

**CITY OF NAPLES, FLORIDA**  
**AGREEMENT**  
**(CONSTRUCTION SERVICES)**

**Bid/Proposal No.** ITB 13-6131 Collier County  
**Clerk Tracking No.** 14-00126  
**Project Name:** Artificial Reef Program – BP Claim No. 185-873

THIS AGREEMENT (the "Agreement") is made and entered into this 1st day of October, 2014, by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **McCulley Marine Services, Incorporated**, a Florida Profit Corporation, located at: **2309 North Old Dixie Highway; Fort Myers, Florida 34946** (the "CONTRACTOR").

WITNESSETH:

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted an **(ITB) Invitation to Bid No. 13-6131 to Collier County** for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of services that will be required for the Project.

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

**ARTICLE ONE**  
**CONTRACTOR'S RESPONSIBILITY**

1.1. The Services to be performed by CONTRACTOR are generally described as **Artificial Reef Program – BP Claim No. 185-873** and may be more fully described in the Scope of Services, attached as **EXHIBIT A** and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified employee to serve as the

CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, sub-consultants and subcontractors to comply with the provisions of this paragraph. However, the CONTRACTOR shall comply with the Florida Public Records laws.

1.7. The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8. The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO CITY'S RESPONSIBILITIES**

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and

define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

Any such modifications or changes ((a) (b) or (c)) shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;
- (b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and
- (c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

### ARTICLE THREE TIME

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and shall be performed and **completed by March 31, 2015**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONTRACTOR's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

3.5 Liquidated Damages: Not applicable to this Agreement.

3.6 Bond. A Payment & Performance Bond with a surety insurer authorized to do business in this state as surety (check) one \_\_\_\_\_ has been recorded in the public records of the County, XXX prior to commencement of work, will be recorded in the public records of the County, or \_\_\_\_\_ is waived.

#### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid to the CONTRACTOR by the CITY for all Services shall not exceed **\$313,650.00** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **EXHIBIT B** and made a part of this Agreement.

#### **ARTICLE FIVE MAINTENANCE OF RECORDS**

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

#### **ARTICLE SIX INDEMNIFICATION**

6.1. The CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

## **ARTICLE SEVEN INSURANCE**

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **EXHIBIT C** and made a part of this Agreement.

## **ARTICLE EIGHT SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

## **ARTICLE NINE WAIVER OF CLAIMS**

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

## **ARTICLE TEN TERMINATION OR SUSPENSION**

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the

CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

#### **ARTICLE ELEVEN CONFLICT OF INTEREST**

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

#### **ARTICLE TWELVE MODIFICATION**

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

#### **ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples  
735 Eighth Street South  
Naples, Florida 34102-3796  
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

McCulley Marine Services, Inc.  
2309 North Old Dixie Highway  
Fort Myers, Florida 34946  
Attention: **John W. McCulley**, Vice President  
FEI/EIN Number: 65-0467519 (State: FL)

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE FOURTEEN  
MISCELLANEOUS**

14.1. The CONTRACTOR, in representing the CITY, shall promote the best interest of the CITY and assume towards the CITY a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

14.7. The CONTRACTOR shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONTRACTOR shall execute the Certification of Compliance with Immigration Laws, attached hereto as **EXHIBIT D**.

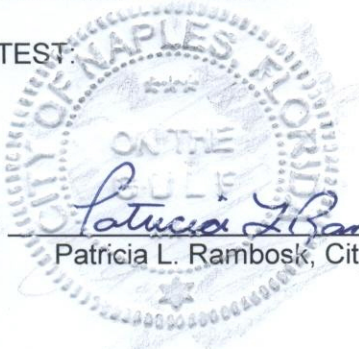
14.8. To the extent that any provision in the Specifications or any other Contract Documents pertaining to this Project conflict with any provision of this Agreement, this Agreement controls.

**ARTICLE FIFTEEN  
APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:



By: Patricia L. Rambosk  
Patricia L. Rambosk, City Clerk

CITY:

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

By: A. William Moss  
A. William Moss, City Manager

Approved as to form  
and legal sufficiency:

By: Robert D. Pritt  
Robert D. Pritt, City Attorney

CONTRACTOR:

McCulley Marine Services, Inc.  
2309 North Old Dixie Highway  
Fort Myers, Florida 34946  
Attention: **John W. McCulley**, Vice President  
FEI/EIN Number: 65-0467519 (State: FL)  
A Florida Profit Corporation

Susan Miller  
Witness

Susan Miller  
Printed Witness Name

By: John W. McCulley  
Its: Vice President

(CORPORATE SEAL)



Services Contract (not Architects/Engineers)



**EXHIBIT A**

**SCOPE OF SERVICES**

**The Scope of Services to be provided under this Agreement is included in Exhibit A-1 as those set out in the Vendor's Submittal of Collier County (ITB) Invitation To Bid No. 13-6131, titled Artificial Reef Program herein referenced and made a part of this Agreement and Exhibit A-2 an Executed BP Grant titled Artificial Reef Program – BP Claim No. 185-873 with its indicated Funding and Scope of Services which is attached and made a part of this Agreement.**

**END OF EXHIBIT A**

**AGREEMENT 13-6131****for****Artificial Reef Program**

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June, 2014, by and between the Board of County Commissioners for Collier County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County" or "Owner") and McCulley Marine Services, Inc., authorized to do business in the State of Florida, whose business address is 2309 N. Old Dixie Highway, Ft. Pierce, Florida 34946 (hereinafter referred to as the "Contractor").

**WITNESSETH:**

1. **COMMENCEMENT.** The Contractor shall commence the work upon issuance of a Notice to Proceed or as specified in a Purchase Order. The contract shall be for a three (3) year period, commencing on Date of Board award and terminating three (3) years from that date, or until such time as all outstanding Purchase Orders issued prior to the expiration of the Agreement period have been completed. This contract shall have three (3) additional, one (1) year renewals, renewable annually. The County Manager, or his designee, may, at his discretion, extend the Agreement under all of the terms and conditions contained in this Agreement for up to one hundred eighty (180) days. The County Manager, or his designee, shall give the Contractor written notice of the County's intention to extend the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect.
2. **STATEMENT OF WORK:** The Contractor shall provide reef material and/or deployment services for Public Utilities Department in accordance with the terms and conditions of **ITB #13-6131** and the Contractor's proposal referred to herein and made an integral part of this agreement.  
  
This Agreement contains the entire understanding between the parties and any modifications to this Agreement shall be mutually agreed upon in writing by the Contractor and the County project manager or his designee, in compliance with the County Purchasing Ordinance and Procedures in effect at the time such services are authorized.
3. **COMPENSATION:** The County shall pay the Contractor for the performance of this Work pursuant to the prices offered by the Contractor in his response to **ITB #13-6131** per Exhibit A, attached herein and incorporated by reference or subsequent quotes. Any County Agency may utilize the services offered under this contract, provided sufficient funds are included in the budget(s). This contract will be purchase order driven.
4. **NOTICES:** All notices required or made pursuant to this Agreement to be given by the County to the Contractor shall be made in writing and shall be delivered by hand, by fax, e-mail, or by the United States Postal Service Department, first class mail service, postage prepaid, addressed to the following Contractor's address of record:

**John W. McCulley, Vice President**  
**McCulley Marine Services, Inc.**  
**2309 N. Old Dixie Highway**  
**Ft. Pierce, Florida 34946**  
**Phone: (772) 489-6069**  
**Fax: (772) 460-9701 Fax**

All notices required or made pursuant to this Agreement to be given by the Contractor to the County shall be in writing and shall be delivered by hand, by fax, e-mail, or by United States Postal Service Department, first class mail service, postage prepaid, addressed to the following County's address of record:

**Collier County Government Complex  
Purchasing Department  
3327 East Tamiami Trail  
Naples, Florida 34112  
Purchasing/General Services Director  
Phone: 239-252-8407  
Fax: 239-252-6584**

The Contractor and the County may change the above mailing address at any time upon giving the other party written notification. All notices under this Service Agreement must be in writing.

5. **NO PARTNERSHIP**: Nothing herein contained shall create or be construed as creating a partnership between the County and the Contractor or to constitute the Contractor as an agent of the County.
6. **PERMITS: LICENSES: TAXES**: In compliance with Section 218.80, Florida Statutes, all permits necessary for the prosecution of the Work shall be obtained by the Contractor. Payment for all such permits issued by the County shall be processed internally by the County. Contractor is not responsible for paying for permits issued by Collier County, but is responsible for acquiring all permits. Owner may require the Contractor to deliver internal budget transfer documents to applicable Collier county agencies when the Contractor is acquiring permits.

