the following items for review and approval by the Department:
  - a. The Permittee shall submit an electronic copy of detailed final construction plans and specifications for all authorized activities, certified by an engineer duly registered pursuant to Chapter 471, F.S., or other appropriate individual. If electronic certification is not available, a certified hard copy shall also be submitted. The plans and specifications must be consistent with the activity description of this permit and the approved permit drawings. The Permittee shall point out any deviations from the activity description or the approved permit drawings, and any significant changes would require a permit modification. The plans shall include details of construction, including general construction procedures, equipment to be used and the borrow source to be used.
5. **Pre-Construction Conference.** The Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with Permittee's contractors, the engineer of record and the JCP Compliance Officer (or

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designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

JCP Compliance Officer  
e-mail: JCPCompliance@dep.state.fl.us

DEP South District Office  
Submerged Lands & Environmental Resources  
2796 Overseas Highway, Suite 221  
Marathon, Florida 33050  
phone: 305-289-7070  
fax: 850-412-0590

Imperiled Species Management Section  
Florida Fish & Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
phone: (850) 922-4330  
fax: (850) 921-4369 or email: marineturtle@myfwc.com

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants (listed above) of the **agreed-upon** date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

6. Sediment quality shall be assessed as outlined in the approved Sediment quality assurance/quality control (QA/QC) plan (attached). Any occurrences of placement of material not in compliance with the Plan shall be handled according to the protocols set forth in the Sediment QA/QC plan. The sediment testing result shall be submitted to the JCP Compliance Officer within 90 days following the completion of beach construction.
  - a. The Sediment QC/QA plan includes the following:
    - i. If, during construction, the Permittee or Engineer determines that the beach fill material does not comply with the sediment compliance specifications, the Permittee shall take measures to avoid further placement of noncompliant fill, and the sediment inspection results shall be reported to the Department.
    - ii. The Permittee shall submit post-construction sediment testing results and an analysis report as outlined in the Sediment QC/QA plan to the Department within 90 days following beach construction. The sediment testing results

shall be certified by a professional engineer (P.E.) or professional geologist (P.G.) from the testing laboratory. A summary table of the sediment samples and test results for the sediment compliance parameters, as outlined in Table 1 of the Sediment QC/QA plan, shall accompany the complete set of laboratory testing results. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the geotechnical investigation shall be included in the sediment testing results report.

- iii. If non-compliant material is placed on the beach, the Permittee shall submit a post-remediation report containing the site map, sediment analysis, and volume of noncompliant fill material removed and replaced to the Department within 7 days following completion of remediation activities.
7. ***Beach Maintenance.*** All derelict concrete, metal, and coastal armoring material and other debris shall be removed from the beach prior to any material placement to the maximum extent practicable. If debris removal activities will take place during shorebird breeding or sea turtle nesting seasons, the work shall be conducted during daylight hours only and shall not commence until completion of daily seabird, shorebird or sea turtle surveys each day. All excavations and temporary alterations of the beach topography shall be filled or leveled to the natural beach profile prior to 9 p.m. each day unless otherwise authorized.
8. ***Wildlife Pre-Construction Meeting.*** A meeting between representatives of the contractor, the US Fish and Wildlife Service (FWS), the Florida Fish & Wildlife Conservation Commission (FWC), the permitted sea turtle surveyor and Bird Monitors (as appropriate) shall be held prior to commencement of work on each nourishment event. At least 10-business days advance notice must be provided prior to conducting this meeting. The meeting will provide an opportunity for explanation and/or clarification of the protection measures as well as additional guidelines when construction occurs during nesting season, such as staging equipment and reporting within the work area as well as follow up meetings during construction.
9. ***Nesting Seabird and Shorebird Protection Conditions:*** Nesting seabird and shorebird (i.e. shorebird) surveys should be conducted by trained, dedicated individuals (Bird Monitor) with proven shorebird identification skills and avian survey experience. A list of candidate Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience shall be provided to the FWC. This information will be submitted to the FWC regional biologist (contact information attached) prior to any construction or hiring for shorebird surveys for revision and consultation. Bird Monitors shall use the following survey protocols:
  - a. Bird Monitors shall review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined

on the FWC's Florida Shorebird Database (FSD) website ([www.FLShorebirdDatabase.org](http://www.FLShorebirdDatabase.org)). An outline of data to be collected, including downloadable field data sheets, is available on the website.

- b. Breeding season varies by species. Most species have completed the breeding cycle by September 1, but flightless young may be present through September. The following dates are based on the best available information regarding ranges and habitat use by species around the state:

All other Atlantic Coast Counties (including the Keys): March 15 – September 1

Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later. Surveys shall be conducted through August 31<sup>st</sup> or until all breeding activity has concluded, whichever is later.

- c. Breeding season surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded. One or more shorebird survey routes shall be established in the FSD website to cover these areas.
- d. During the pre-construction and construction phases of the project, surveys for detecting breeding activity and the presence of flightless chicks shall be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young.
- e. Surveys shall be conducted by walking the length of the project area and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird/seabird chicks, or shorebird/seabird juveniles as outlined in the FSD *Breeding Bird Protocol for Shorebirds and Seabirds*. Use of binoculars is required.
  - i. If an ATV or other vehicle is needed to cover large project areas, operators will adhere to the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you-protect/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed <6 mph and run at or below the high-tide line. The Bird Monitor will stop at no greater than 200 meter intervals to visually inspect for breeding activity.
- f. Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor shall notify the FWC Regional Species Conservation Biologist (contact

information attached) within 24 hours. All breeding activity shall be reported to the FSD website within one week of data collection.

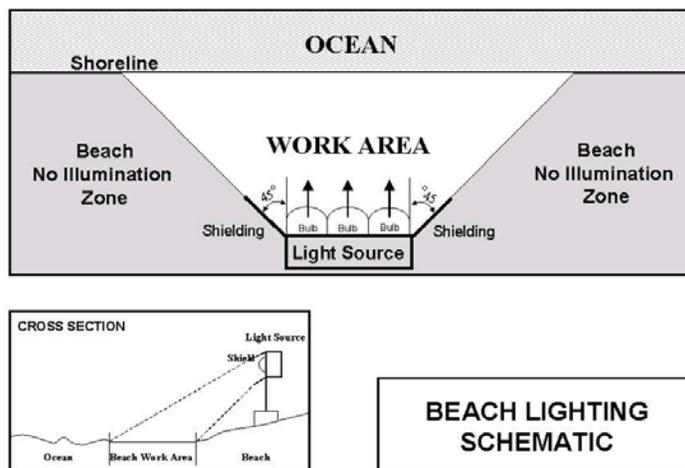
10. ***Seabird and Shorebird Buffer Zones and Travel Corridors.*** Within the project area, the Permittee shall establish a disturbance-free buffer zone around any location where shorebirds have been engaged in breeding behavior, including territory defense. A 300-foot-wide buffer is considered adequate based on published studies. However, a smaller, site-specific buffer may be implemented upon approval by the FWC Regional Species Conservation Biologist (**contact information attached**) as needed. All sources of human disturbance (including pedestrians, pets and vehicles) shall be prohibited in the buffer zone.
- a. The Bird Monitor shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds do appear to be agitated or disturbed by these activities, then the width of the buffer zone shall be increased immediately to a sufficient size to protect breeding birds.
  - b. Reasonable and traditional pedestrian access should not be blocked where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when breeding was initiated within 300 feet of an established beach access pathway. The permittee shall work with the FWC Regional Species Biologist to determine if pedestrian access can be accommodated without compromising nesting success.
  - c. Designated buffer zones shall be marked with posts, twine, and signs around the perimeter. The signs shall state "Do Not Enter, Important Nesting Area" or similar language and shall include the name and a phone number of the entity responsible for posting. Posts should not exceed 3 feet in height once installed. Symbolic fencing (twine, string, or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathways are approved by the FWC Regional Species Conservation Biologist within the 300-foot buffer zone, these should be clearly marked. The posting shall be maintained in good repair until breeding is completed or terminated. Although solitary nesters may leave the buffer zone with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.
  - d. No construction activities, pedestrians, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.

