

CONTRACT NO. 2005000193
AGREEMENT BETWEEN CHARLOTTE COUNTY AND
COASTAL ENGINEERING CONSULTANTS, INC. FOR ENGINEERING SERVICES
FOR PIRATE HARBOR WATERWAY

This Agreement is made and entered into by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, FL 33948-1094 (hereinafter referred to as "County"), and COASTAL ENGINEERING CONSULTANTS, INC., 2106 S. Horseshoe Drive, Naples, FL 34104-6137 (hereinafter referred to as "Engineer") on this 11th day of August, 2005.

WITNESSETH:

WHEREAS, County issued a Request for Proposal (RFP) 2005000193 for professional engineering services in applying for separate standard general permits for dredging a 2,300 foot channel and removing rock in the Pirate Harbor Waterway System in Charlotte County, Florida, in accordance with the provisions of Section 287.055, Florida Statutes; and

WHEREAS, Engineer submitted a proposal in response to RFP 2005000193, and was subsequently selected by County as the company to provide the services requested by RFP 2005000193; and

WHEREAS, County desires to acquire engineering services from Engineer, and Engineer desires to provide such services in accordance with RFP 2005000193, Engineer's proposal, and subsequent negotiations between the parties.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and Engineer agree as follows:

ARTICLE 1

INCORPORATION OF DOCUMENTS

1.1 RFP 2005000193, consisting of pages RFP-1 through and including RFP-14, Addendum No.1 to RFP 2005000193 dated March 23, 2005, issued by County, and the Proposal submitted by Engineer dated April 5, 2005, and the Scope of Work submitted by Engineer dated June 20, 2005, (hereinafter "Scope of Services") all filed with the Clerk of the Circuit Court of Charlotte County, Minutes Division, as RFP No. 2005000193, are hereby specifically made part of this Agreement as if same had been set forth at length herein. In the event of any conflict between the documents constituting this Agreement, the documents shall be given precedence in the following order:

- 1) This Agreement;
- 2) The Scope of Services, including any exhibits attached thereto;
- 3) RFP 2005000193 and any addenda thereto;
- 4) The Proposal submitted by Engineer dated April 5, 2005.

ARTICLE 2

ENGINEER'S DUTIES

2.1 Engineer agrees to perform all the services and provide all the materials requested by RFP 2005000193, and described in the Scope of Services provided by Engineer which is attached hereto as Exhibit "A". Engineer agrees to perform all services and provide all materials in strict accordance with the provisions contained herein. Engineer shall perform all services under the Scope of Services in a professional, workmanlike manner, with such professional care, technical skill, ability and diligence as is required of similar engineers having the level of skill, expertise and specialized knowledge, as represented to County, both orally and in writing, to be possessed by Engineer.

2.2 Engineer agrees to provide its services and materials in the times allowed for performance contained in the Schedule Section of the Scope of Services attached hereto as Exhibit "B".

ARTICLE 3

ADDITIONAL SERVICES

3.1 In the event that County desires Engineer to perform any additional services not specifically contained in the Scope of Services, the parties shall enter into an addendum to this Agreement to provide for the provision of such additional services by Engineer and payment therefor by County.

ARTICLE 4

TERM/TERMINATION

4.1 The term of this Agreement shall begin on the date and year first above written and shall continue until Engineer completes all services and provides all products contained in the Scope of Services and required under this Agreement, and County accepts such services and products as satisfactory, unless otherwise terminated in accordance herewith.

4.2 This Agreement may be terminated by County, with or without cause, by written notice to Engineer of the intent to terminate. Such termination shall be effective thirty (30) days after receipt by Engineer of such written notice of intent to terminate. However, no termination for cause will be effective unless Engineer is first given ten (10) calendar days after receipt of notice of intent to terminate in which to cure the cause for termination.

4.3 In the event of termination, Engineer shall be entitled to compensation for services rendered and costs incurred through the effective date of termination. All finished or unfinished documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, and reports prepared by Engineer shall become the property of County and

shall be delivered by Engineer to County immediately upon the effective date of termination.

ARTICLE 5

METHOD OF BILLING AND PAYMENT

5.1 County shall pay to Engineer the sums indicated in the Summary of Fees Section of the Scope of Services, attached hereto as Exhibit "C", for those Tasks actually performed by Engineer. The total payment to Engineer shall not exceed Sixty Five Thousand Dollars (\$65,000.00) for Engineer's services under this Agreement, performed in accordance with the Scope of Services and this Agreement.

5.2 Payment for services rendered by Engineer shall be made on a monthly basis in proportion to the percentage completed of those services listed in the Summary of Fees Section of the Scope of Services. Percentage of services completed shall be subject to review and approval by the County Public Works Director or his/her designee.

5.3 Engineer shall submit all billings for payment of services rendered on a monthly basis to the County Purchasing Department for processing. Billings shall be detailed as to nature of the services performed and shall refer to the particular line item(s) in the Summary of Fees Section of the Scope of Services to which services apply. Billings shall include a summary of any amounts previously billed and any credits for amounts previously paid.