All permits, fees and licenses necessary for the prosecution of the Work which are not issued by Collier County shall be acquired and paid for by the Contractor. Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

7. **NO IMPROPER USE**: The Contractor will not use, nor suffer or permit any person to use in any manner whatsoever, county facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor or if the County or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or improper, the County shall have the right to suspend the Contract of the Contractor. Should the Contractor fail to correct any such violation, conduct, or practice to the satisfaction of the County within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension to continue until the violation is cured. The Contractor further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the County.
8. **TERMINATION**: Should the Contractor be found to have failed to perform his services in a manner satisfactory to the County and requirements of this Agreement, the County may terminate said Agreement for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be sole judge of non-performance.
9. **NO DISCRIMINATION**: The Contractor agrees that there shall be no discrimination as to race, sex, color, creed or national origin.

10. **INSURANCE, PAYMENT & PERFORMANCE BONDS:** The Contractor shall provide insurance as follows:

- A. **Commercial General Liability:** Coverage shall have minimum limits of **\$2,000,000** Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent contractors; Products and Completed Operations and Contractual Liability.
- B. **Business Auto Liability:** Coverage shall have minimum limits of **\$2,000,000** Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.
- C. **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws. The coverage must include Employers' Liability with a minimum limit of **\$1,000,000** for each accident.

Special Requirements: Collier County Board of County Commissioners shall be listed as the Certificate Holder and included as an **Additional Insured** on the Comprehensive General Liability.

- D. **United States Longshoreman's and Harborworker's Act** coverage shall be maintained where applicable to the completion of the work with a limit of **\$ 2,000,000** Per Occurrence
- E. **Maritime Coverage** (Jones Act) shall be maintained where applicable to the completion of the work with a limit of **\$2,000,000** Per Occurrence

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Contractor during the duration of this Agreement. Renewal certificates shall be sent to the County ten (10) days prior to any expiration date. There shall be a thirty (30) day notification to the County in the event of cancellation or modification of any stipulated insurance coverage.

Contractor shall insure that all subcontractors comply with the same insurance requirements that he is required to meet. The same Contractor shall provide County with certificates of insurance meeting the required insurance provisions.

F. **BONDS.**

- A. When a construction project is in excess of \$200,000, the Contractor shall be required to provide Payment and Performance Bonds.
- B. When required by Owner, the Contractor shall furnish a Performance and/or Payment Bond prior to commencing performance, for the full amount of the Work, which shall act as a security guaranteeing the performance of the Contractor's work and the payment by the Contractor to any other party (ies) providing labor and/or materials in connection with each construction or renovation project performed by the Contractor. The bonds shall be furnished using the forms prescribed in Exhibit "B".
- C. If the surety for any bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business in the State of Florida, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five

(5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

11. **INDEMNIFICATION**: To the maximum extent permitted by Florida law, the Contractor shall indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of Collier County.
  - 11.1 The duty to defend under this Article 11 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 11 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.
12. **PAYMENTS WITHHELD**. Owner may decline to approve any invoice, or portions thereof, because of defective or incomplete work, subsequently discovered evidence or subsequent inspections. The Owner may nullify the whole or any part of any approval for payment previously issued and Owner may withhold any payments otherwise due Contractor under this Agreement or any other agreement between Owner and Contractor, to such extent as may be necessary in the Owner's opinion to protect it from loss because of: (a) defective Work not remedied; (b) failure of Contractor to make payment properly to subcontractors or for labor, materials or equipment; (c) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (d) reasonable indication that the Work will not be completed within the Contract Time; (e) unsatisfactory prosecution of the Work by the Contractor; or (f) any other material breach of the Contract Documents. If any conditions described above are not remedied or removed, Owner may, after three (3) days written notice, rectify the same at Contractor's expense.
13. **SUBMITTALS AND SUBSTITUTIONS**. Any substitution of products/materials from specifications shall be approved in writing by Owner in advance.
14. **CHANGES IN THE WORK**. Owner shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon modification of the Purchase Order by Owner, and Owner shall not be liable to the Contractor for any increased compensation without such modification. No officer, employee or agent of Owner is authorized to direct any extra or changed work orally. Any modifications to this Contract shall be in compliance with the County Purchasing Ordinance and Procedures in effect at the time such modifications are authorized.
15. **ADDITIONAL ITEMS/SERVICES**. Additional items and/or services may be added to this contract in accordance with the Purchasing Procedures.

16. **COMPLIANCE WITH LAWS.** Contractor agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, workers' compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes, and the Florida Public Records Law Chapter 119 (including specifically those contractual requirements at F.S. § 119.0701(2)(a)-(d) and (3)), ordinances). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify Owner in writing.
17. **CLEAN UP.** Contractor agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Contractor shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project site clean and ready for occupancy by Owner.
18. **ASSIGNMENT.** Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of Owner. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward Owner.
19. **WARRANTY.** Contractor expressly warrants that the goods, materials and/or equipment covered by this Agreement will conform to the requirements as specified, and will be of satisfactory material and quality production, free from defects, and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. Any services provided under this Agreement shall be provided in accordance with generally accepted professional standards for the particular service. These warranties shall survive inspection, acceptance, passage of title and payment by the County.
20. **STANDARDS OF CONDUCT: PROJECT MANAGER, SUPERVISOR, EMPLOYEES.** The Contractor shall employ people to work on County projects who are neat, clean, well-groomed and courteous. Subject to the American with Disabilities Act, Contractor shall supply competent employees who are physically capable of performing their employment duties. The County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on Collier County projects is not in the best interest of the County.
21. **TESTS AND INSPECTIONS.** If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the Owner the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the Owner.
22. **PROTECTION OF WORK.**
- A. Contractor shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Contractor or anyone for whom Contractor is legally liable is responsible for any loss or damage to the Work, or other work or materials of Owner or Owner's separate contractors, Contractor shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Contractor.

- B. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- C. Contractor shall not disturb any benchmark established by the Owner with respect to the Project. If Contractor, or its subcontractors, agents or anyone, for whom Contractor is legally liable, disturbs the Owner's benchmarks, Contractor shall immediately notify Owner. The Owner shall re-establish the benchmarks and Contractor shall be liable for all costs incurred by Owner associated therewith.

23. **EMERGENCIES.** In the event of any emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Contractor, without special instruction or authorization from Owner is obligated to act to prevent threatened damage, injury or loss. Contractor shall give the Owner written notice within forty-eight (48) hours after the occurrence of the emergency, if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

If the Owner determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a written Order shall be issued to document the consequences of the changes or variations.

If Contractor fails to provide the forty-eight (48) hour written notice noted above, the Contractor shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

24. **CONTRACT ADMINISTRATION.** This Agreement shall be administered on behalf of the County by the Public Utilities Division.
25. **COMPONENT PARTS OF THIS CONTRACT.** This Contract consists of the attached or referenced component parts, all of which are as fully a part of the Agreement as if herein set out verbatim, including: Exhibits A and B, Contractor's Proposal, Insurance Certificate, ITB #13-6131 any addenda, etc, made or issued pursuant to this Agreement.
26. **PROHIBITION OF GIFTS TO COUNTY EMPLOYEES.** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee, as set forth in Chapter 112, Part III, Florida Statutes, Collier County Ethics Ordinance No. 2004-05, and County Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with County staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the County for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.
27. **SUBJECT TO APPROPRIATION.** It is further understood and agreed, by and between the parties herein that this Agreement is subject to appropriation by the Board of County Commissioners.
28. **SALES TAX.** Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. No markup shall be applied to sales tax.
29. **IMMIGRATION LAW COMPLIANCE.** By executing and entering into this agreement, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located

at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this agreement and the County shall have the discretion to unilaterally terminate this agreement immediately.

30. **VENUE.** Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.
31. **OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES.** Collier County encourages and agrees to the successful proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful proposer.
32. **AGREEMENT TERMS.** If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portion of this Agreement shall remain in effect.
33. **SECURITY.** If required, Contractor shall be responsible for the costs of providing background checks by the Collier County Facilities Management Department for all employees that shall provide services to the County under this Agreement. This may include, but not be limited to, checking federal, state and local law enforcement records, including a state and FBI fingerprint check, credit reports, education, residence and employment verifications and other related records. Contractor shall be required to maintain records on each employee and make them available to the County for at least four (4) years
34. **DISPUTE RESOLUTION.** Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached during negotiations to County for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached at mediation to County's board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Statute.
35. **SAFETY.** All contractors and subcontractors performing service for Collier County are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also all Contractors and subcontractors shall be responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.

Collier County Government has authorized the Occupational Safety and Health Administration (OSHA) to enter any Collier County Facility, property and/or right-of-way for the purpose of inspection of any Contractor's work operations. This provision is non-negotiable by any department and/or Contractor.



All applicable OSHA inspection criteria apply as well as all Contractor rights, with one exception. Contractors do not have the right to refuse to allow OSHA onto a project that is being performed on Collier County Property. Collier County, as the owner of the property where the project is taking place shall be the only entity allowed to refuse access to the project. However, this decision shall only be made by Collier County's Risk Management Department Safety Manager and/or Safety Engineer.