- e. Travel corridors shall be designated and marked outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning shall be prohibited within the designated travel corridors adjacent to the breeding site. When flightless chicks are present within or adjacent to travel corridors, movement of vehicles shall be accompanied by the Bird Monitor who will ensure no chicks are in the path of the moving vehicle and no tracks capable of trapping flightless chicks result.
  - f. To the maximum extent possible within the travel corridor, all ruts shall be filled or leveled to the natural beach profile prior to completion of daily construction during shorebird nesting season.
  - g. To discourage nesting within the travel corridor, it is recommended that the Permittee should maintain some activity within these corridors on a daily basis, without disturbing any nesting shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction.
11. **Notification.** If shorebird breeding occurs within the project area, a bulletin board shall be placed and maintained in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that “NESTING BIRDS ARE PROTECTED BY LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS”.
12. **Marine Turtle Nest Surveys and Relocation.** For sand placement projects that occur during the period from May 1 through October 31, daily early morning (before 9 a.m.) surveys shall be conducted and eggs shall be relocated per the requirements below (12a to 12d) until completion of the project. Sea turtle nesting surveys shall be conducted as indicated below.
- a. Marine turtle nesting surveys shall be initiated 65 days prior to sand placement activities or by April 15, whichever is later, and shall comply with the following requirements.
  - b. Nesting surveys and nest marking shall only be conducted by persons with prior experience and training in these activities and who are authorized to conduct such activities through a valid permit issued by FWC, pursuant to FAC 68E-1. Please contact FWC’s Marine Turtle Management Program in Tequesta at [MTP@myfwc.com](mailto:MTP@myfwc.com) for information on the permit holder in the project area. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (this is for all time zones). The contractor shall not initiate work until daily notice has been received from the marine turtle permit holder that the morning survey has been

completed. Surveys shall be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary marine turtle protection measures.

- c. Only those nests in the area where sand placement will occur shall be relocated. Nests relocation shall not occur upon completion of sand placement. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities shall cease when sand placement activities no longer threaten nests.
  - d. Nests deposited within areas where construction activities have ceased or will not occur for 65 days, or nests laid in the nourished berm prior to tilling, shall be marked and left in place unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker at the nest site and/or a secondary marker at a point as far landward as possible to assure that future location of the nest shall be possible should the on-beach marker be lost. No activity shall occur within this area nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.
13. ***Marine Turtle or Nest Encounters.*** Upon locating a dead or injured sea turtle adult, hatchling or egg that may have been harmed or destroyed as a direct or indirect result of the project, the Permittee shall be responsible for notifying FWC Wildlife Alert at 1-888-404-FWCC (3922). Care shall be taken in handling injured sea turtles or eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials in the best possible state for later analysis. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.
  14. ***Project Lighting.*** Direct lighting of the beach and nearshore waters shall be limited to the immediate construction area during the sea turtle nesting season and shall comply with safety requirements. Lighting on offshore or onshore equipment shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the water's surface and nesting beach while meeting all Coast Guard, EM 385-1-1, and Occupational Safety and Health Administration (OSHA) requirements. Light intensity of lighting equipment shall be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields

shall be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area (**Figure below**).



15. **Fill Restrictions.** During the sea turtle nesting season, the contractor shall not extend the beach fill more than 500 feet along the shoreline between dusk and the following day until the daily nesting survey has been completed and the beach cleared for fill advancement. An exception to this may occur if there is permitted sea turtle surveyor present on-site to ensure no nesting and hatching sea turtles are present within the extended work area. If the 500 feet is not feasible for the project, an agreed upon distance shall be decided on during the preconstruction meeting. Once the beach has been cleared, and the necessary nest relocations have been completed, the contractor shall be allowed to proceed with the placement of fill during daylight hours until dusk at which time the 500-foot length limitation shall apply.
16. **Compaction Sampling.** Sand compaction shall be monitored in the area of sand placement immediately after completion of the project and prior to April 15<sup>th</sup> for three (3) subsequent years, and shall be monitored in accordance with a protocol agreed to by the FWS, FWC, and the Permittee. The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Out-year compaction monitoring and remediation are not required if placed material no longer remains on the beach.
  - a. At a minimum, the protocol provided under a. and b. below shall be followed. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled immediately prior to the following date listed above. If values exceeding 500 psi are distributed throughout the project area, but in no case do those values exist at two adjacent stations at the same depth, then the Permittee shall consult with the FWC or FWS to determine if

tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling shall not be required.

- b. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high water line (normal wrack line).
  - c. At each station the cone penetrometer shall be pushed to depths of 6, 12 and 18 inches three times at each depth (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Compaction reports shall be submitted to the FWC, as required in Specific Condition 17, and shall include all 18 values for each transect line, and the final 6 averaged compaction values.
  - d. No compaction sampling shall occur within 300 feet of any shorebird nest.
  - e. Any vehicles operated on the beach in association with compaction surveys shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/> ).
17. ***Tilling Requirements.*** If tilling is required as specified above, the area shall be tilled to a depth of 36 inches. All tilling activity shall be completed prior to the marine turtle nesting season. If tilling occurs during shorebird nesting season (See 9b above), shorebird surveys prior to tilling shall be required per the Shorebird Conditions included within this document. The Permittee shall ensure that the contractors avoid tilling, scarp removal, or dune vegetation planting in areas where nesting birds are present. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling. If the project is completed during the marine turtle nesting season, tilling shall not be performed in areas where nests have been left in place or relocated. If compaction measurements are taken, a report on the results of the compaction monitoring shall be submitted electronically to FWC at [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com) prior to any tilling actions being taken.
- a. No tilling shall occur within 300 feet of any shorebird nest.

- b. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.
  - c. A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling.
  - d. Tilling shall occur landward of the wrack line, and avoid all vegetated areas of 3 square feet or greater, with a 3-foot buffer around the vegetated areas. The slope between the mean high water line and the mean low water line must be maintained in such a manner as to approximate natural slopes.
  - e. Any vehicles operated on the beach in association with tilling shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>).
18. ***Escarpment Surveys.*** Visual surveys for escarpments along the project area shall be made immediately after completion of the sand placement, weekly during sea turtle nesting season, and during March 15 to April 15 for three (3) subsequent years if sand from the project area still remains on the beach.

Escarpments that interfere with sea turtle nesting, or that exceed 18 inches in height for a distance of at least 100 feet, shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by April 15. Any escarpment removal shall be reported by location. If the project is completed during the sea turtle nesting and hatching season, escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. FWC shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the FWS or FWC will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted electronically to [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com) along with the annual summary as described below. If escarpment removal occurs during shorebird breeding season (March 15 – September 1), shorebirds surveys shall be required per the *Shorebird Conditions* included within this document prior to removal. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach).

- a. No heavy equipment shall operate within 300 feet of any shorebird nest.

- b. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.
- c. Any vehicles operated on the beach in association with escarpment surveys or removal shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>).

**Post-construction Shorebird Protection Conditions:**

- 19. If beach cleaning will occur on the nourished beach, a minimum of 30% of the biotic material within the wrack line shall be left at the strand line on the beach after cleaning. The biotic material shall be left in a natural configuration to ensure that the nourished beach re-establishes its function as foraging habitat for shorebirds. This shall occur for as long as the placed sand remains on the beach.

**Post-construction Monitoring and Reporting Marine Turtle Protection Conditions:**

- 20. Reports on all marine turtle nesting activity shall be provided to the FWC for the initial marine turtle nesting (May 1 through September 15) and hatching (through October 31) season and for up to three additional nesting seasons as follows:
  - a. For the initial nesting season and the following year, the number and type of emergences (nests or false crawls) shall be reported per species in accordance with the table below. An additional year of nesting surveys may be required if nesting success for any species on the nourished beach is less than 40%.
  - b. For the initial nesting season, reproductive success shall be reported per species in accordance with the table below. Reproductive success shall be reported for all sea turtle nests if possible. Otherwise a statistically significant number of nests for each species shall be reported.
  - c. In the event that the reproductive success documented by species meets or exceeds required criteria (outlined in table below) for each species, monitoring for reproductive success shall be recommended, but not required for the second year post-construction.
  - d. Monitoring of nesting activity in the seasons following construction shall include daily surveys and any additional measures authorized by the FWC. Summaries shall include all crawl activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place

**Joint Coastal Permit  
Smathers Beach Nourishment  
Permit No. 0129031-005-JC  
Page 16 of 18**

(if any) by species, project name and applicable project permit numbers and dates of construction.

- e. Data shall be reported for the nourished areas in accordance with the table below and shall include number of nests lost to erosion or washed out. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets) to the FWC Imperiled Species Management section at [MTP@myfwc.com](mailto:MTP@myfwc.com). All summaries should be submitted by January 15 of the following year. The FWC Excel spreadsheet is available upon request from [MTP@myfwc.com](mailto:MTP@myfwc.com).

