

EXECUTIVE SUMMARY

Recommendation to recommend approval of award of Contract 11-5772 for Final Design, Bid, and Construction Support Services for Beach Renourishment and the rebuilding of the five Existing Erosion Control Structures to Coastal Engineering Consultants (CEC) for a not to exceed Time and Material amount of \$98,762 and make a finding that this item promotes tourism.

OBJECTIVE: To move forward with the final design, bid and construction support services for Beach Renourishment and the rebuilding of the five Existing Erosion Control Structures.

CONSIDERATIONS: CEC will assist Collier County with the final design, bid and construction support services for the South Marco Island Beach Renourishment project. CEC shall be in the primary role for final design and support the County for a one-time bid process and through construction. Collier County shall be in the primary role for the bid process and administering the construction project including resident inspection, contractor oversight, sediment qa-qc plan implementation, and agency reporting. Coastal Technology Corporation (CTC) shall provide peer review of the pertinent tasks.

This project will be done in 2 phases. Phase A will consist of the Beach Renourishment. Phase B will consist of repair of existing structures.

Below is the cost breakdown for this project:

PHASE A BUDGET: BEACH RENOURISHMENT

TASK	DESCRIPTION	TIME & MATERIALS
1	Final Design: Beach Renourishment (BR)	\$ 11,425
2	Bid Process and Contract Procurement: BR	\$ 4,610
3	Construction Administration: BR	\$ 13,090
4	Construction Observations / Certifications: BR	\$ 8,915
5	Contingencies: BR	\$ 5,706
	Subtotal	\$ 43,746

PHASE B BUDGET: REPAIR OF EXISTING STRUCTURES

6	Preliminary Design: Repair of Structures (ROS)	\$ 8,825
7	Permit Applications (ROS)	\$ 6,750
8	Permit Processing (ROS)	\$ 3,460
9	Final Design: Beach Renourishment (ROS)	\$ 7,525
10	Bid Process and Contract Procurement: ROS	\$ 2,080
11	Construction Administration: ROS	\$ 7,135
12	Construction Observations / Certifications: ROS	\$ 12,065
13	Contingencies: ROS	\$ 7,176
	Subtotal	\$ 55,016

PHASE	DESCRIPTION	TIME & MATERIALS
A	Beach Renourishment	\$ 43,746
B	Repair of Existing Structures	\$ 55,016
	Total	\$ 98,762

ADVISORY COMMITTEE RECOMMENDATIONS: At the May 11, 2012 CAC meeting this item was incorrectly identified as a Work Order under contract 09-5262. It should have been identified as Collier Contract 11-5772. All else remains the same.

This item was unanimously recommended for approval by the CAC with a 6 to 0 vote.

FISCAL IMPACT: Funding for this project will be from Tourist Development Tax, Fund 195. Current funding for this Work Order is available in Project 80166.

GROWTH MANAGEMENT IMPACT: There is no impact to the Growth Management Plan related to this action.

ADVISORY COMMITTEE RECOMMENDATIONS: Staff is recommending approval of this item.

LEGAL CONSIDERATIONS: This item has been reviewed by the County Attorney's Office, requires majority vote, and is legally sufficient for Board action. –

RECOMMENDATION: To recommend approval of a award of Contract 11-5772 for Final Design, Bid, Construction Support Services for Beach Renourishment and the rebuilding of the five Existing Erosion Control Structures to Coastal Engineering consultants (CEC) for a not to exceed Time and Material amount of \$98,762 and make a finding that this item promotes tourism.

PREPARED BY: J. Gary McAlpin, P.E., Director, Coastal Zone Management Department

Contract #11-5772
Design, Engineering and Permitting Services for Re-nourishment of the Marco Island South Beach

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____ 2012, 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 Coastal Engineering Consultants, Inc., authorized to do business in the State of Florida, whose business address is 3106 S. Horseshoe Drive, Naples, FL 34104 (hereinafter referred to as the "CONSULTANT").

W I T N E S S E T H:

WHEREAS, the OWNER desires to obtain the professional Design, Engineering and Permitting Services of the CONSULTANT concerning Re-nourishment of the Marco Island South Beach (hereinafter referred to as the "Project"), said services being more fully described in Schedule A, "Scope of Services", which is attached hereto and incorporated herein;

WHEREAS, the CONSULTANT has submitted a proposal for provision of those services;
and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional 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 CONSULTANT'S RESPONSIBILITY

1.1. CONSULTANT shall provide to OWNER professional Design, Engineering and Permitting Services in all phases of the Project to which this Agreement applies.

1.2. The Basic Services to be performed by CONSULTANT hereunder are set forth in the Scope of Services described in detail in Schedule A. The total compensation to be paid CONSULTANT by the OWNER for all Basic Services is set forth in Article Five and Schedule B, "Basis of Compensation", which is attached hereto and incorporated herein.

1.3. The CONSULTANT 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 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 professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.4. The CONSULTANT 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 and/or retain only qualified personnel to provide such services to OWNER.

1.5. CONSULTANT designates Michael Poff, P.E., a qualified licensed professional to serve as the CONSULTANT'S project coordinator (hereinafter referred to as the "Project Coordinator"). The Project Coordinator is authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. Further, the Project Coordinator has full authority to bind and obligate the CONSULTANT on all matters arising out of or relating to this Agreement. The CONSULTANT agrees that the Project Coordinator shall devote whatever time

is required to satisfactorily manage the services to be provided and performed by the CONSULTANT hereunder. The Project Coordinator shall not be removed by CONSULTANT from the Project without OWNER'S prior written approval, and if so removed must be immediately replaced with a person acceptable to OWNER.

1.6. CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from Owner to promptly remove and replace the Project Coordinator, or any other personnel employed or retained by the CONSULTANT, or any subconsultants or subcontractors or any personnel of any such subconsultants or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Agreement, said request may be made with or without cause. Any personnel so removed must be immediately replaced with a person acceptable to OWNER.

1.7. The CONSULTANT represents to the OWNER that it has expertise in the type of professional services that will be performed pursuant to this Agreement and has extensive experience with projects similar to the Project required hereunder. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the OWNER'S review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all applicable laws, statutes, including the Local Government Prompt Payment Act (218.735 and 218.76 F.S.) as amended in the 2010 legislative session, ordinances, codes, rules, regulations and requirements of any governmental agencies, including the Florida Building Code where applicable, which regulate or have jurisdiction over the Project or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding resolution of each such conflict. OWNER'S approval of the design documents in no way relieves CONSULTANT of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.

1.7.1 The County reserves the right to deduct portions of the (monthly) invoiced (task) amount for the following: Tasks not completed within the expressed time frame, including required deliverables, incomplete and/or deficient documents, failure to comply with local, state and/or federal requirements and/or codes and ordinances applicable to Consultant's performance of the work as related to the project. This list is not deemed to be all-inclusive, and the County reserves the right to make sole determination regarding deductions. After notification of deficiency, if the Consultant fails to correct the deficiency within the specified timeframe, these funds would be forfeited by the Consultant. The County may also deduct or charge the Consultant for services and/or items necessary to correct the deficiencies directly related to the Consultant's non-performance whether or not the County obtained substitute performance.

1.8. CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER'S prior written consent, or unless incident to the proper performance of the CONSULTANT'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 CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. CONSULTANT shall provide OWNER prompt written notice of any such subpoenas.