\*\*\*\*\* Remainder of page intentionally left blank \*\*\*\*\*

**IN WITNESS WHEREOF**, the Contractor and the County, have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date and year first above written.

ATTEST:  
Dwight E. Brock, Clerk of Courts

By: *Dwight E. Brock*

Dated: June 16, 2014  
(Seal)

Attest as to Chairman's signature only.

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: *Tom Henning*  
Tom Henning, Chairman

**McCulley Marine Services, Inc.**  
Contractor

By: *John W. McCulley*  
Signature

John W. McCulley  
Typed Signature

Vice President  
Title


*Susan G. Miller*  
First Witness

Susan G. Miller  
Type/Print Witness Name

*[Signature]*  
Second Witness

Joshua McCulley  
Type/Print Witness Name

Approved as to form and legality:

*Emily Pepin* 

Assistant County Attorney

**Exhibit A – Price Schedule  
(pages immediately following)**

**ITB 13-6131**  
**Artificial Reef Program**

<b>Artificial Reef Program</b>				
<b>ITB 13-6131</b>				
Description	QTY	Unit	Unit Price	Total
<b>Phase One - Artificial Reef Material Deployment (1)</b>				
1 Artificial Reef Material Deployed between 0 to 14 Miles		Ton	64.75	\$ 64.75
2 Artificial Reef Material Deployed between 14 to 35 Miles		Ton	74.75	\$ 74.75
<b>Phase Two - Artificial Reef Fabricated Structures (2)</b>				
3 8ft Modules	75	Ea.	2630	\$ 197,250.00
4 12ft Modules	75	Ea.	5030	\$ 377,250.00
<b>Additional Fabricated Structures (2)</b>				
5 Installation and Creation of Plogues	1	Ea.	250	\$ 250.00
6 8ft Modules	250	Ea.	2022	\$ 505,500.00
7 8ft Modules	500	Ea.	2016	\$ 1,008,000.00
8 8ft Modules	750	Ea.	1954	\$ 1,465,500.00
9 12ft Modules	250	Ea.	3441	\$ 860,250.00
10 12ft Modules	500	Ea.	3430	\$ 1,715,000.00
11 12ft Modules	750	Ea.	3322	\$ 2,491,500.00
<b>Collection of C&amp;D Material Beyond the 17 mile Range (3)</b>				
12 Zone A - 17 to 30 miles away from the Barge Staging Area	1	Ton	3.65	\$ 3.65
13 Zone B - 30 to 40 miles away from the Barge Staging Area	1	Ton	9.43	\$ 9.43
14 Zone C - 40 to 50 miles away from the Barge Staging Area	1	Ton	11.85	\$ 11.85
<b>Disclaimer</b>				<b>\$ 8,620,664.43</b>
(1) Unit Price to include all work described in the Phase I Artificial Reef Deployment scope of work.				
(2) This unit price consists of the Contractor providing and delivering the Reef Modules to the County Barge Staging Area, see Phase II scope of work. Once on site they will be weighed and charged by tonnage accordingly to their respective reef destination, 0 to 14 miles or 14 to 35 miles.				
(3) This Unit Price consists of collecting and delivering suitable material to the Barge Staging area, from various sites ranging from 17 to 50 miles away, see Phase One scope of work. There will be no additional charge for any suitable material collected within the 17 mile range. Once on site, all material will be weighed and charged by tonnage accordingly to their respective reef destination, 0 to 14 miles or 14 to 35 miles.				
Procurement of individual line items will be dependent upon funding availability, award of bid is based on all the total of all line items.				

Qualifications: Submit with Bid Package:

- 1 Must be on file with the Department of State in accordance with provision of Chapter 607, Florida Statutes ([www.sunbiz.org](http://www.sunbiz.org)) by time of contract award
- 2 Must not be on the Federal or State debarment lists
- 3 Material and deployment must be in compliance with Coast Guard, US Army Corp of Engineers and State of Florida standards and requirements
- 4 Must demonstrate that the bidder is competent (provide five references and include agency name, contact person, phone number)
- 5 Bidder must have necessary resources to complete project (ABS Rated Barges, crane, etc.)
- 6 Must have completed an artificial reef project within the past seven (7) years – provide list of previous projects of similar scope and size. Must have deployed over 5 reefs with one at least 10 miles from shore.
- 7 Must self perform at least 51% of the work
- 8 Provide list of equipment and resources needed to complete this project and notate whether "owned" or "leased", age and location
- 9 Provide brief bios of personnel that may be assigned to this project.

YES/NO
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>
<b>YES</b>



**Artificial Reef Program**

<b>Artificial Reef Program ITB 13-6131</b>				
Description	QTY	Unit	Unit Price	Total
<b>Phase One - Artificial Reef Material Deployment (1)</b>				
1 Artificial Reef Material Deployed between 0 to 14 Miles	1	Ton	62.81	\$ 62.81
2 Artificial Reef Material Deployed between 14 to 35 Miles	1	Ton	72.51	\$ 72.51
<b>Phase Two - Artificial Reef Fabricated Structures (2)</b>				
3 8ft Modules	75	Ea.	2551.1	\$ 191,332.50
4 12ft Modules	75	Ea.	4879.1	\$ 365,932.50
<b>Additional Fabricated Structures (2)</b>				
5 Installation and Creation of Plaques	1	Ea.	242.5	\$ 242.50
6 8ft Modules	250	Ea.	1961.34	\$ 490,335.00
7 8ft Modules	500	Ea.	1955.52	\$ 977,760.00
8 8ft Modules	750	Ea.	1895.38	\$ 1,421,535.00
9 12ft Modules	250	Ea.	3337.77	\$ 834,442.50
10 12ft Modules	500	Ea.	3327.1	\$ 1,663,550.00
11 12ft Modules	750	Ea.	3222.34	\$ 2,416,755.00
<b>Collection of C&amp;D Material Beyond the 17 mile Range (3)</b>				
12 Zone A - 17 to 30 miles away from the Barge Staging Area	1	Ton	3.54	\$ 3.54
13 Zone B - 30 to 40 miles away from the Barge Staging Area	1	Ton	9.15	\$ 9.15
14 Zone C - 40 to 50 miles away from the Barge Staging Area	1	Ton	11.49	\$ 11.49
<b>Disclaimer</b>				\$ 8,362,044.50
(1) Unit Price to include all work described in the Phase I Artificial Reef Deployment scope of work.				
(2) This unit price consists of the Contractor providing and delivering the Reef Modules to the County Barge Staging Area, see Phase II scope of work. Once on site they will be weighed and charged by tonnage accordingly to their respective reef destination, 0 to 14 miles or 14 to 35 miles.				
(3) This Unit Price consists of collecting and delivering suitable material to the Barge Staging area, from various sites ranging from 17 to 50 miles away, see Phase One scope of work. There will be no additional charge for any suitable material collected within the 17 mile range. Once on site, all material will be weighed and charged by tonnage accordingly to their respective reef destination, 0 to 14 miles or 14 to 35 miles.				
Procurement of individual line items will be dependent upon funding availability, award of bid is based on all the total of all line items.				

Qualifications: Submit with Bid Package:

- 1 Must be on file with the Department of State in accordance with provision of Chapter 607, Florida Statutes ([www.sunbiz.org](http://www.sunbiz.org)) by time of contract award
- 2 Must not be on the Federal or State debarment lists
- 3 Material and deployment must be in compliance with Coast Guard, US Army Corp of Engineers and State of Florida standards and requirements
- 4 Must demonstrate that the bidder is competent (provide five references and include agency name, contact person, phone number)
- 5 Bidder must have necessary resources to complete project (ABS Rated Barges, crane, etc.)
- 6 Must have completed an artificial reef project within the past seven (7) years – provide list of previous projects of similar scope and size. Must have deployed over 5 reefs with one at least 10 miles from shore.
- 7 Must self perform at least 51% of the work
- 8 Provide list of equipment and resources needed to complete this project and notate whether "owned" or "leased", age and location
- 9 Provide brief bios of personnel that may be assigned to this project.

YES/NO
YES
YES
YES
YES
YES
YES
YES
YES
YES



**Exhibit B – Performance and Payment Bonds**

**PUBLIC PAYMENT BOND**  
**Artificial Reef Program**

Bond No.  
Contract No. 13-6131

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_ (Business Address) are held and firmly bound to \_\_\_\_\_ as Obligee in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Obligee for \_\_\_\_\_ in \_\_\_\_\_ accordance with drawings and specifications, which contract is incorporated by reference and made a part hereof, and is referred to herein as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

Promptly makes payment 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, then this bond is void; otherwise it remains in full force.

Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The provisions of this bond are subject to the time limitations of Section 255.05(2). In no event will the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by claimants.

IN WITNESS WHEREOF, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name of each party being affixed and these presents duly signed by its under-signed representative, pursuant to authority of its governing body.