Table. Marine Turtle Monitoring:

Metric	Duration	Variable	Criterion
Nesting Success	Year of construction, one year to two or three years post construction if placed sand remains on beach and variable does not meet criterion based on previous year	Number of nests and non-nesting emergences by day by species	40% or greater
Hatching Success	Year of construction and one to three years post construction if placed sand remains on beach and variable does not meet criterion based on previous year	Number of hatchlings by species to completely escape egg	Average of 60% or greater (data must include washed out nests)
Emergence Success	Year of construction and one to three years post construction if placed sand remains on beach and variable does not meet success criterion based on previous year	Number of hatchlings by species to emerge from nest onto beach	Average must not be significantly different than the average hatching success
Disorientation	Year of construction and one to three years post construction if placed sand remains on beach	Number of nests and individuals that misorient or disorient	
Lighting Surveys	Two surveys the year following construction , one survey between May 1 and May 15 and second survey between July 15 and August 1	Number, location and photographs of lights visible from nourished berm, corrective actions and notifications made	100% reduction in lights visible from nourished berm within one to two month period
Compaction	Not required if the beach is tilled prior to nesting season each year placed sand remains on beach	Shear resistance	Less than 500 psi
Escarpment Surveys	Weekly during nesting season for up to three years each year placed sand remains on the beach	Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks	Successful remediation of all persistent scarps as needed

- 21. Two lighting surveys shall be conducted of all artificial lighting visible from the nourished berm. The first survey shall be conducted between May 1 and May 15 the first nesting season following construction or immediately after placement if construction is not completed until after May 15, and a second survey shall be conducted between July 15 and August 1. The survey shall be conducted by the Permittee and should be

conducted to include a landward view from the seaward most extent of the new beach profile. The survey should follow standard techniques for such a survey and include number and type of visible lights, location of lights and photo documentation. For each light source visible, the Permittee shall document that the property owner(s) have been notified of the problem light, and provided with recommendations for correcting the light. Recommendations shall be in accordance with the Florida Model Lighting Ordinance for Marine Turtle Protection (Chapter 62B-55, F.A.C.) and local lighting restrictions. In addition to local code enforcement, actions shall be taken by the Permittee to ensure that no lights or light sources are visible from the newly elevated beach within their respective areas. A report summarizing all lights visible shall be submitted to FWC Imperiled Species Management Section at [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com) by the 1st of the month following survey. A summary report documenting what corrective actions have been taken and all compliance and enforcement actions shall also be submitted by December 15 of that year. After the annual report is completed, a meeting shall be set up with the Permittee, county or municipality, FWC and the FWS to discuss the survey report as well as any documented sea turtle disorientations in or adjacent to the project area.

22. In order to minimize turbidity, and avoid the need for standard turbidity monitoring, the Permittee shall employ the follow best management practices:
  - a. Turbidity curtains shall be in use during all fill placement and grading activities. The curtains shall be located landward of the previously authorized seagrass impact sites.
  - b. Fill material shall be dry and shall placed at low tide in order to minimize the amount of in-water placement.
23. The Permittee shall conduct physical monitoring in accordance with the submitted Physical Monitoring Plan dated December 14, 2012.
24. If the Permittee is unable to complete at least two nourishment events within the 15-year life of this permit, they may request an extension of time to allow a second nourishment event to be completed. The time extension would be implemented through an administrative modification of the permit, with no application fee.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Martin K. Seeling, Administrator  
Beaches, Inlets and Ports Program

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



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Deputy Clerk

7/12/13  
Date

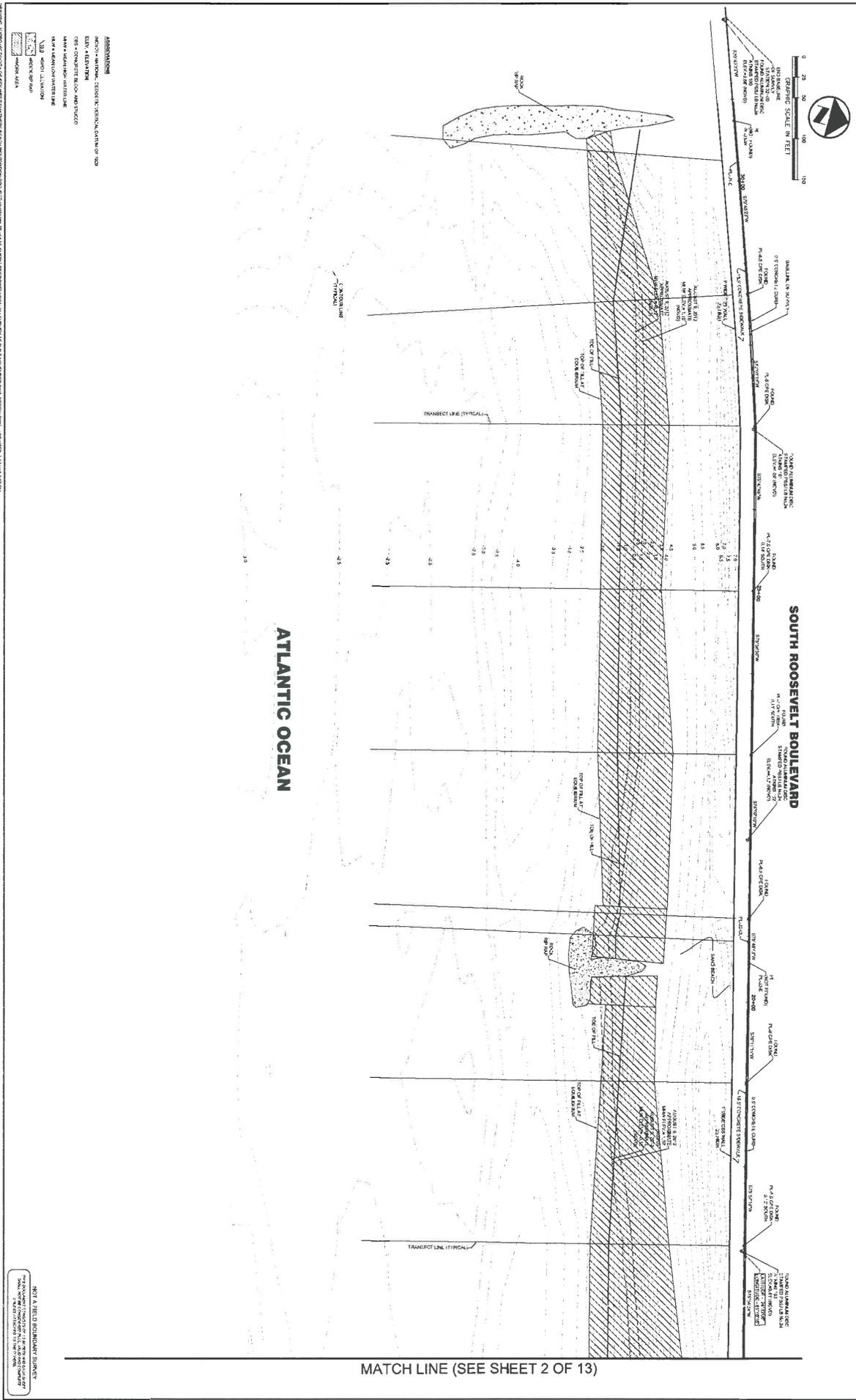
Prepared by Liz Yongue.

Attachments: Approved Permit Drawings (13 pages)  
Physical Monitoring Plan (approved on December 14, 2012)  
Sediment QA/QC Plan (approved on February 25, 2013)