1.9 As directed by OWNER, all plans and drawings referencing a specific geographic area must be submitted in an AutoCad Digital Exchange File (DXF) format on a CD or DVD, drawn in the Florida State Plane East (US Feet) Coordinate System (NAD 83/90). The drawings should either reference specific established Survey Monumentation, such as Certified Section Corners (Half or Quarter Sections are also acceptable), or when implemented, derived from the RTK(Real-Time Kinematic) GPS Network as provided by OWNER. Information layers shall have common naming conventions (i.e. right-of-way - ROW, centerlines - CL, edge-of-pavement - EOP, etc), and adhere to industry standard CAD specifications.

ARTICLE TWO ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by OWNER through a Change Order to this Agreement, CONSULTANT shall furnish or obtain from others Additional Services of the types listed in Article Two herein. The agreed upon scope, compensation and schedule for Additional Services shall be set forth in the Amendment authorizing those Additional Services. With respect to the individuals with authority to authorize Additional Services under this Agreement, such authority will be as established in OWNER'S Purchasing Policy and Administrative Procedures in effect at the time such services are authorized. These services will be paid for by OWNER as indicated in Article Five and Schedule B. Except in an emergency endangering life or property, any Additional Services must be approved in writing via an Amendment to this Agreement prior to starting such services. OWNER will not be responsible for the costs of Additional Services commenced without such express prior written approval. Failure to obtain such prior written approval for Additional Services will be deemed: (i) a waiver of any claim by CONSULTANT for such Additional Services and (ii) an admission by CONSULTANT that such Work is not additional but rather a part of the Basic Services required of CONSULTANT hereunder. If OWNER determines that a change in the Agreement is required because of the action taken by CONSULTANT in response to an emergency, an Amendment shall be issued to document the consequences of the changes or variations, provided that CONSULTANT has delivered written notice to OWNER of the emergency within forty-eight (48) hours from when CONSULTANT knew or should have known of its occurrence. Failure to provide the forty-eight (48) hour written notice noted above, waives CONSULTANT'S right it otherwise may have had to seek an adjustment to its compensation or time of performance under this Agreement. The following services, if not otherwise specified in Schedule A as part of Basic Services, shall be Additional Services:

2.1. Preparation of applications and supporting documents (except those already to be furnished under this Agreement) for private or governmental grants, loans, bond issues or advances in connection with the Project.

2.2. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule or character of construction; and revising studies, reports, design documents or Contract Documents previously accepted by OWNER when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to and not reasonably anticipated prior to the preparation of such studies, reports or documents, or are due to any other causes beyond CONSULTANT'S control and fault.

2.3 Providing renderings or models for OWNER'S use.

2.4 Investigations and studies involving detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; and evaluating processes available for licensing and assisting OWNER in obtaining such process licensing.

2.5. Furnishing services of independent professional associates and consultants for other than the Basic Services to be provided by CONSULTANT hereunder.

2.6. Services during travel outside of Collier and Lee Counties required of CONSULTANT and directed by OWNER, other than visits to the Project site or OWNER's office.

2.7 Preparation of operating, maintenance and staffing manuals, except as otherwise provided for herein.

2.8. Preparing to serve or serving as a CONSULTANT or witness for OWNER in any litigation, or other legal or administrative proceeding, involving the Project (except for assistance in consultations which are included as part of the Basic Services to be provided herein).

2.9 Additional services rendered by CONSULTANT in connection with the Project, not otherwise provided for in this Agreement or not customarily furnished in Collier County as part of the Basic Services in accordance with generally accepted professional practice.

ARTICLE THREE OWNER'S RESPONSIBILITIES

3.1. The OWNER shall designate in writing a project manager to act as OWNER'S representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Manager"). The Project Manager shall have authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to CONSULTANT'S services for the Project. However, the Project Manager is not authorized to issue any verbal or written orders or instructions to the CONSULTANT 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 CONSULTANT hereunder;
- (b) The time the CONSULTANT is obligated to commence and complete all such services; or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONSULTANT.

3.2. The Project Manager shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;

- (b) Provide all criteria and information requested by CONSULTANT as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
- (c) Upon request from CONSULTANT, assist CONSULTANT by placing at CONSULTANT'S disposal all available information in the OWNER'S possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to the Project;
- (d) Arrange for access to and make all provisions for CONSULTANT to enter the Project site to perform the services to be provided by CONSULTANT under this Agreement; and
- (e) Provide notice to CONSULTANT of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONSULTANT hereunder.

ARTICLE FOUR TIME

4.1. Services to be rendered by CONSULTANT shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be performed and completed in accordance with the Project Milestone Schedule attached hereto and made a part hereof as Schedule C. Time is of the essence with respect to the performance of this Agreement.

4.2. Should CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONSULTANT, and not due to its own fault or neglect, including but not restricted to acts of nature or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONSULTANT shall notify OWNER in writing within five (5) working days after

commencement of such delay, stating the specific cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension for that specific delay.

4.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONSULTANT'S services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONSULTANT'S sole remedy against OWNER will be the right to seek an extension of time to its schedule provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage for Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of CONSULTANT, the services to be provided hereunder have been delayed for a total of 180 calendar days, CONSULTANT'S compensation shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONSULTANT, if any, as a result of such delays.

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

4.5 In no event shall any approval by OWNER authorizing CONSULTANT to continue performing Work under this Agreement or any payment issued by OWNER to CONSULTANT be

deemed a waiver of any right or claim OWNER may have against CONSULTANT for delay or any other damages hereunder.

ARTICLE FIVE COMPENSATION

5.1. Compensation and the manner of payment of such compensation by the OWNER for services rendered hereunder by CONSULTANT shall be as prescribed in Schedule B, entitled "Basis of Compensation", which is attached hereto and made a part hereof.

ARTICLE SIX OWNERSHIP OF DOCUMENTS

6.1. Upon the completion or termination of this Agreement, as directed by OWNER, CONSULTANT shall deliver to OWNER copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CADD files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by or for CONSULTANT under this Agreement ("Project Documents"). OWNER shall specify whether the originals or copies of such Project Documents are to be delivered by CONSULTANT. CONSULTANT shall be solely responsible for all costs associated with delivering to OWNER the Project Documents. CONSULTANT, at its own expense, may retain copies of the Project Documents for its files and internal use.

6.2. Notwithstanding anything in this Agreement to the contrary and without requiring OWNER to pay any additional compensation, CONSULTANT hereby grants to OWNER a nonexclusive, irrevocable license in all of the Project Documents for OWNER'S use on this Project. CONSULTANT warrants to OWNER that it has full right and authority to grant this license to OWNER. Further, CONSULTANT consents to OWNER'S use of the Project Documents to complete the Project following CONSULTANT'S termination for any reason or to perform additions to or remodeling, replacement or renovations of the Project. CONSULTANT also acknowledges OWNER may be making Project Documents available for review and information to various third parties and hereby consents to such use by OWNER.

ARTICLE SEVEN MAINTENANCE OF RECORDS

7.1. CONSULTANT will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five (5) years from (a) the date of termination of this Agreement or (b) the date the Project is completed, whichever is later, or such later date as may be required by law. OWNER, or any duly authorized agents or representatives of OWNER, shall, free of charge, 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 five (5) year period noted above, or such later date as may be required by law; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE EIGHT INDEMNIFICATION

8.1. To the maximum extent permitted by Florida law, CONSULTANT shall indemnify and hold harmless OWNER, 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 CONSULTANT or anyone employed or utilized by the CONSULTANT 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 8.1.