Signed, sealed and delivered  
in the presence of:

PRINCIPAL

\_\_\_\_\_

\_\_\_\_\_

Witnesses as to Principal

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
ITS: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation.  
He/she is personally known to me OR has produced \_\_\_\_\_ as identification and did (did not)  
take an oath.

My Commission Expires:

\_\_\_\_\_  
(Signature of Notary)

NAME: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of \_\_\_\_\_  
Commission No.: \_\_\_\_\_

ATTEST:

SURETY:  
\_\_\_\_\_  
(Printed Name)

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

(Business Address

\_\_\_\_\_

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

Witnesses to Surety

\_\_\_\_\_  
(Printed Name)



OR

\_\_\_\_\_  
  
\_\_\_\_\_  
Witnesses

\_\_\_\_\_  
As Attorney in Fact  
(Attach Power of Attorney)  
  
\_\_\_\_\_  
(Printed Name)

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

(Business Address)

(Telephone Number)

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_ Surety, on behalf of Surety. He/She is personally known to  
me OR has produced \_\_\_\_\_ as identification and who did (did  
not) take an oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_



**PUBLIC PERFORMANCE BOND**  
**Artificial Reef Program**

Bond No. \_\_\_\_\_  
Contract No. 13-6131

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_  
\_\_\_\_\_, as Principal, and \_\_\_\_\_  
\_\_\_\_\_, as Surety, located \_\_\_\_\_ at  
\_\_\_\_\_, (Business  
Address) are held and firmly bound to \_\_\_\_\_, as  
Obligee in the sum \_\_\_\_\_ of  
(\$ \_\_\_\_\_) for the payment whereof we bond ourselves, our heirs, executors, personal  
representatives, successors and assigns, jointly and severally.

WHEREAS, Principal has entered into a contract dated as of the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, with Obligee \_\_\_\_\_ for  
\_\_\_\_\_ in accordance  
with drawings and specifications, which contract is incorporated by reference and made a part hereof, and  
is referred to herein as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees that Obligee sustains because of any default by Principal under the Contract, including, but not limited to, all delay damages, whether liquidated or actual, incurred by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force. Any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Sureties obligation under this Bond.

The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the specifications referred to therein shall in anywise affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the specifications.

This instrument shall be construed in all respects as a common law bond. It is expressly understood that the time provisions and statute of limitations under Section 255.05, Florida Statutes, shall not apply to this bond.

In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.



IN WITNESS WHEREOF, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

PRINCIPAL

\_\_\_\_\_

\_\_\_\_\_

Witnesses as to Principal

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me OR has produced \_\_\_\_\_ as identification and did (did not) take an oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_



ATTEST:

SURETY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Printed Name)

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

Witnesses as to Surety

\_\_\_\_\_  
(Printed Name)

OR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Witnesses  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Telephone Number)

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ Surety, on behalf of Surety. He/She is personally known to me OR has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

My Commission Expires:

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

Name: \_\_\_\_\_  
(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public, State of: \_\_\_\_\_  
Commission No.: \_\_\_\_\_



**Certificate of Insurance**  
*Issued By*  
**INTEGRO INSURANCE BROKERS**  
ONE STATE STREET PLAZA, 9<sup>TH</sup> FLOOR  
NEW YORK, NY 10004

*Issued to:* Collier County Board of County Commissioners  
Purchasing Department  
3327 Tamiami Trail East  
Naples, Florida 34112-4901

This is to Certify that *insurance has been issued as follows:*

*Assured:* Pine Island Towing Company, Inc. and McCulley Marine Service, Inc.

Collier County Board of County Commissioners is listed as an Additional Assured as their rights and interest may appear as per written contract on or about June 11, 2014 or H/C.

*Coverage:*

- 1) Hull & Machinery including Collision & Towers Liability and P&I Package Policy
- 2) Comprehensive Marine General Liability including Stevedores and Salvors Legal Liability
- 3) Property / Contractors / Rental Package Policy
- 4) Pollution Liability
- 5) Excess Liability
- 6) Workers Compensation Including Employers Liability & USL&H

*Limits:*

- 1) To Scheduled Hull Values as per the attached plus \$1,000,000 C.S.L P&I Limit of \$1,000,000
- 2) \$1,000,000 any one accident
- 3) \$500,000 scheduled property any one occurrence or as may be declared
- 4) \$5,000,000 any one accident
- 5) To \$4,000,000 aca excess of Underlying Liability Policies
- 6) Statutory / \$1,000,000

*Security:*

- 1) Allianz / The Insurance Company of North America
- 2) Allianz
- 3) Allianz
- 4) Lloyds through (EPG)
- 5) XL Insurance Company
- 6) Maryland Casualty Company (Zurich)

*Policy Numbers:*

- 1) OHL92006476/ HUN05711137
- 2) OML9208191
- 3) MX193008862
- 4) EPG-06266-06
- 5) 24760MA13A
- 6) WC9595816

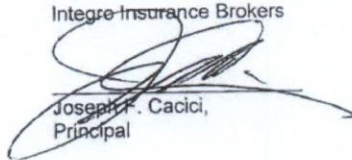
*Term:*

- 1) 11/18/13 – 11/18/2014
- 2) 5/20/14 – 5/20/15
- 3) 4/24/14 – 4/24/15
- 4) 3/14/14 – 3/14/15
- 5) 7/2/13 – 7/2/14
- 6) 10/6/13 – 10/6/14

This Certificate of Insurance is listed as a matter of information only and confers no rights upon the Certificate Holder. This Certificate neither affirmatively nor negatively amends, extends or alters the coverage afforded by those policy(ies) indicated above. This Certificate of Insurance does not constitute a contract between the insurers, representatives, the producer and / or the Certificate Holder notwithstanding anything indicated above, additional assureds can not be named on any Workers Compensation policy. Granting of an additional named insured status hereon does not provide first party coverage to the additional named insured. If the Certificate Holder is an Additional Assured and / or if subrogation is waived, the policy or policies must be endorsed and a statement on this Certificate does not confer rights to the Certificate Holder in lieu of such endorsement. This Certificate shall replace and supersede any previous Certificate issued. Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days prior written notice to the above named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon that company or this agency.

Dated, this 11<sup>th</sup> day of June 2014

Integro Insurance Brokers

  
Joseph F. Cacici,  
Principal



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
 06/11/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> LARRY LEE JR-STATE FARM 4075 VIRGINIA AVE FORT PIERCE, FL 34981	<b>CONTACT NAME:</b> SHARON SKINNER <b>PHONE (A/C, No, Ext):</b> 772-461-6622 <b>FAX (A/C, No):</b> 772-461-0443 <b>E-MAIL ADDRESS:</b> SHARON.L.SKINNER.LH89@STATEFARM.COM	
	INSURER(S) AFFORDING COVERAGE INSURER A : State Farm Mutual Automobile Insurance Company <b>NAIC #</b> 25178 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
<b>INSURED</b> MCCULLEY MARINE SERVICES INC 2309 N OLD DIXIE HWY FORT PIERCE FL 34946-1410		

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL/SUBR INSD. WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/KOP AGG \$ OTHER \$
A	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		414 8966-D31-59D	04/30/2014	10/30/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED      RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N				PER STATUTE      OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> COLLIER COUNTY BOCC COLLIER COUNTY RISK MANAGEMENT DEPARTMENT 3311 TAMIAMI TRAIL EAST NAPLES, FL 34112	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

LSA5 A244608

*Marion*

BestLinda

**From:** BestLinda  
**Sent:** Wednesday, June 11, 2014 2:52 PM  
**To:** BestLinda; 'sue@mcculleymarine.com'  
**Subject:** RE: Insurance Requirements

*F.Y.S.*

*Insurance's approval.*

**Tracking:** Recipient  
BestLinda  
'sue@mcculleymarine.com'

**Delivery**  
Delivered: 6/11/2014 2:52 PM

*Linda Best*

Good afternoon, Sue;

I researched the insurance coverages provided against the requested coverages, the *only* coverage that is not identified on the Integro COI is automobile. I looked at the coverage in the original agreement, Auto was on a separate policy from State Farm at that time (2006). My thought is that perhaps auto remains on a separate policy for McCulley.

I was able to work through the other line items on the Integro COI, and while they are not exactly worded as set forth in the contract, however, the coverages do correlate with the requirements. The Excess Liability picks up the variances between the requested coverages and the coverages McCulley has in place.

I apologize for any confusion, the insurance certificate is not in a format that the County typically receives, and the coverages for marine work are not as easily recognized due to the descriptions of the coverages. I will sign off on the insurance certificate as received, the only last piece missing is the auto insurance.