PERMIT # 129031005



**ATKINS** 2001 N.W. 10TH AVE  
MIAMI, FL 33172-2501  
(305) 595-7733



**CLIENT**  
CITY OF KEY WEST  
FLORIDA

**PROJECT**  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

**TASK**  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

**ORIGINAL:** 1

**REVISIONS:**

2	REVISIONS	6
3	REVISIONS	7
4	REVISIONS	8
5	REVISIONS	9
6	REVISIONS	10
7	REVISIONS	11
8	REVISIONS	12

**JOB NO. 120803001**

**DRAWN: [Name]**

**DESIGNED: [Name]**

**CHECKED: [Name]**

**DATE: [Date]**

**SHEET 3 OF 13**

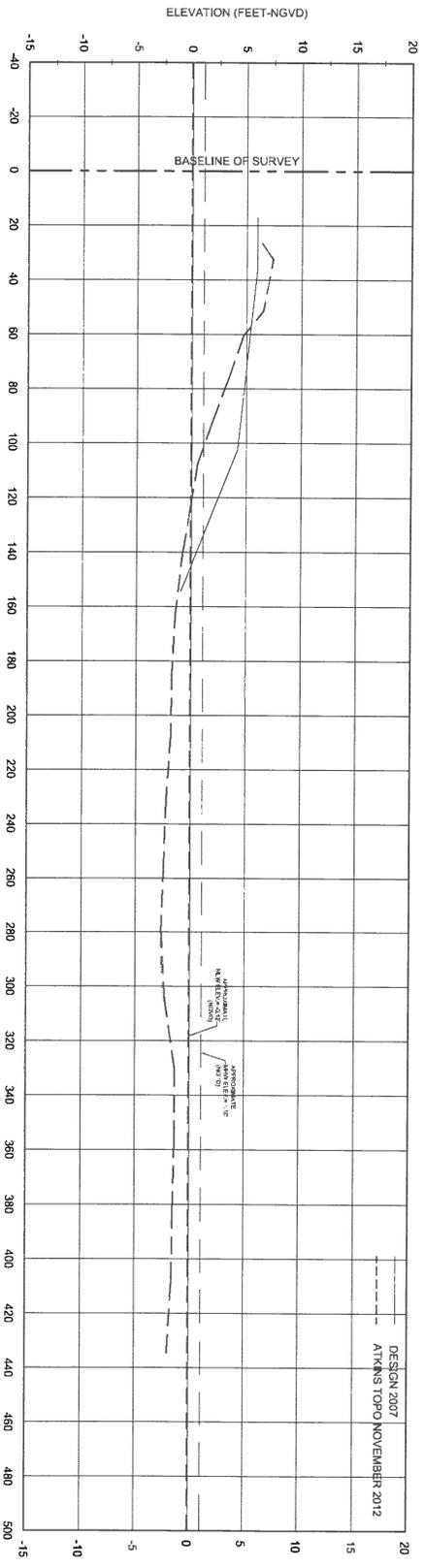
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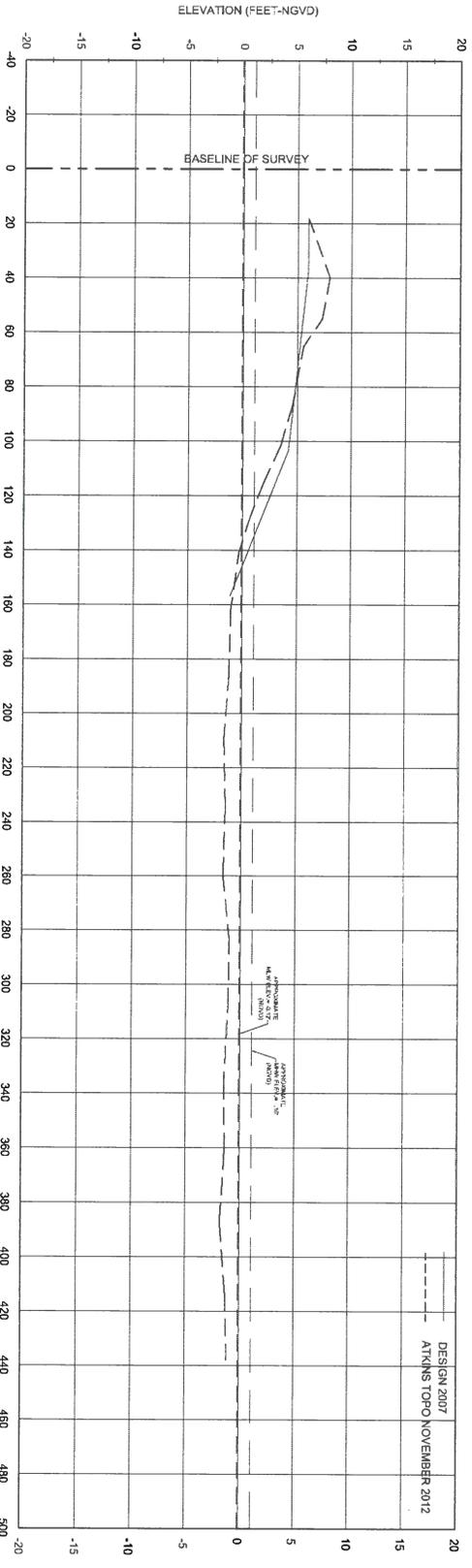
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- USE - ESTABLISH
- PER - QUADRI-ANGLE AND STATION
- DATA - LOCAL HIGH WATER LINE
- DATA - LOCAL LOW WATER LINE
- DATA - LOCAL TIDE GAUGE
- DATA - LOCAL SURFACE
- DATA - LOCAL MAP
- DATA - LOCAL DATA





STA. PL-2



STA. PL-2.5

HORIZONTAL SCALE 1"=20'  
VERTICAL SCALE 1"=5'

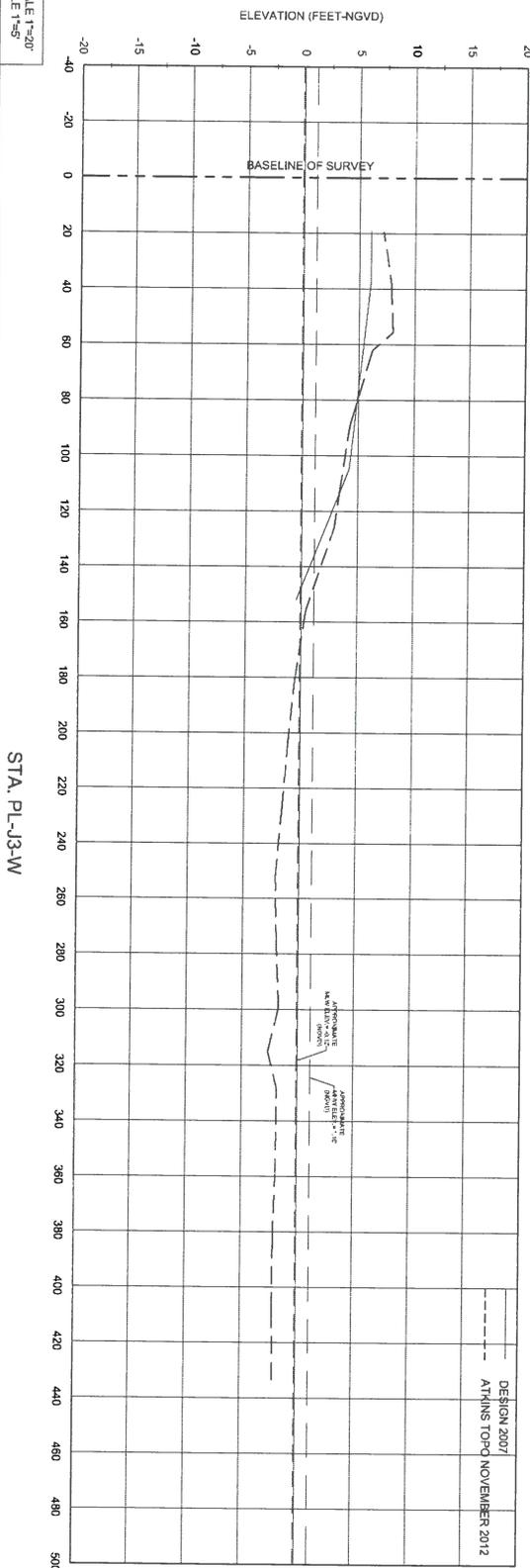
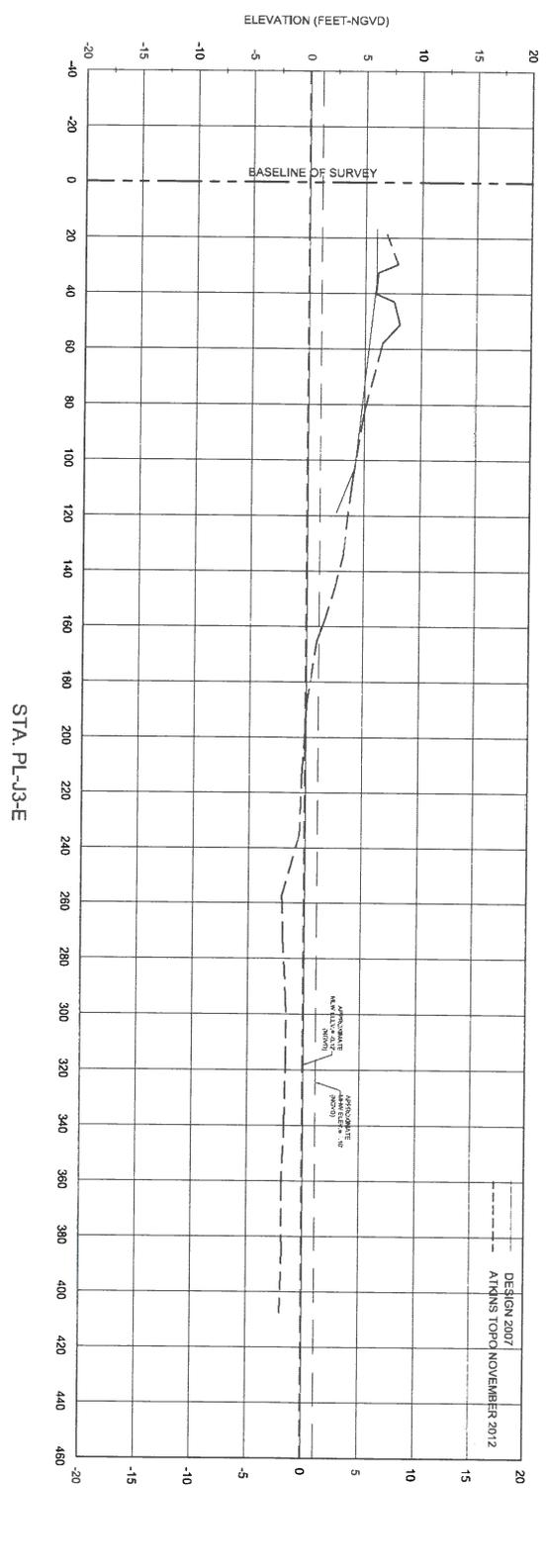
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<b>TASK</b>	<b>NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE</b>		
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12. 2007 DESIGN, 11/1/2012			
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<b>DESIGNED 2/22</b>			
<b>CHECKED 2/22</b>			
<b>DATE 2/22</b>			
<b>SHEET 5 OF 13</b>			