ARTICLE NINE INSURANCE

9.1. CONSULTANT shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in SCHEDULE D to this Agreement.

- 9.2 All insurance shall be from responsible companies duly authorized to do business in the State of Florida.
- 9.3 All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:
- 9.3.1. All insurance policies, other than the Business Automobile policy, Professional Liability policy, and the Workers Compensation policy, provided by CONSULTANT to meet the requirements of this Agreement shall name Collier County Government, Collier County, Florida, as an additional insured as to the operations of CONSULTANT under this Agreement and shall contain a severability of interests provisions.
 - 9.3.2. Companies issuing the insurance policy or policies shall have no recourse against OWNER for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of CONSULTANT.
 - 9.3.3. All insurance coverages of CONSULTANT shall be primary to any insurance or self-insurance program carried by OWNER applicable to this Project, and the "Other Insurance" provisions of any policies obtained by CONSULTANT shall not apply to any insurance or self-insurance program carried by OWNER applicable to this Project.
 - 9.3.4. The Certificates of Insurance must read: **For any and all work performed on behalf of Collier County.**
 - 9.3.5. All insurance policies shall be fully performable in Collier County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 9.4. CONSULTANT, its subconsultants and OWNER shall waive all rights against each other for damages covered by insurance to the extent insurance proceeds are paid and received by OWNER, except such rights as they may have to the proceeds of such insurance held by any of them.
- 9.5 All insurance companies from whom CONSULTANT obtains the insurance policies required hereunder must meet the following minimum requirements:
- 9.5.1. The insurance company must be duly licensed and authorized by the Department of Insurance of the State of Florida to transact the appropriate insurance business in the State of Florida.
 - 9.5.2. The insurance company must have a current A. M. Best financial rating of "Class VI" or higher.

ARTICLE TEN
SERVICES BY CONSULTANT'S OWN STAFF

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

10.2 Attached as Schedule F is a listing of all key personnel CONSULTANT intends to assign to the Project to perform the Services required hereunder. Such personnel shall be committed to this Project in accordance with the percentages noted in Schedule F. CONSULTANT also has identified each subconsultant and subcontractor it intends to utilize on the Project in Schedule F. All personnel, subconsultants and subcontractors identified in Schedule F shall not be removed or replaced without OWNER'S prior written consent.

10.3 CONSULTANT is liable for all the acts or omissions of its subconsultants or subcontractors. By appropriate written agreement, the CONSULTANT shall require each subconsultant or subcontractor, to the extent of the Services to be performed by the subconsultant or subcontractor, to be bound to the CONSULTANT by the terms of this Agreement, and to assume toward the CONSULTANT all the obligations and responsibilities which the CONSULTANT, by this Agreement, assumes toward the OWNER. Each subconsultant or subcontract agreement shall preserve and protect the rights of the OWNER under this Agreement with respect to the Services to be performed by the subconsultant or subcontractor so that the subconsulting or subcontracting thereof will not prejudice such rights. Where appropriate, the CONSULTANT shall require each subconsultant or subcontractor to enter into similar agreements with its sub-subconsultants or sub-subcontractors.

10.4 CONSULTANT acknowledges and agrees that OWNER is a third party beneficiary of each contract entered into between CONSULTANT and each subconsultant or subcontractor, however nothing in this Agreement shall be construed to create any contractual relationship between OWNER and any subconsultant or subcontractor. Further, all such contracts shall provide that, at Owner's discretion, they are assignable to OWNER upon any termination of this Agreement.

ARTICLE ELEVEN WAIVER OF CLAIMS

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

ARTICLE TWELVE TERMINATION OR SUSPENSION

12.1. CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) CONSULTANT'S failure to begin services under the Agreement within the times specified under the Notice(s) to Proceed, or (b) CONSULTANT'S failure to properly and timely perform the services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT'S principals, officers or directors, or (d) CONSULTANT'S failure to obey any laws, ordinances, regulations or other codes of conduct, or (e) CONSULTANT'S failure to perform or abide by the terms and conditions of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONSULTANT seven (7) calendar days written notice of the material default.

12.2. If, after notice of termination of this Agreement as provided for in paragraph 12.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 12.1, then the notice of termination given pursuant to paragraph 12.1 shall be deemed to be the notice of termination provided for in paragraph 12.3, below, and CONSULTANT's remedies against OWNER shall be the same as and be limited to those afforded CONSULTANT under paragraph 12.3, below.

12.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar days written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT'S recovery against OWNER 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 CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed. CONSULTANT must mitigate all such costs to the greatest extent reasonably possible.

12.4. Upon termination and as directed by Owner, the CONSULTANT shall deliver to the OWNER all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement, including those described in Section 6, that are in CONSULTANT'S possession or under its control.

12.5. The OWNER shall have the power to suspend all or any portions of the services to be provided by CONSULTANT hereunder upon giving CONSULTANT two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the CONSULTANT'S sole and exclusive remedy shall be to seek an

extension of time to its schedule in accordance with the procedures set forth in Article Four herein.

12.6 In the event (i) OWNER fails to make any undisputed payment to CONSULTANT within forty-five (45) days after such payment is due or such other time as required by Florida's Prompt Payment Act or (ii) OWNER otherwise persistently fails to fulfill some material obligation owed by OWNER to CONSULTANT under this Agreement, and (ii) OWNER has failed to cure such default within fourteen (14) days of receiving written notice of same from CONSULTANT, then CONSULTANT may stop its performance under this Agreement until such default is cured, after giving OWNER a second fourteen (14) days written notice of CONSULTANT'S intention to stop performance under the Agreement. If the Services are so stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the CONSULTANT or its subconsultant or subcontractor or their agents or employees or any other persons performing portions of the Services under contract with the CONSULTANT, the CONSULTANT may terminate this Agreement by giving written notice to OWNER of CONSULTANT'S intent to terminate this Agreement. If OWNER does not cure its default within fourteen (14) days after receipt of CONSULTANT'S written notice, CONSULTANT may, upon fourteen (14) additional days' written notice to the OWNER, terminate the Agreement and recover from the Owner payment for Services performed through the termination date, but in no event shall CONSULTANT be entitled to payment for Services not performed or any other damages from Owner.

ARTICLE THIRTEEN TRUTH IN NEGOTIATION REPRESENTATIONS

13.1. CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for

CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

13.2. In accordance with provisions of Section 287.055, (5)(a), Florida Statutes, the CONSULTANT agrees to execute the required Truth-In-Negotiation Certificate, attached hereto and incorporated herein as Schedule E, certifying that wage rates and other factual unit costs supporting the compensation for CONSULTANT'S services to be provided under this Agreement are accurate, complete and current at the time of the Agreement. The CONSULTANT agrees that the original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the OWNER determines the Agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE FOURTEEN CONFLICT OF INTEREST

14.1. CONSULTANT 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. CONSULTANT further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE FIFTEEN MODIFICATION

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

ARTICLE SIXTEEN NOTICES AND ADDRESS OF RECORD

16.1. All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the OWNER shall be in writing and shall be delivered by hand, by fax, or by United States Postal Service Department, first class mail service, postage prepaid, addressed to the following OWNER'S address of record:

Board of County Commissioners,
Collier County Florida
Purchasing Department
3327 Tamiami Trail East
Naples, FL. 34112
Attention: Joanne Markiewicz, Interim Purchasing/General Services Director
Fax: 239-732-0844

16.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONSULTANT shall be made in writing and shall be delivered by hand, by fax or by the United States Postal Service Department, first class mail service, postage prepaid, addressed to the following CONSULTANT'S address of record:

Coastal Engineering Consultants, Inc.
3106 S. Horseshoe Drive
Naples, FL 34104
Telephone: (239) 643-2324
Attn: Michael Poff, P.E.
Fax: (239) 643-1143

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

ARTICLE SEVENTEEN MISCELLANEOUS

17.1. CONSULTANT, in representing OWNER, shall promote the best interests of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

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

17.3. This Agreement is not assignable, or otherwise transferable in whole or in part, by CONSULTANT without the prior written consent of OWNER.