Regards,

*Linda*

Linda Best, MBA  
Manager, Risk Finance  
Collier County Risk Management Department  
3311 Tamiami Trail East  
Naples, FL 34112  
Direct: 239-252-8839  
Mobile: 239-784-4650

**From:** BestLinda  
**Sent:** Tuesday, June 10, 2014 4:08 PM

**EXHIBIT A – SPECIFICATIONS****Phase I  
Artificial Reef Deployment****Scope of Work**

The proposed work consists of providing all necessary services and equipment to deploy clean suitable construction and demolition reef material (C&D) into permitted Artificial Reef sites up to 35 miles offshore. Please provide unit prices by ton for reefs deployed between 0 to 14 miles, and reefs deployed between 14 to 35 miles to provide the scope of work which consists of, but not limited to the following:

- Review and adhere to all permit requirements regarding the construction and deployment of Artificial Reefs
- Manage and organize the construction and demolition (C&D) waste stockpiled at the Collier County Landfill (Details provided in Section B, under Contractor's Responsibility)
- Transport stockpiled clean suitable construction and demolition (C&D) suitable material from the Collier County Landfill, and from various vendors whom are up to 50 miles away of the loading site; to a waterfront material staging location(s)
- Load the suitable materials on barges
- Transport and deploy the suitable materials as per the Engineer's design, to the permitted artificial reef locations

The contractor must provide all materials, labor supervision, and equipment to perform the work. The scope of work is extended to other governmental entities: Collier County encourages and agrees to the successful contractor extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful contractor.

**Contractor's Responsibilities**

The Contractor shall be responsible for all activities associated with the work including, but not limited to, the following:

A) Permits –The permits are available to potential Contractors at the offices of the Environmental Services Department. The Contractor must be thoroughly familiar with the permits since they describe the procedure to be utilized, including the method of construction, and the suitable materials for the artificial reefs. The Contractor must adhere to all permit requirements and must certify and assure compliance for each deployment to the sites. All special and standard Manatee Protection Requirements must be complied with.

B) Suitable Material - The Contractor is responsible for assuring the materials are suitable, however the County Representative reserves the right to reject any material. Suitable materials are described in the permits. They are described as but not limited to; recovered pre-cast concrete with structural integrity such as culverts, manholes, barriers, pilings, catch basins, etc. of varying sizes larger than three (3) feet across, or limestone boulders no smaller than three (3) feet in diameter and no longer than ten (10) feet in diameter. The Contractor will be responsible for removing unsuitable materials from the Collier County Landfill. This may be done at the landfill, at the discretion of the Collier County Landfill Operations Manager.

The Collier County Landfill is located approximately seventeen miles away from the barge staging area. Therefore, the Contractor is responsible for collecting and transporting suitable material, from various sites up to seventeen (17) miles from the barge staging area, at no additional cost. However, at the discretion of the County, Contractor may provide an additional charge per ton, to collect and transport suitable material to the barge staging area, located at various sites outside the seventeen mile range and up to fifty miles away from the barge staging area. All material must be certified on site by a County Representative as suitable reef material. The Contractor is responsible for properly disposing any and all unsuitable materials removed from a vendor's site. Unsuitable material from the C&D materials derived from sources other than the Collier County Landfill will not be permitted to be disposed of at the Collier County Landfill. The Contractor is liable for any damages done at the various collection sites.

C) C&D Loading – Upon initiation of stockpiling, loading, and transporting of the reef material by the Contractor, all liability, risk of loss and responsibility for the safe handling, storage, transportation and deployment of the materials shall be the Contractor's responsibility. This liability, assumption of risk and responsibility shall remain with the Contractor until the materials are deployed at the permitted reef site in accordance with these specifications. The Suitable materials will be stockpiled as they are received at the landfill. The Contractor shall not allow the materials to accumulate at the landfill in excess of six thousand (6,000) tons. The Contractor is responsible for maintaining and organizing the stockpile material in a suitable fashion to maximize the footprint for material storage. All loading must be coordinated with the County's Solid and Hazardous Waste Management Department and the landfill operator.

D) Barge Staging Area – The Contractor is responsible for hauling the materials to the barge staging area. The Contractor must coordinate with the County representative for the use of the barge staging area located at the base of the Marco Island Jolly Bridge, 951 North:



9800 ISLE OF CAPRI RD Naples fl 34114

All materials received at the site shall utilize the barge displacement technique for measurement of material tonnage. The Contractor must maintain the barge staging area clean with suitable material in an organized fashion and submit written certification that the materials loaded on the barge are suitable.



E) Transport to Reef Location –The vessel utilized should be a barge or other vessel suitable for offshore movement. The Contractor shall provide a sufficiently powered towing vessel, personnel, and all necessary equipment to transport the materials offshore and deploy it. The county has the right to reject any equipment they deem to be inadequate or worn-out. The materials loaded on the transporting vessel must be properly secured to allow for safe transport to the reef construction site.

The barge must carry an Artificial Reef Materials Cargo Manifest as required by Florida Statutes 370.25 (6)(b). The cargo manifest will be issued by the County's representative upon inspection of the loaded barge.

F) Deployment of Recycled C&D Reef Materials – The Contractor shall be responsible for placing temporary buoys to mark each deployment site in accordance with the permits. The County's representative will observe the temporary marking of the reef deployment locations in advance of deployment. The markers shall be colored buoys no less than twelve inches (12") in diameter and sufficiently anchored so that they will not drift off the designated deployment site prior to deployment. The Contractor shall be required to remove any materials placed outside the permit area. Precise GPS placement of marker buoys that do not shift position with time will be important to insure the reef is constructed within the permitted area.

The County's representative, as an official observer, shall remain on-site during the entire deployment phase of the operation, and observe the GPS coordinates of the individual placements as well as the maximum vertical relief of the constructed reefs.

The Contractor shall have, on-site, current nautical charts of the deployment area, with the permitted site indicated on the chart. The proposed patch reef coordinates and the corner coordinates of the reef site also must be in possession of the Contractor when on-site. The Contractor must also be in possession of a copy of the Army Corps permit for the area where the deployments are taking place. The Contractor shall be responsible for ensuring that all permit conditions are met.

The Contractor shall be responsible for providing to the County a contour map of the site describing conditions before and after each deployment.

During the deployment of the concrete reef materials, the transport vessel must be effectively moored through double anchoring, or otherwise be held securely in place with minimal movement to ensure accurate and concentrated placement of the concrete patch reefs on the bottom. Individual reef materials shall not be widely scattered. Additionally, the patch reefs shall not exceed twelve (12) feet in height or one-half the distance between the surfaces and bottom whichever is less. If the height restriction is exceeded, the Contractor will be required to adjust the materials to meet the height restriction.

Any machinery used to move and deploy the reef materials should be sufficiently powered/maneuverable and capably operated to ensure timely, effective and safe off-loading of materials. The tug or transport vessel shall meet all U.S. Coast Guard certification and safety requirements, be equipped with a working, accurate Global Positioning System (GPS) unit and other marine electronics including a working VHF radio.

G) Reports – The Contractor shall prepare and deliver to the County the pre-notification required in the permits at least twenty-one (21) days prior to the expected deployment dates. The Contractor shall also prepare the post deployment notification as required by the permits, and submit it to the County within fourteen (14) days following the deployment. The County will provide the notification to the agencies as required in the permits.

H) Other –Contractor must demonstrate that it has obtained all necessary permits or can obtain such permits within one hundred twenty (120) days of the Award for the barge loading facility site and all transportation vessels.