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**CLIENT**  
CITY OF KEY WEST  
FLORIDA

**PROJECT**  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

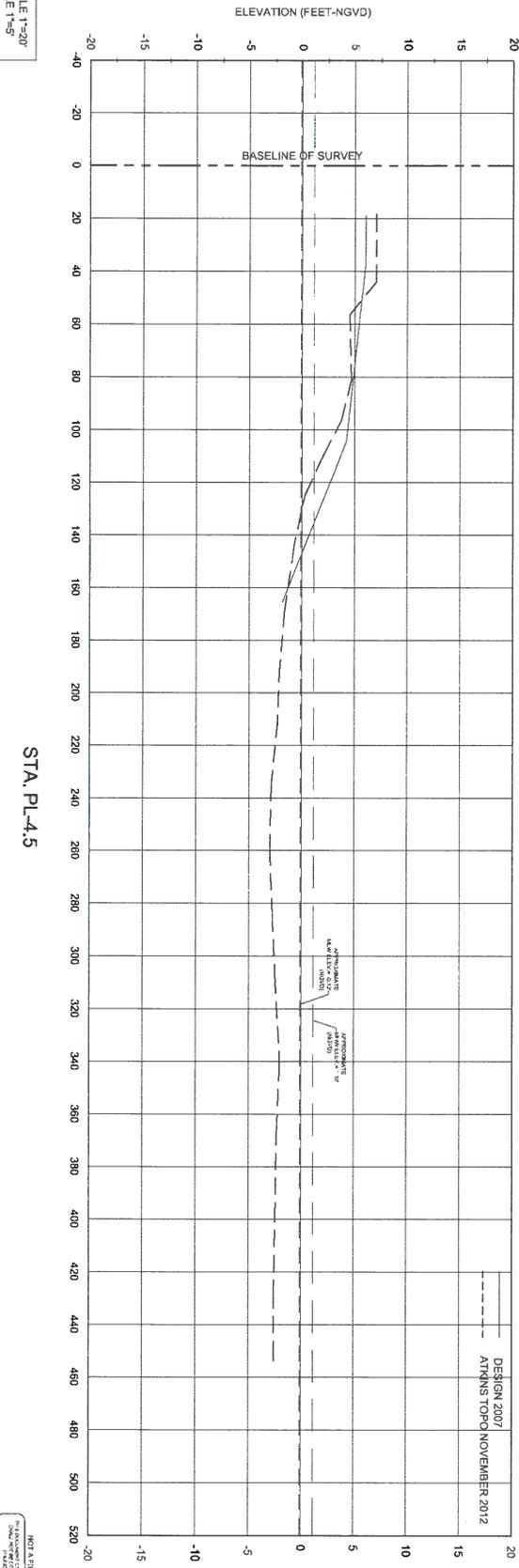
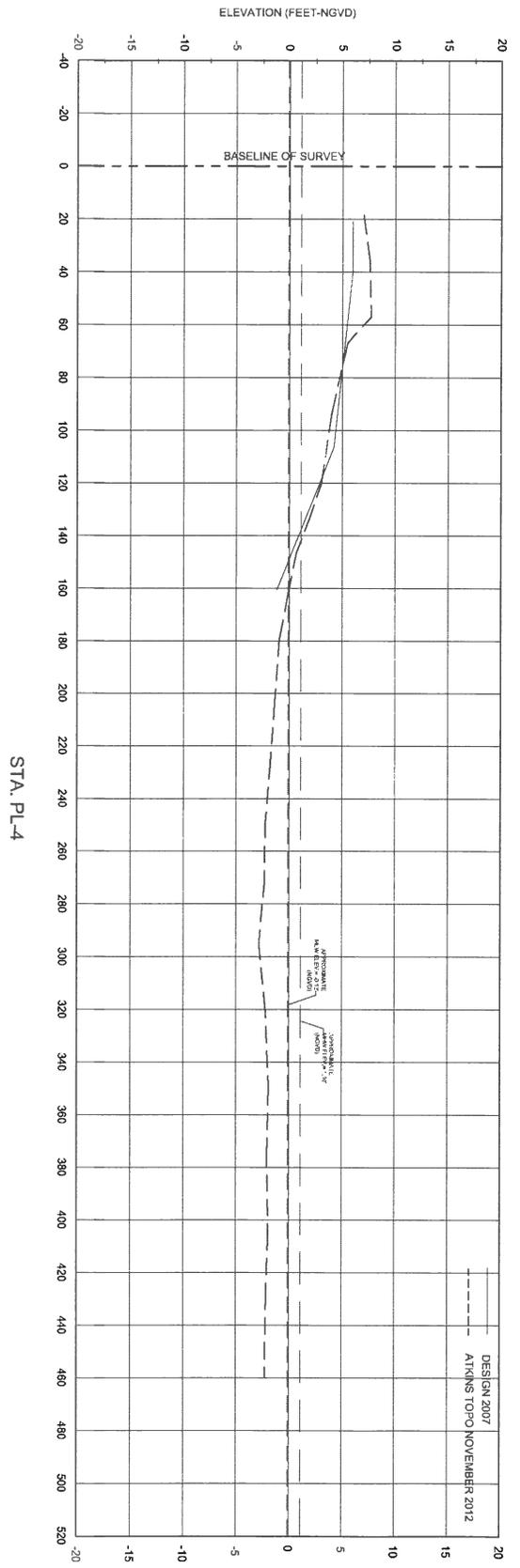
**TASK**  
NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

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**DRAWN** JED  
**DESIGNED** JED  
**CHECKED** JED  
**QC** JED  
**DATE** 11/15/12  
**SHEET** 7 OF 13

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HORIZONTAL SCALE 1"=30'  
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**CITY OF KEY WEST  
FLORIDA**