17.4. Waivers 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.

17.5. The headings of the Articles, Schedules, 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, Schedules, Parts and Attachments.

17.6. This Agreement, including the referenced Schedules and Attachments hereto, 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.

17.7 Unless otherwise expressly noted herein, all representations and covenants of the parties shall survive the expiration or termination of this Agreement.

17.8 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

17.9 The terms and conditions of the following Schedules are by this reference incorporated herein:

- Schedule A SCOPE OF SERVICES
- Schedule B BASIS OF COMPENSATION
- Schedule C PROJECT MILESTONE SCHEDULE
- Schedule D INSURANCE COVERAGE

Schedule E TRUTH IN NEGOTIATION CERTIFICATE

Schedule F KEY PERSONNEL, SUBCONSULTANTS AND
SUBCONTRACTORS

RFP # 11-5772 Terms and conditions

ARTICLE EIGHTEEN
APPLICABLE LAW

18.1. This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by such laws, rules and regulations of the United States as made applicable to 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 federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

ARTICLE NINETEEN
SECURING AGREEMENT/PUBLIC ENTITY CRIMES

19.1 CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. At the time this Agreement is executed, CONSULTANT shall sign and deliver to OWNER the Truth-In-Negotiation Certificate identified in Article 13 and attached hereto and made a part hereof as Schedule E. CONSULTANT'S compensation shall be adjusted to exclude any sums by which OWNER determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

19.2 By its execution of this Agreement, CONSULTANT acknowledges that it has been informed by OWNER of and is in compliance with the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

ARTICLE TWENTY DISPUTE RESOLUTION

20.1 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 CONSULTANT with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached during negotiations to OWNER 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 CONSULTANT with full decision-making authority and by OWNER'S staff person who would make the presentation of any settlement reached at mediation to OWNER'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. Stat.

20.2 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.

ARTICLE 21

IMMIGRATION LAW COMPLIANCE

21.1 By executing and entering into this agreement, the CONSULTANT 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 CONSULTANT 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.

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

ATTEST:

Dwight E. Brock, Clerk

By: _____

Date: _____

BOARD OF COUNTY COMMISSIONERS FOR
COLLIER COUNTY, FLORIDA,

By: _____
Fred W. Coyle, Chairman

Approved as to form and
legal sufficiency:

Scott R. Teach
Deputy County Attorney

Coastal Engineering Consultants, Inc.

Witness

By: _____

Typed Name and Title

Witness

Contract #11-5772

Design, Engineering and Permitting Services for Re-nourishment of the Marco Island South Beach

Schedule A

SCOPE OF SERVICES

PHASE A: FINAL DESIGN, BID, AND CONSTRUCTION SUPPORT SERVICES FOR BEACH RENOURISHMENT

CEC shall assist Collier County with the final design, bid and construction support services for the South Marco Island beach renourishment project. For the purposes of the scope and budget, CEC shall be in the primary role for the final design and support the County for a one-time bid process and through construction. Collier County shall be in the primary role for the bid process and administering the construction project including resident inspection, contractor oversight, sediment QA-QC plan implementation, and agency reporting. Coastal Technology Corporation (CTC) shall provide peer review of the pertinent tasks.

TASK 1: FINAL DESIGN FOR BEACH RENOURISHMENT

Utilizing the 2011 R-monument beach profile and 2010 Caxambas Pass borrow area cross section survey data provided by the County, CEC shall prepare for incorporation into the County's Bid Documents detailed construction plans to show the general scope, character, and extent of the work to be furnished and performed by the contractor. The plans shall include horizontal and vertical control, survey baseline, construction access, staging area, vessel corridor and transport route, anchoring area, pipeline corridor, beach fill plan view and templates, borrow area plan view and dredge templates, volume and quantity requirements, and environmental protection measures.

CEC shall prepare for incorporation into the County's Bid Documents detailed construction specifications including description of work, special terms and conditions, quantity estimates, bid schedules, and technical specifications describing the general scope, character and extent of work to be furnished and performed by the contractor.

Based on the final design documents, CEC shall prepare a Final Opinion of Probable Construction Cost including a 15% contingency. Construction costs shall be broken down by Project feature. CEC shall use construction contractor interviews to answer questions and reduce the risk and uncertainty. A list of assumptions will be provided.

CEC shall review drafts of the deliverables with the County to obtain their input, complete one round of edits, and finalize the construction plans, construction specifications, and Final Opinion of Cost. CEC shall prepare and submit to the County two reproducible 11" x 17" engineering scaled sets of final drawings along with one electronic copy of both CADD and PDF files, and two reproducible sets of technical specifications and special conditions along with two electronic copies of both Word and PDF files for the County to assemble the Bid Documents.

TASK 2: BID PROCESS AND CONTRACT PROCUREMENT FOR BEACH RENOURISHMENT

CEC shall assist the County in coordinating a one-time bid process. These services will include attending the pre-bid meeting; assisting the County issue addenda as appropriate to interpret, clarify or expand the Bid Documents; assisting the County in obtaining bids from contractors; assisting the County in evaluating the bids; and making a recommendation for award to the lowest responsive bidder. CEC shall provide technical support to the County during the construction contract procurement process.

TASK 3: CONSTRUCTION ADMINISTRATION FOR BEACH RENOURISHMENT

CEC shall serve in a support role to assist the County administer the construction of the beach renourishment component of the Project.

Agency Notice to Proceed: Assist the County complete the Joint Coastal Permitting for the beach renourishment. Assist the County coordinate the agency notice to proceed for the work. Arrange, prepare for, and attend one permit conference locally with the FDEP, USACE, County and contractor.

Work Plan and Submittal Forms: Review the contractor's work plan and submittal forms (e.g., turbidity, daily QA-QC) to determine compliance with the plans and specifications. Upon completion of the review, submit to the County in writing

recommended changes or a written approval of the contractor’s work plan, and submittal forms. Review one round of work plan revisions from the contractor.

Construction Meetings: Arrange, prepare for, and attend one pre-construction conference with the County and contractor covering contract obligations, construction plans, general and special conditions, and technical specifications. Record and distribute the minutes of the meeting. Attend construction progress meetings with the County and contractor routinely covering work progress and schedule, conformance to plans and specifications, and other relevant issues that need to be addressed. Record and distribute the minutes of each meeting. The budget assumes two progress meetings.

Pay Applications: Review invoices for payment submitted by the contractor along with daily records of the County, contractor and construction surveys, and determine the amounts of progress payments due based on completion of work. Upon completion of review, submit recommendations to County for payment of invoices to the contractor. The budget assumes two pay requests.

Field Orders, Change Orders, and Contract Modifications: Assist the County to prepare required field changes, change orders, or contract modifications requested by the contractor and submit to the County for approval. Provide to the contractor instructions issued by the County in addition to providing any necessary interpretations or clarifications of the contract documents requested by the contractor. Make determinations on non-conforming and unauthorized work as authorized in the contract documents.

Substantial Completion: Upon receiving written notice from the County that the Project is substantially complete, conduct a one-time comprehensive review of the Project, prepare a punch list of items needing completion or correction, forward said list to the County and contractor, and provide written recommendations to the County concerning the acceptability of work done and the use of the Project.