<b>Phase II</b> <b>Artificial Reef Fabricated Structures</b>
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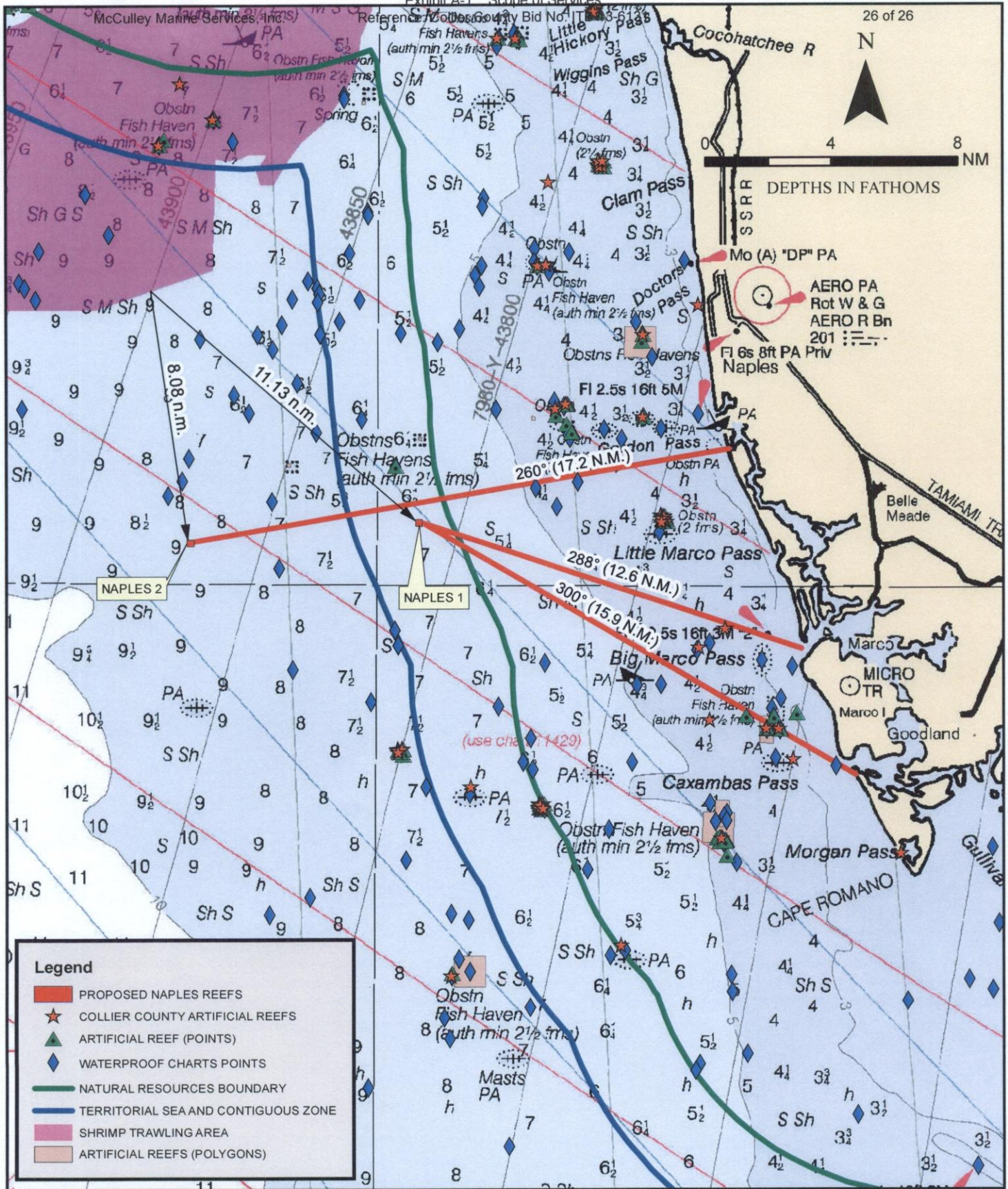
The Contractor is responsible for providing fabricated reef modules to the barge staging area. The tetrahedrons, reef modules, are to be constructed of reinforced concrete, example Reefmaker's Florida Limestone and Florida Special Artificial Reefs (or approved equivalent\*). Two (2) reef module sizes will be used in the new artificial reefs off of Collier County. One option will be an 8 foot and the other will be a 12 foot tetrahedron weighing a minimum of 5,000 lbs.

Twenty (20) reef modules are to be placed at each deployment site upright and a minimum distance of 40ft from the toe of the concrete/limestone/rubble. Ten (10) modules will be placed on the northern side of the concrete/limestone/rubble and ten (10) modules will be placed on the southern side. There should be 10ft to 20ft between each module. Eight (8) foot modules are to be placed on reefs with more than 12ft of relief. Twelve (12) foot modules are to be placed on reefs with less than 12ft of relief. Coordination of the final deployment schedule and locations will be coordinated with the County's Project Manager.

Please provide unit pricing on the bid tab sheet (provided in separate file) for providing the reef modules at the barge staging area. Once there, the modules will be weighed using the barge displacement technique for measurement of material tonnage and charged accordingly to their respective reef location between 0 to 14 or 0 to 35 miles. The minimum module order will be no less than 75 modules each.

Also please provide unit pricing for creating and installing customized plaques on reef modules and other potential artificial reef materials. Contractor must provide and display examples of the plaques, and may only proceed at the discretion of the County.

*\*If proposing equivalent, please include in bid package specification documentation.*



**Legend**

- PROPOSED NAPLES REEFS
- ★
 COLLIER COUNTY ARTIFICIAL REEFS
- ▲
 ARTIFICIAL REEF (POINTS)
- ◆
 WATERPROOF CHARTS POINTS
- NATURAL RESOURCES BOUNDARY
- TERRITORIAL SEA AND CONTIGUOUS ZONE
- SHRIMP TRAWLING AREA
- ARTIFICIAL REEFS (POLYGONS)



**Turrell, Hall & Associates, Inc.**  
 Marine & Environmental Consulting

3484 Exchange Ave. Suite B. Naples, FL 34104-3732  
 Email: tuna@turrell-associates.com Phone: (239) 643-0166 Fax: (239) 643-6632

**CITY OF NAPLES  
 PROPOSED REEF SITES**

DRAWN BY:	RMJ	REVISION:	SCALE:
CREATED:	05-14-13	06-19-13	1" = 4 N.M.
JOB NO.:	1249	N/A	FILE PATH:
SHEET:	01	N/A	P:\1249-Collier County Reef\GIS\NAPLES-SHT1.mxd



*City of Naples*

FINANCE DEPARTMENT

TELEPHONE (239) 213-7100 • FACSIMILE (239) 213-7103  
735 Eighth Street South • Naples, Florida 34102-6796

January 2, 2013

Nick Gagliano, Project Coordination  
Deepwater Horizon Claims Center  
Post Office Box 2396  
Hammond, Louisiana 70404

**RE: City of Naples, Florida - BP Promotional Fund – Return of Executed Contact**

Dear Mr. Gagliano:

Enclosed please find two original signature funding agreements. Also enclosed please find the City's W-9 and Contact Information. Our 1<sup>st</sup> Progress Report will follow shortly.

Please return one fully executed agreement to my attention.

The Naples city government is concerned with a sustainable clean environment and looks forward to working with you. Thank you for your consideration in this matter.

Sincerely,

Gregory Given  
Grants and Procurement Coordinator  
City of Naples Finance Department  
735 Eighth Street – South  
Naples FL 34102  
Land: 239-213-7101  
Email: [ggivens@naplesgov.com](mailto:ggivens@naplesgov.com)

**Enclosures**

Two Original (2) Copies - City of Naples, Florida, BP Promotional Fund Funding Agreement and Related Information

## PROMOTIONAL FUND GRANT AGREEMENT

This Promotional Fund Grant Agreement (this "Agreement") is entered into by \_\_\_\_\_ City of Naples, FL \_\_\_\_\_ ("Grantee"), with offices at \_\_\_\_\_ 735 8<sup>th</sup> Street South, Naples, FL \_\_\_\_\_; Patrick Juneau, as Trustee (the "Trustee") of the Settlement Trust as further defined below (the "Settlement Trust"), and as Claims Administrator of the Court Supervised Settlement Program (the "Claims Administrator"); and solely for the purposes of taking cognizance and approving the terms of this Agreement, BP Exploration & Production Inc. ("BP Exploration") and Lead Class Counsel.

### RECITALS

WHEREAS, BP Exploration, a Delaware corporation and certain of its affiliates (collectively "BP") have been named as defendants in *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (the "MDL Litigation");

WHEREAS, BP and the Economic Class Representatives, individually and on behalf of the Economic and Property Damages Settlement Class, by and through Lead Class Counsel entered into an Economic and Property Damages Settlement Agreement ("Settlement Agreement") dated April 18, 2012, and amended May 1, 2012, for the purpose of settling all Released Claims against the Released Parties, including BP;

WHEREAS, the United States District Court of the Eastern District of Louisiana (the "Court") has preliminarily approved the Settlement Agreement by Order dated May 2, 2012 (the "Preliminary Approval Order," as further defined below);

WHEREAS, on May 4, 2012, BP, Lead Class Counsel, the Trustee and J.P. Morgan Trust Company (the "Directed Trustee") entered into the *Deepwater Horizon* Economic and Property Damages Trust Agreement (the "Trust Agreement") creating the Settlement Trust;

WHEREAS, the Settlement Trust is intended to meet the requirements of a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended from time to time, and section 1.468B-1(c) of the Treasury Regulations promulgated thereunder;

WHEREAS, the Settlement Trust's purpose is to establish a mechanism to pay Settlement Payments (as defined in the Settlement Agreement) and the costs of administering the Settlement Program (as defined in the Settlement Agreement) in accordance with the terms of the Settlement Agreement and the Trust Agreement.

WHEREAS, the Trustee has the power, pursuant and subject to the terms of the Settlement Agreement and the Trust Agreement, to make distributions from the funds held by the Settlement Trust subject to the terms and conditions thereof; and

WHEREAS, Grantee desires to obtain funds for promotional services as described on attached Schedule "1";

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

## AGREEMENT

### 1. Definitions.

The following words and phrases have the meanings indicated. Other words and phrases appearing in capital letters throughout this Agreement shall have the meanings they are given with their first operative use. Terms not otherwise defined herein shall have the same meanings ascribed to them in the Settlement Agreement and/or the Trust Agreement.