PROJECT  
**SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA**

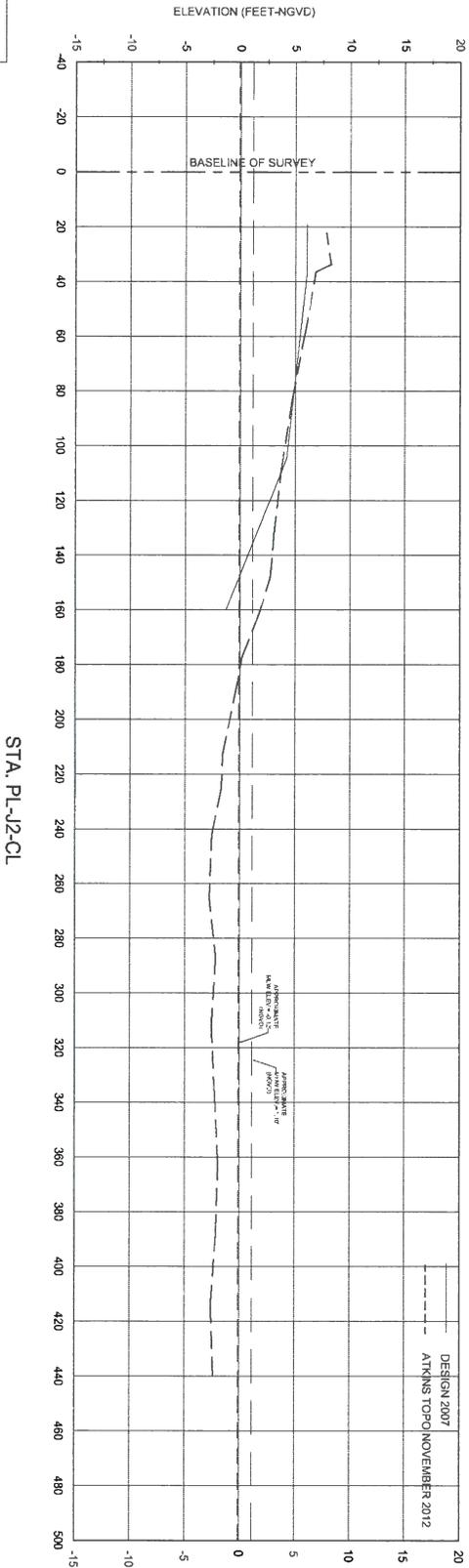
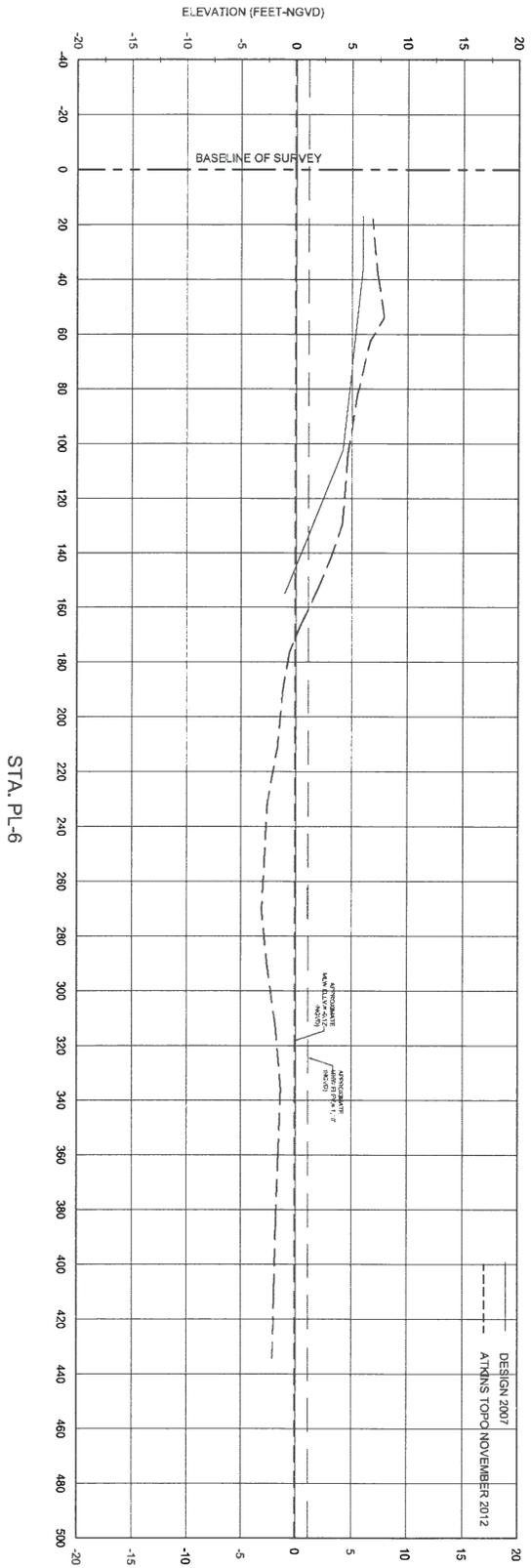
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**NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE**

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DATE: 11/01/12  
SHEET: 8 OF 13

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STATE OF FLORIDA  
 DEPARTMENT OF TRANSPORTATION  
 DIVISION OF HIGHWAYS

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CLIENT  
**CITY OF KEY WEST  
FLORIDA**

PROJECT  
**SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA**

TASK  
**NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE**

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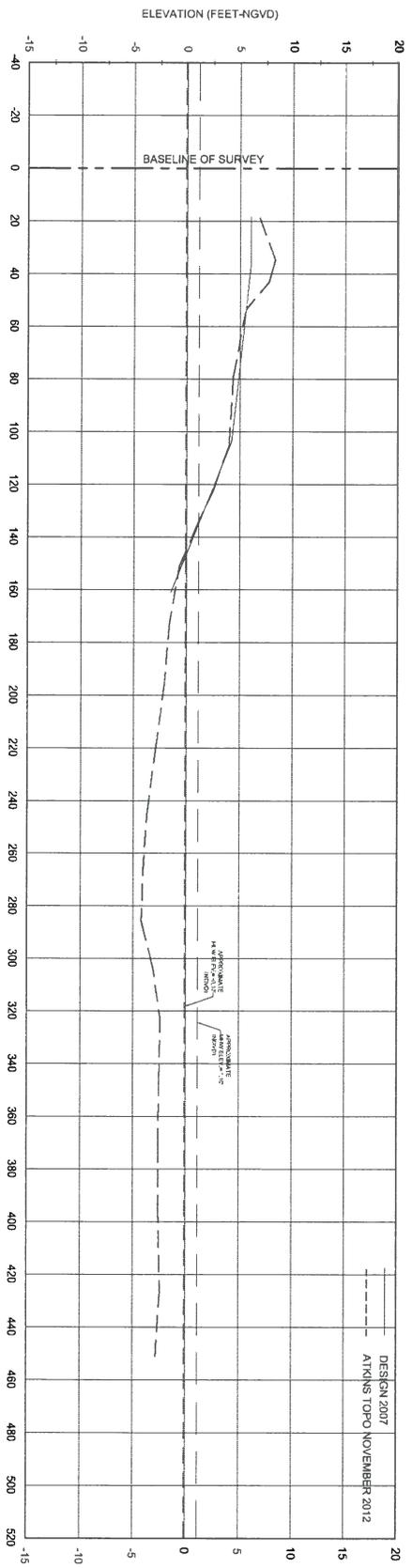
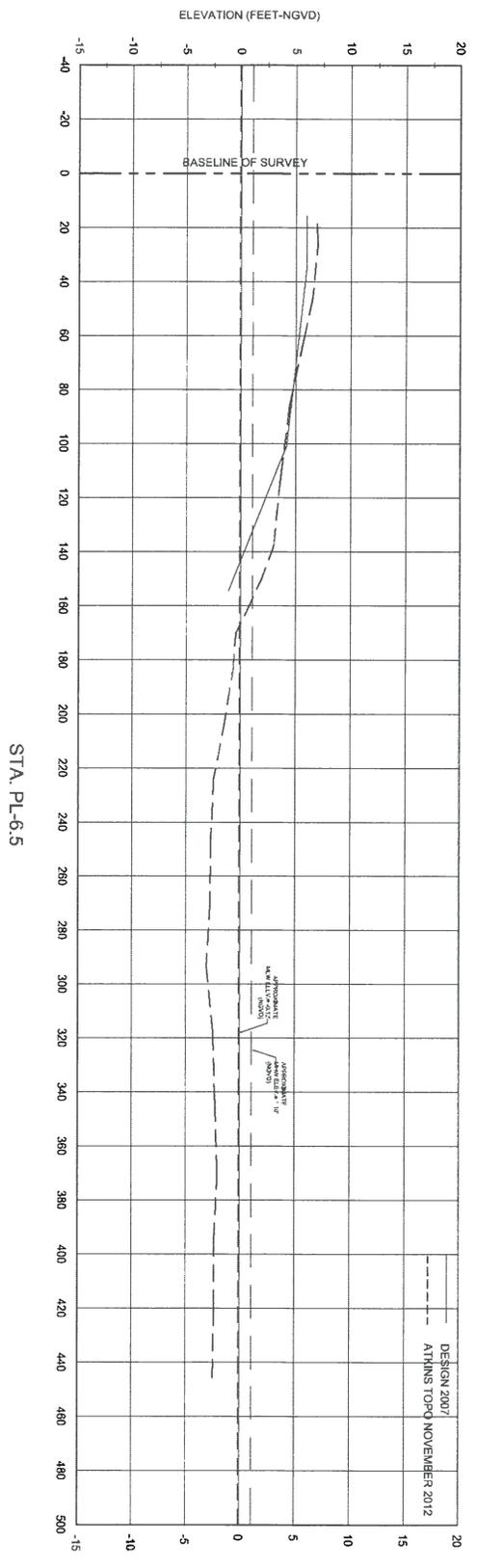
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SCALE	AS SHOWN
SHEET	10 OF 13