TASK 4: CONSTRUCTION OBSERVATIONS AND PROJECT CERTIFICATIONS FOR BEACH RENOURISHMENT

This task is for CEC to support the County in conducting construction observations, on average once per week, such that CEC can complete the Project Certifications.

Site Visits: During each site visit, CEC shall observe the work for compliance with the permits, construction plans and technical specifications; determine work completed; record quantities of materials and equipment on site; and report contractor’s performance and activities to the County. The budget includes three site visits (on average once per week). Additional site visits or weekend hours can be provided through contingencies or as additional services.

Construction Survey Observations: CEC shall accompany the County’s contractor to observe the pre-construction survey plus one pay survey to be utilized as the basis for payment.

Project Certifications: Upon receiving written notice from the County that the Project is finally complete, CEC shall perform final site observations in conjunction with the County to verify the punch list has been completed and the Project is ready for its intended use. Assist the County in closing out the construction contract. Prepare and submit the agency required Project Certifications utilizing the County provided surveys.

TASK 5: ALLOWANCE FOR BEACH RENOURISHMENT

It is recognized that additional work components may be necessary throughout the project, including but not limited to additional meetings, monitoring surveys, pay requests, site visits, construction observations, and endangered species protection issues. A 15% Allowance is included for addressing additional work components.

PHASE A BUDGET: BEACH RENOURISHMENT

TASK	DESCRIPTION	TIME AND MATERIALS
1	Final Design: Beach Renourishment (BR)	\$ 11,425
2	Bid Process and Contract Procurement: BR	\$ 4,610
3	Construction Administration: BR	\$ 13,090
4	Construction Observations / Certifications: BR	\$ 8,915
5	Allowance	\$ 5,706
	Subtotal	\$ 43,746

PHASE B: DESIGN, PERMIT, BID, AND CONSTRUCTION SUPPORT SERVICES FOR REPAIR OF EXISTING EROSION CONTROL STRUCTURES

CEC shall assist Collier County with the design, permitting, bid and construction support services for the repair of the five (5) existing erosion control structures including the two (2) groins and three (3) segmented breakwaters along South Marco Island. For the purposes of this scope and budget, CEC shall be in the primary role for the design and serve as the County's agent for the permit process; and support the County for a one-time bid process and through construction (concurrent with Phase A services). Collier County shall be in the primary role for the bid process and administering the construction project including resident inspection, contractor oversight, and agency reporting. CTC shall provide peer review of the pertinent tasks.

TASK 6: PRELIMINARY DESIGN FOR REPAIR OF STRUCTURES

CEC shall conduct a topographic and bathymetric survey of the five (5) existing erosion control structures. The survey shall include one (1) longitudinal profile along the centerline and cross-sections at 25-foot offsets (minimum) for each structure. Elevations of the structures will be obtained at appropriate intervals along each survey transect. The survey data shall be reduced to the appropriate datums. The survey shall be conducted in accordance with the FDEP *Monitoring Standards for Beach Erosion Control Projects*.

CEC shall compare the design survey and the original permitted design sections for the structures to evaluate the settlement and adjustments experienced by the structures over time and in the wake of multiple storm events. CEC shall compute the quantity of stone along with a 20% contingency to restore the structures to their original design function. It is anticipated that a complete layer of armor stone cannot be simply placed on top of the existing structures as this level may exceed the permitted crest heights of the groins and / or the jetties. Similar to how the Doctors Pass north jetty was recently repaired, it is anticipated that rock re-working will have to be accomplished to add armor stone and remain within a reasonable construction tolerance (e.g., one-foot) and be compliant with the original permitted design templates. CEC will assist the County develop the qa-qc plan for the rock testing and certification process as well as the rock handling and placement procedures.

CEC shall prepare preliminary design plans in the form of 8 ½" x 11" permit drawings. The preliminary plans shall include location map; vicinity map; plan views depicting coastal structures, cross sections depicting coastal structure templates and details. The preliminary plans shall serve as the permit drawings for the Permit Process. CEC shall review drafts of the deliverables with the County to obtain their input, complete one round of edits, and finalize the preliminary design plans.

TASK 7: PERMIT APPLICATIONS FOR REPAIR OF STRUCTURES

Based on CEC's experience and preliminary discussion with FDEP and USACE, the authorization to repair the existing structures to their original design function / templates meets the criteria for an FDEP exemption pursuant to Florida Administrative Code *62B-41.005 Policy and Eligibility Criteria for Coastal Construction Permits. (8) Minor reconstruction of existing rigid coastal structures is exempt from the provisions of subsections (6) and (7) above; and the Corps' criteria for a Nationwide Permit (NWP) No. 3 – Maintenance (a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills.*

CEC shall prepare a JCP Application to request the FDEP exemption and the USACE NWP to repair the existing structures to their original design function and templates. The request shall include a Project Description, permit drawings (Task 1), submerged lands easements (if necessary), environmental protection measures, construction methods and equipment anticipated to be employed, and NMFS checklist.

CEC shall review drafts of the deliverables with the County to obtain their input, complete one round of edits, and submit the Permit Exemption request to the FDEP and NWP request to the USACE. The County will pay all required public noticing and application fees.

TASK 8: PERMIT PROCESSING FOR REPAIR OF STRUCTURES

Subsequent to submittal of the permit application, CEC will proactively engage FDEP and USACE staffs to informally monitor the process, address staff questions, and facilitate agency consideration of the application. CEC shall compile, clarify, and provide existing information as may be requested by FDEP and USACE staff and seek to negotiate conditions for the Project that are acceptable to the County. CEC shall respond to one Request for Additional Information each from FDEP and USACE.

TASK 9: FINAL DESIGN FOR REPAIR OF STRUCTURES

Based on the results of the permit process and utilizing the deliverables for Task 1, CEC shall prepare detailed construction

plans to show the work to be furnished and performed by the contractor specific to the repair of the existing structures. The construction plans shall be amended to include the coastal structure design sections and details, volume and quantity requirements, signage, and additional environmental protection measures noting it is anticipated the offshore portion of the work will be completed during sea turtle nesting season.

CEC shall amend the construction specifications including description of work, special terms and conditions, quantity estimates, bid schedules, and technical specifications of work to be furnished and performed by the contractor specific to the repair of the existing structures. CEC shall amend the Final Opinion of Probable Construction Cost including a 15% contingency to include the repair of the existing structures.

CEC shall review drafts of the deliverables with the County to obtain their input, complete one round of edits, and finalize the construction plans, construction specifications, and Final Opinion of Cost. CEC shall prepare and submit to the County two reproducible 11" x 17" engineering scaled sets of final drawings along with one electronic copy of both CADD and PDF files, and two reproducible sets of technical specifications and special conditions along with two electronic copies of both Word and PDF files for the County to assemble the Bid Documents.

TASK 10: BID PROCESS AND CONTRACT PROCUREMENT FOR REPAIR OF STRUCTURES

Concurrent with Task 2 services for the one-time bid process, CEC shall provide technical support to the County for bidding and construction contract procurement process specific to the repair of the existing structures. It is noted the scope of services parallels the Task 2 services, and is not repeated herein for brevity. Support to conduct a separate bid process for the structural repairs can be provided as additional services.

TASK 11: CONSTRUCTION ADMINISTRATION FOR REPAIR OF STRUCTURES

Concurrent with Task 3 services, CEC shall serve in a support role to assist the County administer the construction of the structural repairs component of the Project. It is noted the scope of services parallels the Task 3 services, and is not repeated herein for brevity.