- 1.1 Applicable Law: means all applicable local, state and federal laws, rules and regulations.
- 1.2 Claims Administrator: has the meaning ascribed to it in the Settlement Agreement.
- 1.3 Individual: means a natural person.
- 1.4 Lead Class Counsel: means the lawyers appointed by the Court to represent the Class of Claimants.
- 1.5 Settlement Trust: means the qualified settlement trust fund established pursuant to that certain *Deepwater Horizon* Economic and Property Damages Trust Agreement, dated May 4, 2012, among BP, Lead Class Counsel, the Claims Administrator, and the Directed Trustee.
- 1.6 Parties: means the Settlement Trust, the Claims Administrator, Grantee, BP and Lead Class Counsel. BP and Lead Class Counsel are only made Parties to this Agreement for the purposes of taking cognizance and approving the terms of this Agreement.
- 1.7 Preliminary Approval Order: means the Order entered by the Court on May 2, 2012 granting preliminary approval of the Settlement Agreement.

### 2. Scope of Services.

- 2.1 Services. The general scope of the services to be furnished by Grantee shall be those described on attached Schedule "1".
- 2.2 The Services shall be provided in strict accordance with the terms of the Settlement Agreement, the Preliminary Approval Order, a final approval order (if one is entered) and in compliance with Applicable Law.

### 3. Grant Award.

- 3.1 Amount of Grant. Subject to the terms and conditions of this Agreement, and contingent upon sufficient funding of the Settlement Trust by BP, the Settlement Trust agrees to award to Grantee up to \$313,650.00 for the period December 1, 2012 to November 30, 2013. The Grant shall be payable as follows:

\$78,390.00 after signing and processing the contract.  
\$78,390.00 upon receipt and approval of the first quarter report.  
\$78,390.00 upon receipt of the second and third quarter reports.  
\$78,390.00 upon receipt and approval of the final report and submission of all deliverables as

outlined in Schedule 1.

- 3.2 Documentation. Grantee shall submit to the Claims Administrator all documentation as further described in Paragraph 3.3 within ten (10) days before the beginning of each calendar quarter, or more frequently as the Claims Administrator may require. The Claims Administrator shall review Grantee's documentation and if acceptable, authorize the next Grant payment. In the event that any documentation is deemed not acceptable by the Claims Administrator, Grantee shall be notified in writing of such deficiencies within ten (10) days of submission of the documentation.
- 3.3 Reporting. Grantee will provide reports to the Claims Administrator at least quarterly, within ten (10) days before the beginning of each quarter, or more often as the Claims Administrator may require, in which it will report, for the preceding quarter the following: a updated list of services and deliverables as outlined on Schedule 1. The Claims Administrator may distribute such reports as it deems appropriate. In addition, Grantee may be required to provide additional reports as may further be defined by the Claims Administrator in writing.
- 3.4 Ownership of Documentation. All records, reports, documents and other material delivered or transmitted to Grantee by the Claims Administrator shall remain the property of the Claims Administrator, and shall be returned by Grantee to the Claims Administrator, at Grantee's expense, at termination or expiration of this Agreement. All records, reports, documents, or other material related to this Agreement and/or obtained or prepared by Grantee in connection with the performance of the Services contracted for herein shall become the property of the Claims Administrator, and shall, upon request, be returned by Grantee to the Claims Administrator, at Grantee's expense, at termination or expiration of this Agreement.
- 3.5 Audit Rights. Grantee will provide to the Claims Administrator copies of its audit reports, if and when requested to do so by the Claims Administrator. In addition, the Claims Administrator or its authorized representatives may, at any time on reasonable notice, audit the operation of Grantee in relation to the activities undertaken pursuant to this Agreement.
- 3.6 Payment in Full. The Grant payments made hereunder are and shall be deemed to constitute "payment in full" for any Services performed by Grantee.

#### 4. Term.

- 4.1 This Agreement is effective as of 12:01 a.m. Eastern Standard Time on December 1, 2012 (the "Effective Date") and its term shall end on November 30, 2013 (the "Expiration Date"), unless terminated on a different date in accordance with Paragraph 4.2 or as otherwise agreed by the Parties.
- 4.2 Grantee shall be authorized to perform the Services as further defined in Schedule "1" to this Agreement starting on the Effective Date, through and including the earlier of the date that: (1) the Court denies the Parties' motion for final approval of the Settlement Agreement; (2) the reversal on appeal of a Court order granting final approval of the Settlement Agreement; (3) the Court enters an Order closing the proposed Court Supervised Settlement Program; (4) Grantee is terminated by the

Claims Administrator with at least thirty (30) days written notice before the end of any quarter, which the Claims Administrator shall have the right to do with or without cause (collectively, "Termination Events"); or (5) the Expiration Date. As used herein, "cause" shall include, without limitation, the following: (i) the failure of Grantee to perform the Services in accordance with the requirements of this Agreement, (ii) the breach by Grantee of any other obligations under this Agreement, which breach is not cured within ten (10) days of written notice thereof, (iii) the commission of any act or any omission involving gross negligence, fraud, or other intentional or willful misconduct by Grantee, and (iv) any other violation of a statute, regulation, order, decree or court requirement or other Applicable Law by Grantee.

5. [Intentionally Omitted]

6. Representations and Warranties.

Grantee represents, warrants and covenants that: (i) it has the power and authority to enter into this Agreement and to perform all of its obligations hereunder; (ii) the execution, delivery and performance of this Agreement does not violate or conflict with any other agreement to which Grantee is a party or by which it is bound; (iii) Grantee has not previously entered into any agreement that would restrict Grantee in the performance of the Services; (iv) Grantee shall comply with all Applicable Law in performing its obligations under this Agreement; (v) Grantee shall use commercially reasonable efforts to verify that each of its employees performing Services is legally entitled to work in the United States and has all necessary visas and work permits; (vi) Grantee has the capacity and resources to perform the Services; (vii) all Services shall be performed by qualified personnel in a timely, professional and workmanlike manner in accordance with generally accepted industry practices; (viii) Grantee is either a governmental entity political subdivision of a governmental entity, or is recognized by the Internal Revenue Service (the "IRS") as a public charitable organization under sections 501(c)(3) and 509(a)(1), (2) or (3) of the Internal Revenue Code, and will inform the Claims Administrator immediately of any changes in, or IRS proposed or actual revocation (whether or not appealed) of such tax status; and (ix) all Grant funds shall be used only for the purposes described herein.

7. [Intentionally Omitted]

8. [Intentionally Omitted]

9. Miscellaneous.

9.1 Subcontracting. Notwithstanding any provision in this Agreement to the contrary, Grantee shall not subcontract any of its obligations under this Agreement to any third party unless approved in writing by the Claims Administrator.

9.2 Successors and Assigns. The terms and conditions of this Agreement shall be binding upon the Parties and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that, unless otherwise provided in this Agreement, the obligations of the Parties under this Agreement may not be delegated nor shall any rights be assigned or transferred, including by merger, reorganization, change of control, acquisition or sale of all or substantially all of its assets or business or otherwise (including, without limitation, by operation of law) (collectively a "Sale Transaction"), by a Party without the other Parties' prior written consent.



- 9.3 Compliance with Laws. Grantee and its respective employees and agents shall comply with all Applicable Law in performance under this Agreement.
- 9.4 Tax Responsibility. Grantee shall be responsible for the payment of any taxes that might be due from or assessed on any of the Grant funds received under this Agreement.
- 9.5 Maintenance of Books and Records. In order to implement and effectuate the audit rights of the Claims Administrator as described in Paragraph 3.5, Grantee shall maintain its books and records and other documents pertaining to the use and disposition of the grant funds received and to the Services rendered under this Agreement, for a period of at least three (3) years after the Termination Date.
- 9.6 Dispute Resolution. Any and all claims, disputes and controversies arising under or relating to this Agreement that cannot be resolved by the Parties shall be determined solely in the Court, under Louisiana law without regard to its conflicts of law provisions. All Parties waive the right to a jury trial. In the Court's discretion, the prevailing Party in any dispute arising from this Agreement may be awarded reasonable attorney's fees.
- 9.7 Complete Agreement. This Agreement and any exhibits, together with any addenda, set forth the entire agreement of the Parties with respect to Services hereunder, and any prior or contemporaneous promises, conditions or understandings are superseded and/or replaced with this Agreement.
- 9.8 Modification. No provision of this Agreement may be changed unless the change is set forth in a written amendment to this Agreement signed by the Parties.
- 9.9 No Waiver. If a Party waives compliance with any term or condition of this Agreement, it shall be not deemed a waiver of any other right, nor to permit less than strict compliance with any term or condition on any future occasion.
- 9.10 Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the law of the State of Louisiana without reference to its conflict of laws principles. To the extent that any provision is found to be unenforceable or invalid, then such provision shall be ineffective only to the extent of such unenforceability or invalidity, and shall not affect the enforceability or validity of any other provision of this Agreement.
- 9.11 Notices. All notices and correspondence required to be given by this Agreement shall be delivered by hand or certified mail, return receipt requested and postage pre-paid, or by a nationally recognized courier service, or by facsimile transmission, and be addressed as follows:

If to Claims Administrator and/or Settlement Trust:

Patrick Juneau  
935 Gravier St.  
Suite 1905  
New Orleans, LA  
Phone: 504-264-9740

Fax: 504-264-9746  
Email: [mjj@dheclaims.com](mailto:mjj@dheclaims.com)

If to Grantee:

Michael Bauer, Ph.D. \_\_\_\_\_  
295 Riverside Circle \_\_\_\_\_  
Naples, FL 34102 \_\_\_\_\_  
Phone: (239) 213-1031  
Fax: (239) 231-5010  
[mbauer@naplesgov.com](mailto:mbauer@naplesgov.com)

9.12 Counterparts. This Agreement may be executed in one or more counterparts which taken together shall constitute one single agreement between the Parties.