HORIZONTAL SCALE 1"=20'  
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**CLIENT**  
CITY OF KEY WEST  
FLORIDA

**PROJECT**  
SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA

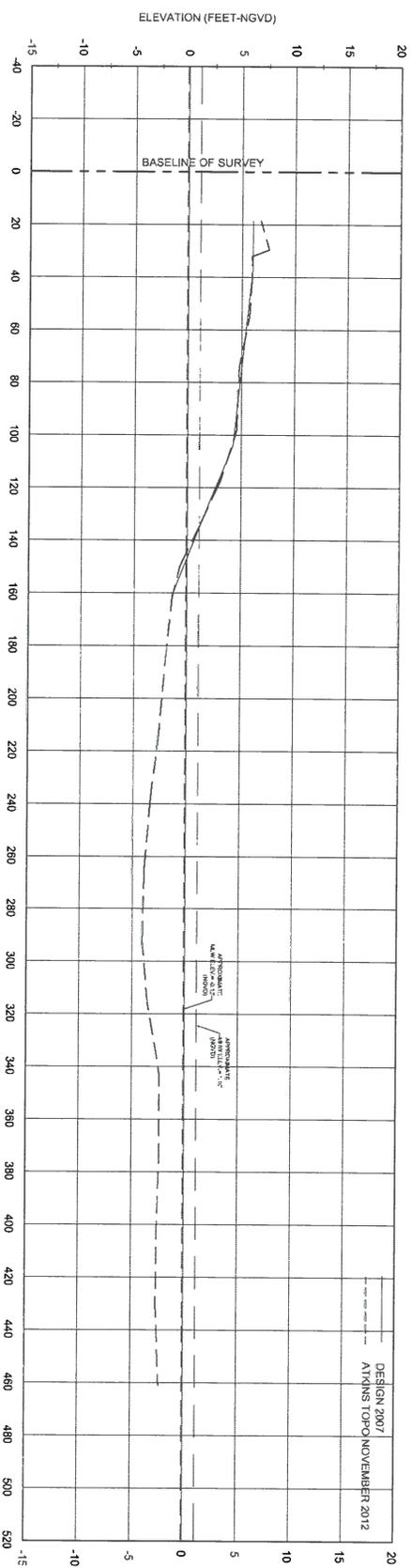
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HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE

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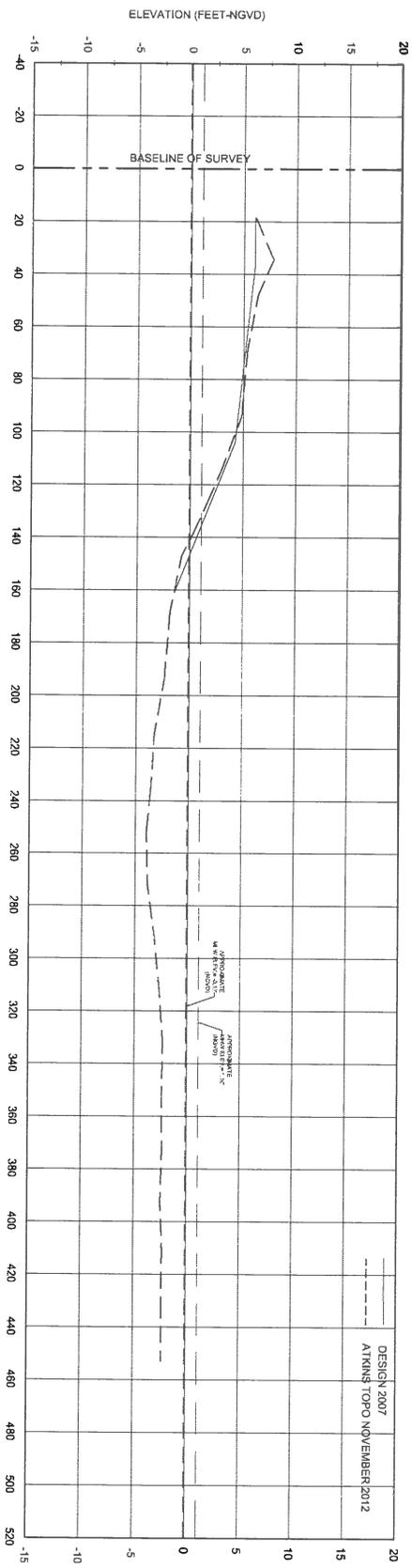
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STA. PL-7.5

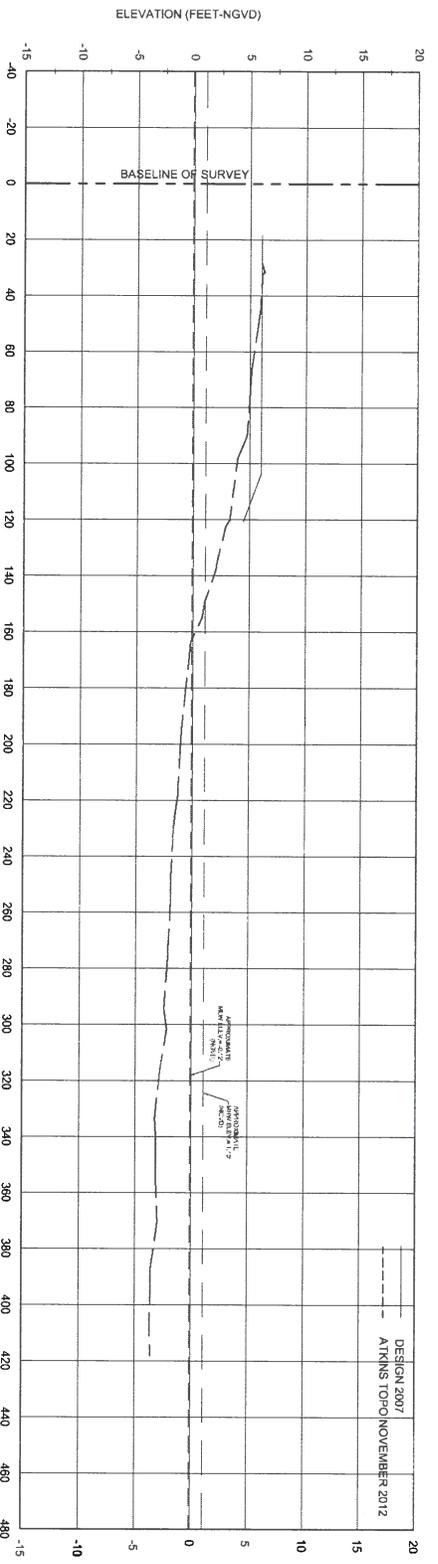
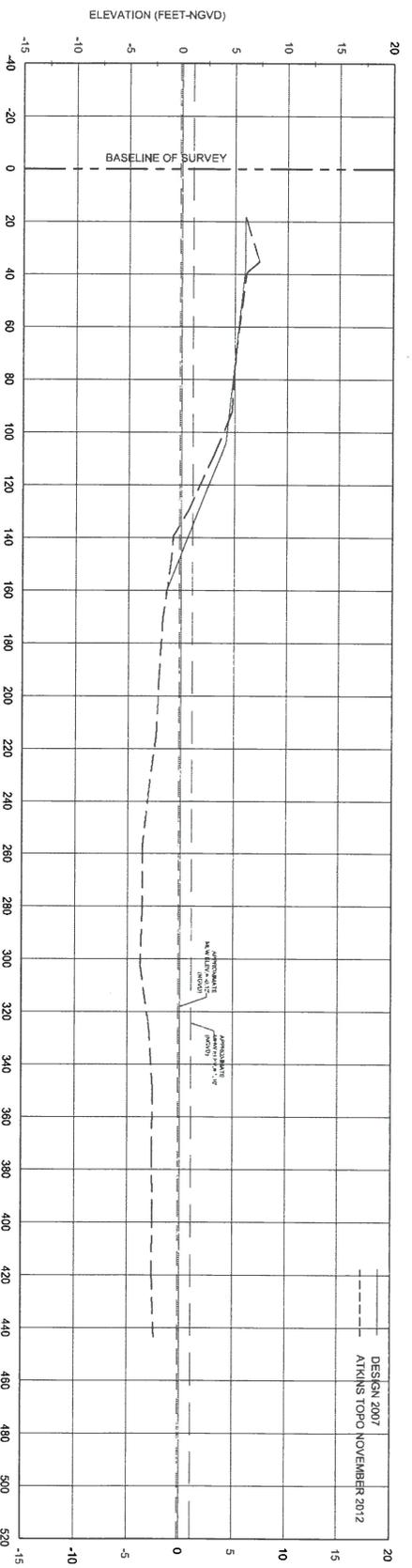