Agency Notice to Proceed

Work Plan and Submittal Forms

Construction Meetings: The budget assumes two progress meetings.

Pay Applications: The budget assumes two pay requests.

Field Orders, Change Orders, and Contract Modifications

Substantial Completion

TASK 12: CONSTRUCTION OBSERVATIONS AND PROJECT CERTIFICATIONS FOR REPAIR OF STRUCTURES

Concurrent with Task 4 services, CEC shall serve in a support role to assist the County in conduct construction observations such that CEC can complete the Project Certifications specific to the structural repairs component of the Project. It is noted the scope of services parallels the Task 4 services, and is not repeated herein for brevity.

Site Visits: The budget includes three site visits (on average once per week). Additional site visits or weekend hours can be provided through contingencies or as additional services.

Quarry Visits: CEC shall support the County to conduct the site visits to the rock quarry / testing facility to witness the density and drop tests to verify compliance with the Specifications. The budget includes three visits.

Construction Survey Observations

Project Certifications

TASK 13: ALLOWANCE FOR REPAIR OF STRUCTURES

It is recognized that additional work components may be necessary throughout the project, including but not limited to

additional meetings, pay requests, site visits, monitoring surveys, construction observations, and endangered species protection issues. A 15% allowance is included for addressing additional work components.

PHASE B BUDGET: REPAIR OF EXISTING STRUCTURES

TASK	DESCRIPTION	TIME AND MATERIALS
6	Preliminary Design: Repair of Structures (ROS)	\$ 8,825
7	Permit Applications (ROS)	\$ 6,750
8	Permit Processing (ROS)	\$ 3,460
9	Final Design: Beach Renourishment (ROS)	\$ 7,525
10	Bid Process and Contract Procurement: ROS	\$ 2,080
11	Construction Administration: ROS	\$ 7,135
12	Construction Observations / Certifications: ROS	\$ 12,065
13	Allowance	\$ 7,176
	Subtotal	\$ 55,016

PHASE	DESCRIPTION	TIME AND MATERIALS
A	Beach Renourishment	\$ 43,746
B	Repair of Existing Structures	\$ 55,016
	Total	\$ 98,762

COUNTY RESPONSIBILITIES

It is understood the County shall, through its staff, contractor, and outside consultant, provide the following.

1. Public notices and permit fees.
2. Construction easements from private upland property owners for work upland of the ECL including but not limited to construction access and staging; to allow for placement, grading, and tilling of beach fill; and for repair of the existing coastal structures.
3. Funding related tasks (FEMA coordination, public access requirements, etc.).
4. Rock density testing.
5. Resident inspection services.
6. Sediment QA-QC plan implementation including sediment sampling, testing, laboratory services, and reporting.
7. Turbidity monitoring.
8. Construction stake-out, pre-construction, pay-, post-construction, and physical monitoring (permit required) surveys and reporting. The survey data shall be reduced to the appropriate datums. The surveys and reporting shall be conducted in accordance with the FDEP *Monitoring Standards for Beach Erosion Control Projects* and shall include all deliverables required by these standards.
9. Endangered species monitoring and reporting.

ASSUMPTIONS

The scope and budget are based on the following.

1. The County bids and constructs the two components (beach renourishment and repair of existing structures) concurrently.
2. The budget is based on a 135-day construction window inclusive of thirty (30) days for mobilization and demobilization.
3. Beach renourishment and repair of existing rock groins will be conducted outside of sea turtle nesting season.

SCHEDULE B
 BASIS OF COMPENSATION

TIME AND MATERIAL

1. MONTHLY STATUS REPORTS

B.1.1 As a condition precedent to payment, CONSULTANT shall submit to OWNER as part of its monthly invoice, a progress report reflecting the Project design and construction status, in terms of the total work effort estimated to be required for the completion of the Basic Services and any then-authorized Additional Services, as of the last day of the subject monthly billing cycle. Among other things, the report shall show all Service items and the percentage complete of each item.

B1.1.1 All monthly status reports and invoices shall be mailed to the attention Of: Gary McAlpin, Coastal Zone Management Director
 3299 Tamiami Trail East, Suite 103, Naples, FL 34112-5746

2. COMPENSATION TO CONSULTANT

B.2.1. For the Basic Services provided for in this Agreement, OWNER agrees to make monthly payments to CONSULTANT based upon CONSULTANT'S Direct Labor Costs and Reimbursable Expenses in accordance with the terms stated below. Provided, however, in no event shall such compensation exceed the amounts set forth in the table below.

ITEM	DESCRIPTION	NOT TO EXCEED AMOUNT:
PHASE A	FINAL DESIGN, BID, AND CONSTRUCTION SUPPORT SERVICES	
1.	Final Design: Beach Renourishment	\$ <u>11,425.00</u>
2.	Bid Process and Contract Procurement	\$ <u>4,610.00</u>
3.	Construction Administration	\$ <u>13,090.00</u>
4.	Construction Observations/Certifications	\$ 8,915.00
5.	Allowance	\$ <u>5,706.00</u>
	Subtotal	\$43,746.00
PHASE B	DESIGN, PERMIT, BID, AND CONSTRUCTION SUPPORT SERVICES FOR REPAIR OF EXISTING EROSION CONTROL STRUCTURES	
6.	Preliminary Design: Repair of Structures	\$ <u>8,825.00</u>
7.	Permit Applications	\$ 6,750.00
8.	Permit Processing	\$ 3,460.00
9.	Final Design: Beach Renourishment	\$ <u>7,525.00</u>
10.	Bid Process and Contract Procurement	\$ <u>2,080.00</u>
11.	Construction Administration	\$ 7,135.00
12.	Construction Observations/Certifications	\$ 12,065.00
13.	Allowance	\$ 7,176.00

	Subtotal	\$55,016.00
	TOTAL FEE (Total Items 1-13)	\$98,762.00

- B.2.2. Direct Labor Costs mean the actual salaries and wages (basic, premium and incentive) paid to CONSULTANT'S personnel, with respect to this Project, including all indirect payroll related costs and fringe benefits, all in accordance with and not in excess of the rates set forth in the Attachment I to this Schedule B.
- B.2.3. With each monthly Application for Payment, CONSULTANT shall submit detailed time records, and any other documentation reasonably required by OWNER, regarding CONSULTANT'S Direct Labor Costs incurred at the time of billing, to be reviewed and approved by OWNER.
- B.2.4 For Additional Services provided pursuant to Article 2 of the Agreement, OWNER agrees to pay CONSULTANT a negotiated total fee and Reimbursable Expenses based on the services to be provided. The negotiated fee shall be based upon the rates specified in Attachment 1 to this Schedule B and all Reimbursable Expenses shall comply with the provisions of Section 3.5.1 below. There shall be no overtime pay on Basic Services or Additional Services without OWNER'S prior written approval.
- B.2.5. The compensation provided for under Sections 2.1 of this Schedule B, shall be the total and complete amount payable to CONSULTANT for the Basic Services to be performed under the provisions of this Agreement, and shall include the cost of all materials, equipment, supplies and out-of-pocket expenses incurred in the performance of all such services.
- B.2.6 Notwithstanding anything in this Agreement to the contrary, CONSULTANT acknowledges and agrees that in the event of a dispute concerning payments for Services performed under this Agreement, CONSULTANT shall continue to perform the Services required of it under this Agreement, as directed by OWNER, pending resolution of the dispute provided that OWNER continues to pay to CONSULTANT all amounts that OWNER does not dispute are due and payable.