9.13 Independent Contractors. Grantee is an independent contractor. No Party to this Agreement is an agent, representative, joint venturer, or partner of any other Party. No Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, any other Party. Each Party shall bear its own costs and expenses in performing the Agreement. Grantee shall be responsible for the payment of all fees, wages and/or salaries payable to Grantee personnel and for providing Grantee personnel with any fringe benefits to which they are entitled by reason of being an employee or contractor of Grantee. Grantee shall comply, at its expense, with all applicable provisions of workers' compensation laws, unemployment compensation laws, federal social security law, the Fair Labor Standards Act and all other applicable federal, state and local laws and regulations relating to terms and conditions of employment required to be fulfilled by employers. Grantee shall comply with all applicable occupational health and safety laws, standards and requirements pertaining to the Services, including, but not limited to, OSHA standards and analogous state standards for work performed under this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement which shall be effective on the date first above-written, to be executed on their behalf by the undersigned duly authorized individuals.

**Settlement Trust**

By:

\_\_\_\_\_  
Signature

Patrick Juneau  
Printed Name

Trustee  
Printed Title

\_\_\_\_\_  
Date

**Grantee:**

*John F. Sorey III*  
Signature

John F. Sorey III  
Printed Name

Mayor  
Printed Title

12-31-12  
Date

**Claims Administrator**

By:

\_\_\_\_\_  
Signature

Patrick Juneau  
Printed Name

Claims Administrator  
Printed Title

\_\_\_\_\_  
Date

**Approved as to form and legality**

By *Robert D. Pritt*  
**Robert D. Pritt, City Attorney**

Attest  
*Patricia L. Rambosk*  
Patricia L. Rambosk, City Clerk  
Date: 1-3-13



**Schedule 1**  
**Description of Services**

The City of Naples will construct at least 10 new 500-ton state-of-the-art artificial reefs.

1. Submit a timeline outlining the tasks involved in the creation of the artificial reefs and the approximate time each task will take to complete.
2. Provide copies of contracts of those involved in the artificial reef construction project, including the transport of materials.
3. Submit copies of appropriate permits from the U.S. Army Corps of Engineers and the Department of Environmental Protection allowing/permitting the project.
4. Provide copies of surveys and monitoring results.
5. Submit photographs of the work as it progresses with brief narratives describing the project events.
5. Provide documentation that the project is completed, such as paid-in-full contractor contracts, reports or other data furnished by government agencies.
3. Submit copies of news releases distributed regarding the project.
4. Submit copies of articles published regarding the project.

**Final Report**

1. Submit a final report that provides a synopsis of all of the activities and events as outlined in the proposal, with narrative and supporting data on the ways these projects met the anticipated outcomes as listed in the proposal.

Form **W-9**  
(Rev. January 2011)  
Department of the Treasury  
Internal Revenue Service

### Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Name (as shown on your income tax return)  
CITY OF NAPLES, FLORIDA

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification (required):  
 Individual/sole proprietor     C Corporation     S Corporation     Partnership     Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_     Exempt payee  
 Other (see instructions) ▶ **GOVERNMENT - LOCAL**

Address (number, street, and apt. or suite no.)  
735 8TH STREET S  
City, state, and ZIP code  
NAPLES, FL 34102

Requester's name and address (optional)

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
			-					

Employer identification number									
5	9	-	6	0	0	0	3	8	2

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here    Signature of U.S. person ▶ *Ann Marie S. Riccardi*    Date ▶ *12/27/2012*

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note, if a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



**CONTACT INFORMATION SHEET**

Name of Organization: City of Naples, Florida

Contact Person: Michael Bauer, Ph.D.

Mailing Address: 295 Riverside Circle  
Naples, FL 34102

Email Address: mbauer@naplesgov.com

Phone #: (239) 213-1031

Purpose of Grant:  
The purpose is construction of artificial Gulf reefs.

**EXHIBIT B**

**BASIS OF COMPENSATION**

As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONTRACTOR agrees to accept payment on a time and reimbursement cost basis as indicated in Exhibit B.

Retainage: (N/A) Not applicable to this Agreement.

				<b>McCulley Marine Services Ft. Pierce, FL</b>	
Description		QTY	Unit	Unit Price	Total
<b><i>Phase One - Artificial Reef Material Deployment (1)</i></b>					
1	Artificial Reef Material Deployed between 0 to 14 Miles	2500	Ton	\$64.75	\$ 161,875.00
2	Artificial Reef Material Deployed between 14 to 35 Miles	2000	Ton	\$74.75	\$ 149,500.00
<b><i>Phase Two - Artificial Reef Fabricated Structures (2)</i></b>					
3	8ft Modules	0	Ea.	\$2,630.00	\$ -
4	12ft Modules	0	Ea.	\$5,030.00	\$ -
<b><i>Additional Fabricated Structures (2)</i></b>					
5	Installation and Creation of Plaques	0	Ea.	\$250.00	\$ -
6	8ft Modules	0	Ea.	\$2,022.00	\$ -
7	8ft Modules	0	Ea.	\$2,016.00	\$ -
8	8ft Modules	0	Ea.	\$1,954.00	\$ -
9	12ft Modules	0	Ea.	\$3,441.00	\$ -
10	12ft Modules	0	Ea.	\$3,430.00	\$ -
11	12ft Modules	0	Ea.	\$3,322.00	\$ -
<b><i>Collection of C&amp;D Material Beyond the 17 mile Range (3)</i></b>					
12	Zone A - 17 to 30 miles away from the Barge Staging Area	0	Ton	\$3.65	\$ -
13	Zone B - 30 to 40 miles away from the Barge Staging Area	0	Ton	\$9.43	\$ -
14	Zone C - 40 to 50 miles away from the Barge Staging Area	0	Ton	\$11.85	\$ -
Estimated Phase One Deployed Tonnage - Subject to Change					<b>\$ 311,375.00</b>
Stated Phase One amount will allow the creation of 9 reefs, deploying a total of approximately 4,500 tons, pursuant to the awarded BP Grant funds.					
Current BP Grant Dollar Amount as indicated in Article 4.1					<b>\$ 313,650.00</b>

**END OF EXHIBIT B**

## EXHIBIT C

### GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples must be named as Additional Insured on the insurance certificate and the following must also be stated on the certificate. "These coverage's are primary to all other coverage's the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. The Certificate Holder shall read as follows:

The City of Naples  
735 Eighth Street South  
Naples, Florida 34102

No City Division, Department, or individual name should appear on the Certificate.  
No other format will be acceptable.

The Certificate must state the bid number and title.

When using the ACORD 25 – Certificate of Insurance only the most current version will be accepted.

The City of Naples requires a copy of a cancellation notice in the event the policy is cancelled. The City of Naples shall be expressly endorsed onto the policy as a cancellation notice recipient.  
*[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1 through C-\_\_ ]*

**EXHIBIT D**

**CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS**

The undersigned is the **Vice President of the McCulley Marine Services, Incorporated** company ("the CONTRACTOR"), and hereby certifies to the following:

1. The CONTRACTOR is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONTRACTOR has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONTRACTOR in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONTRACTOR in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONTRACTOR to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONTRACTOR's files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONTRACTOR will have its contractors, subcontractors, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONTRACTOR being liable for any violation of the law by such third parties.

4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONTRACTOR, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONTRACTOR has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONTRACTOR will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONTRACTOR acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours notice, to examine the CONTRACTOR's books and records to confirm that the CONTRACTOR is in compliance with the terms of this certification.

Executed this 23 day of September, 2014.

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

**ACKNOWLEDGMENT**

STATE OF FLORIDA

COUNTY OF St Lucie

SWORN TO AND SUBSCRIBED before me this 23 day of September, 2014.

The Affiant, John W. McCulley, is [ ] personally known to me or [ ] has produced \_\_\_\_\_ as identification, which is current or has been issued within the past five years and bears a serial number of other identifying number.

Melissa C Blandford

Print Name:

Melissa C Blandford

NOTARY PUBLIC - STATE

OF FLORIDA

Commission Number: EE 201372

My Commission Expires: 8/14/16

(Notary Seal)