STA. PL-8

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<p>PROJECT <b>SMATHERS BEACH RENOURISHMENT MONITORING KEY WEST, FLORIDA</b></p>		<p>TASK <b>NOVEMBER 2012 HYDROGRAPHIC SURVEY AND HIGH WATER LINE</b></p>																																																					
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NOT A FIELD MONITORING SURVEY  
FOR THE PURPOSES OF THE PERMIT  
THESE DATA ARE FOR INFORMATION ONLY  
AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE



HORIZONTAL SCALE 1"=30'  
VERTICAL SCALE 1"=5'

**ATKINS**  
2001 N.W. 107th Ave  
Miami, FL 33157  
(305) 595-7230  
ATKINS NORTH AMERICA, INC.  
FLORIDA CERTIFICATE OF AUTHORIZATION NUMBER LB24



CLIENT  
**CITY OF KEY WEST  
FLORIDA**

PROJECT  
**SMATHERS BEACH  
RENOURISHMENT MONITORING  
KEY WEST, FLORIDA**

TASK  
**NOVEMBER 2012  
HYDROGRAPHIC SURVEY  
AND HIGH WATER LINE**

ORIGINAL	REVISIONS:	DATE	BY	CHKD
1	DESIGN	11/15/12		
2	REVISION	11/15/12		
3	REVISION	11/15/12		
4	REVISION	11/15/12		
5	REVISION	11/15/12		

JOB NO.	DATE	BY	CHKD
129031005	11/15/12		
DESIGNED	11/15/12		
CHECKED	11/15/12		
DATE	11/15/12		

NOT A FIELD BOUNDARY SURVEY  
This drawing is not to be used for any other purpose than that for which it was prepared.  
DATE: 11/15/12



**APPROVED**

**Sediment QA/QC Plan**  
Permit #: 0129031-005-JC  
Approval: February 25, 2013    EK  
**Division of Water Resource Management**

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

FDEP Permit No. 0129031-005-JC

City of Key West

Smathers Beach Nourishment

April 19, 2012

**A. INTRODUCTION**

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

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

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

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

**B. SEDIMENT QUALITY SPECIFICATIONS**

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

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

**Table 1- Sediment Compliance Specifications**

<b>Sediment Parameter</b>	<b>Parameter Definition</b>	<b>Compliance Value</b>
Max. Silt Content	passing #230 sieve	<b>2%</b>
Max. Shell Content*	retained on #4 sieve	<b>5%</b>
Munsell Color Value	moist Value (chroma = 1)	<b>10 or lighter</b>

**The beach fill material shall not contain construction debris, toxic material, other foreign matter, coarse gravel or rocks.**

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

### C. QUALITY CONTROL PLAN

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

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

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

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

b. **For material requiring special handling and material processing.** If special handling and material processing are necessary to produce beach compatible material consistent with the Sediment Compliance Specifications in Table 1, then sampling and laboratory testing of the processed sand shall be conducted at the upland mine(s) from the stockpiled material before the material is transported to the Construction

Access/Staging Areas. The Contractor will collect 4 representative samples from approximately every 3,000 cubic yards of material in the stockpile no less than 6 inches below the surface. The samples shall be tested at a Licensed Testing Laboratory using the criteria outlined in Section D.7.b.

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

**2. Beach Observation.** The Contractor will continuously visually monitor the sediment being placed on the beach. An assessment will be made during placement at a minimum of once every hour. This assessment will consist of handling the fill material to ensure that it is predominantly sand and to note the physical characteristics, and assure the material meets the Sediment Compliance Specifications in Table 1. If noncompliant sediment is placed on the beach, the Contractor will immediately cease placement until any stockpiled material at the beach construction staging area can be verified as beach compatible and verbally notify the Permittee's On-site Representative, providing the time, location, and description of the noncompliant sediment. The Contractor will take the appropriate remediation actions as directed by the Permittee or Permittee's Engineer.

#### **D. QUALITY ASSURANCE PLAN**

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

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

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

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

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

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

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

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

- a. Post-construction sampling of each acceptance section and testing of the fill material will be conducted to verify that the sediment placed on the beach meets the expected criteria/characteristics provided during from the geotechnical investigation and borrow area design process. Upon completion of an acceptance section of constructed beach, the project Engineer will collect two (2) duplicate sand samples at each Department reference monument profile line to quantitatively assess the grain size distribution, moist Munsell color, shell content, and silt content for compliance. The Engineer will collect the sediment samples of a minimum of 1 U.S. pint (at least 200 grams) each from the bottom of a test hole a minimum of 18 inches deep within the limits of the constructed berm. The Engineer will visually assess grain size, Munsell color, shell content, and silt content of the material by handling the fill material to ensure that it is predominantly sand, and further to note the physical characteristics. The Engineer will note the existence of any layering or rocks within the test hole. One sample will be sent for laboratory analysis while the other sample will be archived by the Permittee. All samples and laboratory test results will be labeled with the Project name, FDEP Reference Monument Profile Line designation, date sample was obtained, and "Construction Berm Sample."
- b. All samples will be evaluated for visual attributes (Munsell color and shell content), sieved in accordance with the applicable sections of ASTM D422-63 (Standard Test Method for Particle-Size Analysis of Soils), ASTM D1140 (Standard Test Method for Amount of Material in Soils Finer than No. 200 Sieve), and ASTM D2487 (Classification of Soils for Engineering Purposes), and analyzed for carbonate content. The samples will be sieved using the following U.S. Standard Sieve Numbers: 3/4", 5/8", 3.5, 4, 5, 7, 10, 14, 18, 25, 35, 45, 60, 80, 120, 170, and 230.
- c. A summary table of the sediment samples and test results for the sediment compliance parameters shall accompany the complete set of laboratory testing results. The column headings will include: Sample Number; Mean Grain Size (mm); Sorting Value; Silt Content (%); Shell Content (%); Munsell Color Value; and a column stating whether each sample MET or FAILED the compliance values found in Table 1. The sediment testing results will be certified by a P.E or P.G. registered in the State of Florida. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the sand search investigation and borrow area design shall be included in the sediment testing results report. The Permittee will submit sediment testing results and analysis report to the Department within 90 days following beach construction.
- d. In the event that a section of beach contains fill material that is not in compliance with the sediment compliance specifications, then the Department will be notified. Notification will indicate the volume, aerial extent and location of any unacceptable beach areas and remediation planned.

## **E. REMEDIATION**

1. **Compliance Area.** If a sample does not meet the compliance value for construction debris, toxic material, other foreign material, coarse gravel, or rock the Permittee shall determine the aerial extent of the noncompliant beach fill material and remediate regardless of the extent of the noncompliant material. If a sample is noncompliant for the silt content, shell content, or Munsell color, and the aerial extent exceeds 10,000 square feet of beach berm or 100 linear feet of dune for dune-only projects, the Permittee shall remediate.
2. **Notification.** If an area of newly constructed beach or dune does not meet the sediment compliance specifications, then the Department (JCPCCompliance@dep.state.fl.us) will be notified. Notification will indicate the aerial extent and location of any areas of noncompliant beach fill material and remediation planned. As outlined in section E.4 below, the Permittee will immediately undertake remediation actions without additional approvals from the Department. The results of any remediation will be reported to the Department following completion of the remediation activities and shall indicate the volume of noncompliant fill material removed and replaced.
3. **Sampling to determine extent.** In order to determine if an area greater than 10,000 square feet of beach berm or 100 linear feet of dune for dune-only projects is noncompliant, the following procedure will be performed by the Permittee's On-site Representative or Engineer:
  - a. Upon determination that the first sediment sample is noncompliant, at minimum, five (5) additional sediment samples will be collected at a maximum 25-foot spacing in all directions and assessed. If the

additional samples are also noncompliant, then additional samples will be collected at a 25-foot spacing in all directions until the aerial extent is identified.

- b. The samples will be visually compared to the acceptable sand criteria. If deemed necessary by the Engineer, quantitative assessments of the sand will be conducted for grain size, silt content, shell content, and Munsell color using the methods outlined in section D.7.b. Samples will be archived by the Permittee.
- c. A site map will be prepared depicting the location of all samples and the boundaries of all areas of noncompliant fill.
- d. The total square footage will be determined.
- e. The site map and analysis will be included in the Contractor's Daily Report.

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

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

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

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

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

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

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

**DEP Bureau of Beaches & Coastal Systems**

JCP Compliance Officer  
Mail Station 300  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000  
phone: (850) 414-7716  
e-mail: [JCP Compliance@dep.state.fl.us](mailto:JCP.Compliance@dep.state.fl.us)

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End of Plan

FDEP Version dated April 26, 2010