3. SCHEDULE OF PAYMENTS:

- B.3.1. CONSULTANT shall submit, with each of the monthly status reports provided for under Section 1.1 of this Schedule B, an invoice for fees earned in the performance of Basic Services and Additional Services during the subject billing month. Notwithstanding anything herein to the contrary, the CONSULTANT shall submit no more than one invoice per month for all fees and Reimbursable Expenses earned that month for both Basic Services and Additional Services. Invoices shall be reasonably substantiated, identify the services rendered and must be submitted in triplicate in a form and manner required by Owner. Additionally, the number of the purchase order granting approval for such services shall appear on all invoices.
- B.3.1.1 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of contract. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this agreement.

- B.3.2. Invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no signature, etc.) shall be returned to CONSULTANT for correction. Invoices shall be submitted on CONSULTANT'S letterhead and must include the Purchase Order Number and the Project name and shall not be submitted more than one time monthly.
- B.3.3 Notwithstanding anything herein to the contrary, in no event may CONSULTANT'S monthly billings, on a cumulative basis, exceed the sum determined by multiplying the applicable not to exceed task limits set forth in the table in Section 2.1 by the percentage Owner has determined CONSULTANT has completed such task as of that particular monthly billing.
- B.3.4 Payments for Additional Services of CONSULTANT as defined in Article 2 hereinabove and for reimbursable expenses will be made monthly upon presentation of a detailed invoice with supporting documentation.
- B.3.5 Unless specific rates have been established in Attachment 1, attached to this Schedule B, CONSULTANT agrees that, with respect to any subconsultant or subcontractor to be utilized by CONSULTANT for Additional Services, CONSULTANT shall be limited to a maximum markup of 5% on the fees and expenses associated with such subconsultants and subcontractors.
- B.3.5.1 Reimbursable Expenses associated with Additional Services must comply with section 112.061, Fla. Stat., or as set forth in the Agreement, be charged without mark-up by the CONSULTANT, and shall consist only of the following items:
5. B.3.5.1.1. Cost for reproducing documents that exceed the number of documents described in this Agreement and postage and handling of Drawings and Specifications.
6. B.3.5.1.2. Travel expenses reasonably and necessarily incurred with respect to Project related trips, to the extent such trips are approved by OWNER. Such expenses, if approved by OWNER, may include coach airfare, standard accommodations and meals, all in accordance with section 112.061, F.S. Further, such expenses, if approved by OWNER, may include mileage for trips that are from/to destinations outside of Collier or Lee Counties. Such trips within Collier and Lee Counties are expressly excluded.
- B.3.5.1.3. Permit Fees required by the Project.
- B.3.5.1.4 Expense of overtime work requiring higher than regular rates approved in advance and in writing by OWNER.
- B.3.5.1.5 Expense of models for the County's use.
- B.3.4.1.6 Other items on request and approved in writing by the OWNER.

END OF SCHEDULE B.

Attachment 1 to Schedule B

<u>Personnel Category</u>	<u>Standard Hourly Rate</u>
Principal	\$195
Senior Project Manager	\$165
Project Manager	\$148
Senior Engineer	\$155
Engineer	\$119
Senior Inspector	\$85
Inspector	\$65
Senior Planner	\$140
Planner	\$110
Senior Designer	\$115
Designer	\$100
Environmental Specialist	\$115
Senior GIS Specialist	\$145
GIS Specialist	\$100
Clerical	\$60
Surveyor and Mapper	\$130
CADD Technician	\$85
Survey Crew - 2 man	\$130
Survey Crew - 3 man	\$160
Survey Crew - 4 man	\$180

This list is not intended to be all-inclusive. Hourly rate fees for other categories of professional, support and other services shall be mutually negotiated by the County and firm on a project by project basis as needed.

Schedule C
PROJECT MILESTONE SCHEDULE

Phase A work to be completed within three hundred seventy (370) days from issuance of Notice to Proceed

Phase B work to be completed within four hundred thirty (430) days from issuance of Notice to Proceed

SCHEDULE D INSURANCE COVERAGE

(1) The amounts and types of insurance coverage shall conform to the following minimum requirements with the use of Insurance Services Office (ISO) forms and endorsements or their equivalents. If CONSULTANT has any self-insured retentions or deductibles under any of the below listed minimum required coverages, CONSULTANT must identify on the Certificate of Insurance the nature and amount of such self-insured retentions or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles will be CONSULTANT'S sole responsibility.

(2) The insurance required by this Agreement shall be written for not less than the limits specified herein or required by law, whichever is greater.

(3) Coverages shall be maintained without interruption from the date of commencement of the services until the date of completion and acceptance of the Project by the OWNER or as specified in this Agreement, whichever is longer.

(4) Certificates of insurance (3 copies) acceptable to the OWNER shall be filed with the OWNER within ten (10) calendar days after Notice of Award is received by CONSULTANT evidencing the fact that CONSULTANT has acquired and put in place the insurance coverages and limits required hereunder. In addition, certified, true and exact copies of all insurance policies required shall be provided to OWNER, on a timely basis, if requested by OWNER. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to

the OWNER. CONSULTANT shall also notify OWNER, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer, and nothing contained herein shall relieve CONSULTANT of this requirement to provide notice. In the event of a reduction in the aggregate limit of any policy to be provided by CONSULTANT hereunder, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

(5) All insurance coverages of the CONSULTANT shall be primary to any insurance or self insurance program carried by the OWNER applicable to this Project.

(6) The acceptance by OWNER of any Certificate of Insurance does not constitute approval or agreement by the OWNER that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of this Agreement.

(7) CONSULTANT shall require each of its subconsultants to procure and maintain, until the completion of the subconsultant's services, insurance of the types and to the limits specified in this Section except to the extent such insurance requirements for the subconsultant are expressly waived in writing by the OWNER.

(8) Should at any time the CONSULTANT not maintain the insurance coverages required herein, the OWNER may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the CONSULTANT for such coverages purchased. If CONSULTANT fails to reimburse OWNER for such costs within thirty (30) days after demand, OWNER has the right to offset these costs from any amount due CONSULTANT under this Agreement or any other agreement between OWNER and CONSULTANT. The OWNER shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the OWNER to

purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Agreement.

(9) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the services required hereunder or termination of the Agreement, the CONSULTANT shall furnish to the OWNER, in triplicate, renewal or replacement Certificate(s) of Insurance not later than three (3) business days after the renewal of the policy(ies). Failure of the Contractor to provide the OWNER with such renewal certificate(s) shall be deemed a material breach by CONSULTANT and OWNER may terminate the Agreement for cause.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Required by this Agreement? Yes No

(1) Workers' Compensation and Employers' Liability Insurance shall be maintained by the CONSULTANT during the term of this Agreement for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. The amounts of such insurance shall not be less than:

- a. Worker's Compensation - Florida Statutory Requirements
- b. Employers' Liability (check one, if applicable)

<input type="checkbox"/>	\$100,000 Each Accident \$500,000 Disease Aggregate \$100,000 Disease Each Employee
<input checked="" type="checkbox"/>	\$1,000,000 Each Accident \$1,000,000 Disease Aggregate \$1,000,000 Disease Each Employee

(2) The insurance company shall waive all claims rights against the OWNER and the policy shall be so endorsed.

(3) United States Longshoreman's and Harborworker's Act coverage shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

(4) Maritime Coverage (Jones Act) shall be maintained where applicable to the completion of the work.

Applicable Not Applicable

COMMERCIAL GENERAL LIABILITY

Required by this Agreement? Yes No

(1) Commercial General Liability Insurance, written on an "occurrence" basis, shall be maintained by the CONSULTANT. Coverage will include, but not be limited to, Bodily Injury, Property Damage, Personal Injury, Contractual Liability for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations and Products and Completed Operations Coverage. Products and Completed Operations coverage shall be maintained for a period of not less than five (5) years following the completion and acceptance by the OWNER of the work under this Agreement. Limits of Liability shall not be less than the following:

<input type="checkbox"/>	General Aggregate	\$300,000
	Products/Completed Operations Aggregate	\$300,000
	Personal and Advertising Injury	\$300,000
	Each Occurrence	\$300,000
	Fire Damage	\$ 50,000
<input type="checkbox"/>	General Aggregate	\$500,000
	Products/Completed Operations Aggregate	\$500,000
	Personal and Advertising Injury	\$500,000
	Each Occurrence	\$500,000

Fire Damage	\$ 50,000
<input checked="" type="checkbox"/> General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$ 50,000

(2) The General Aggregate Limit shall apply separately to this Project and the policy shall be endorsed using the following endorsement wording. "This endorsement modifies insurance provided under the following: Commercial General Liability Coverage Part. The General Aggregate Limit under LIMITS OF INSURANCE applies separately to each of your projects away from premises owned by or rented to you." Applicable deductibles or self-insured retentions shall be the sole responsibility of CONSULTANT. Deductibles or self-insured retentions carried by the CONSULTANT shall be subject to the approval of the Risk Management Director or his/her designee.

(3) The OWNER, Collier County Government, shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the OWNER.

(4) Coverage shall be included for explosion, collapse or underground property damage claims.

(5) Watercraft Liability coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than the Commercial General Liability limit shown in subparagraph (1) above if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

(7) Aircraft Liability coverage shall be carried by the CONSULTANT or the SUBCONSULTANT in limits of not less than \$5,000,000 each occurrence if applicable to the completion of the Services under this Agreement.

Applicable Not Applicable

AUTOMOBILE LIABILITY INSURANCE

Required by this Agreement? Yes No

(1) Automobile Liability Insurance shall be maintained by the CONSULTANT for the ownership, maintenance or use of any owned, non-owned or hired vehicle with limits of not less than:

Bodily Injury & Property Damage - \$ 500,000

Bodily Injury & Property Damage - \$1,000,000

UMBRELLA LIABILITY

(1) Umbrella Liability may be maintained as part of the liability insurance of the CONSULTANT and, if so, such policy shall be excess of the Employers' Liability, Commercial General Liability, and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis.

(2) The policy shall contain wording to the effect that, in the event of the exhaustion of any underlying limit due to the payment of claims, the Umbrella policy will "drop down" to apply as primary insurance.

PROFESSIONAL LIABILITY INSURANCE

Required by this Agreement? Yes No

(1) Professional Liability Insurance shall be maintained by the CONSULTANT to insure its legal liability for claims arising out of the performance of professional services under this

Agreement. CONSULTANT waives its right of recover against OWNER as to any claims under this insurance. Such insurance shall have limits of not less than:

- \$ 500,000 each claim and in the aggregate
- \$1,000,000 each claim and in the aggregate
- \$2,000,000 each claim and in the aggregate
- \$5,000,000 each claim and in the aggregate

(2) Any deductible applicable to any claim shall be the sole responsibility of the CONSULTANT. Deductible amounts are subject to the approval of the OWNER.

(3) The CONSULTANT shall continue this coverage for this Project for a period of not less than five (5) years following completion and acceptance of the Project by the OWNER.

(4) The policy retroactive date will always be prior to the date services were first performed by CONSULTANT or OWNER, and the date will not be moved forward during the term of this Agreement and for five years thereafter. CONSULTANT shall promptly submit Certificates of Insurance providing for an unqualified written notice to OWNER of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In addition, CONSULTANT shall also notify OWNER by certified mail, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverages or limits received by CONSULTANT from its insurer. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy, CONSULTANT shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. CONSULTANT shall promptly submit a certified, true copy of the policy and any endorsements issued or to be issued on the policy if requested by OWNER.

VALUABLE PAPERS INSURANCE

(1) In the sole discretion of the County, CONSULTANT may be required to purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

PROJECT PROFESSIONAL LIABILITY

(1) If OWNER notifies CONSULTANT that a project professional liability policy will be purchased, then CONSULTANT agrees to use its best efforts in cooperation with OWNER and OWNER'S insurance representative, to pursue the maximum credit available from the professional liability carrier for a reduction in the premium of CONSULTANT'S professional liability policy. If no credit is available from CONSULTANT'S current professional policy underwriter, then CONSULTANT agrees to pursue the maximum credit available on the next renewal policy, if a renewal occurs during the term of the project policy (and on any subsequent professional liability policies that renew during the term of the project policy). CONSULTANT agrees that any such credit will fully accrue to OWNER. Should no credit accrue to OWNER, OWNER and CONSULTANT, agree to negotiate in good faith a credit on behalf of OWNER for the provision of project-specific professional liability insurance policy in consideration for a reduction in CONSULTANT'S self-insured retention and the risk of uninsured or underinsured consultants.

(2) CONSULTANT agrees to provide the following information when requested by OWNER or OWNER'S Project Manager:

- a. The date the professional liability insurance renews.
- b. Current policy limits.
- c. Current deductibles/self-insured retention.
- d. Current underwriter.
- e. Amount (in both dollars and percent) the underwriter will give as a credit if the policy is replaced by an individual project policy.
- f. Cost of professional insurance as a percent of revenue.
- g. Affirmation that the design firm will complete a timely project errors and omissions application.

(3) If OWNER elects to purchase a project professional liability policy, CONSULTANT to be insured will be notified and OWNER will provide professional liability insurance, naming CONSULTANT and its professional subconsultants as named insureds.

END OF SCHEDULE D

SCHEDULE E
TRUTH IN NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, **Coastal Engineering Consultants, Inc.** hereby certifies that wages, rates and other factual unit costs supporting the compensation for the services of the CONSULTANT to be provided under the Professional Services Agreement, concerning **Design, Engineering and Permitting Services for Re-nourishment of the Marco Island South Beach** are accurate, complete and current as of the time of contracting.

Coastal Engineering Consultants, Inc.

BY: _____

TITLE: _____

DATE: _____

Contract 11-5772 Design, Engineering and Permitting Services for Re-nourishment of the Marco
 Island South Beach

SCHEDULE F
 KEY PERSONNEL, SUBCONSULTANTS AND SUBCONTRACTORS

<u>NAME</u>	<u>TITLE</u>	<u>HOURLY RATE</u>	<u>% ASSIGNMENT</u>
Michael T. Poff, P.E.	Principal Engineer	\$195	16.1%
Michael F. Stephen, Ph.D.	Principal Geologist	\$195	4.5%
Kris W. Thoenke, Ph.D.	Senior Project Manager	\$165	7.1%
Mark Kincaid, P.E.	Senior Engineer	\$155	39.5%
Vadim Alymov, Ph.D.	Coastal Modeler	\$135	4.4%
Rick Ewing, PSM	Survey & Mapper	\$130	1.2%
Samantha Brasher	CADD Technician	\$85	6.3%
Sarah Bunn	Clerical	\$60	5.4%
Ben Churchwell	One-man RTK Crew	\$130	6.7%
Coastal Technology Corporation	Subconsultant	-	5.5%
Reimbursables			3.3%
		<u>TOTAL</u>	<u>100%</u>