5.4 Engineer acknowledges that each billing must be reviewed and approved by the County Public Works Director or designee. Should the County Public Works Director, or designee, determine that the billing is not commensurate with services performed, work accomplished or hours expended, Engineer shall adjust billing accordingly. However, Engineer shall be entitled to payment of any portion of a billing not in dispute.

5.5 County shall pay Engineer's monthly billings in accordance with Sections 218.70 through 218.80 Florida Statutes, the Florida Prompt Payment Act.

ARTICLE 6

COUNTY'S RESPONSIBILITIES

6.1 County shall perform the responsibilities contained in this Article 6 in a timely manner so as not to delay the services of Engineer.

6.2. County shall furnish to Engineer, upon request of Engineer and at County expense, all existing studies, reports and other available data pertinent to the services to be performed under this Agreement which are within the County's possession. However, Engineer shall be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

6.3 County shall provide reasonable access and entry to all public property required by Engineer to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Engineer to perform the services described in this Agreement.

ARTICLE 7

STANDARDS AND CORRECTIONS

7.1 Engineer shall perform or furnish to County engineering and related services to a level of technical skill, ability, and diligence as is required of a design professional having the level of skill, expertise and specialized knowledge, as represented to the County, both orally and in writing, to be possessed by Engineer, all in accordance with the standards contained elsewhere in this Agreement and in accordance with generally accepted standards of professional engineering practice and with the laws, statutes, ordinances, codes, rules and regulations governing Engineer's profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Engineer.

7.2 Engineer shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Engineer or any subconsultant or subcontractor engaged by Engineer for one year after the completion of Engineer's services under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statute of limitations. County review of, approval of, acceptance of, or payment for any of Engineer's work product, services, or materials shall not be construed to operate as a waiver of any of County's rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement.

ARTICLE 8

COUNTY PROPERTY

8.1 All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Engineer's services under this Agreement shall become the property of and shall be delivered to County without restriction or limitation as to use. However, any use subsequent to or other than for the specific project for which such items were created, shall be at sole risk of County.

ARTICLE 9

NOTICES

9.1 Any notice required or permitted to be sent hereunder shall be sent certified mail, return receipt requested to the parties at the addresses listed below:

If to County:

Director of Purchasing
18500 Murdock Circle, Suite 344
Port Charlotte, FL 33948-1094

with a copy to:

Director of Public Works
7000 Florida Street
Punta Gorda, FL 33950

If to Engineer:

Michael T. Poff, PE
Coastal Engineering Consultants, Inc.
2106 S. Horseshoe Drive
Naples, FL 34104-6137

ARTICLE 10

NO CONTINGENT FEES

10.1 Engineer certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Engineer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Engineer any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, County shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 11

NO ASSIGNMENT

11.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Engineer without the prior written consent of County. Further, no portion of this Agreement may be performed by subcontractors or subconsultants without written notice to and approval of such action by County.

ARTICLE 12

INDEMNIFICATION

12.1 Engineer shall indemnify and hold harmless County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Engineer and other persons employed or utilized by Engineer in the performance of services under this Agreement.

ARTICLE 13

CONTACT PERSONS

13.1 Upon written request of Engineer, the County Administrator shall designate one or more County employees to whom all communications pertaining to the day-to-day conduct of the performance of this Agreement shall be addressed.

ARTICLE 14

SEVERABILITY

14.1 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

ARTICLE 15

TRUTH-IN-NEGOTIATION CERTIFICATE

15.1 In accordance with Section 287.055, Florida Statutes, signature of this Agreement by Engineer shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 16

GOVERNING LAW/VENUE

16.1 This Agreement shall be governed and construed in accordance with Florida law. In the event litigation arises involving the parties in connection with this Agreement, venue for such litigation shall be in Charlotte County, Florida.

ARTICLE 17

INDEPENDENT CONTRACTOR STATUS

17.1 Engineer is an independent contractor and is not an employee, servant, agent, partner or joint venturer of the County.

ARTICLE 18

AUDIT REQUIREMENTS

18.1 Engineer shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at Engineer's offices for the purpose of inspection, audit, and copying during normal business hours by the County, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of the services. Prior to destruction of any records, the Engineer shall notify the County and deliver to the County any records the County requests. Engineer shall require all subcontractors to comply with the provisions of this paragraph by insertion of the requirements hereof in a written contract agreement between Engineer and the subcontractor.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

COASTAL ENGINEERING CONSULTANTS, INC.

By: 

Title: Vice-President of Engineering


Corporate Secretary

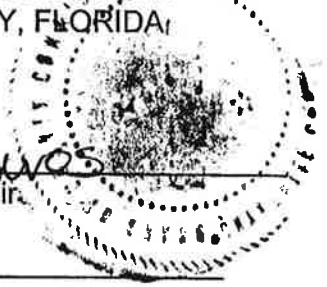
Date: 8-16-05

ATTEST/WITNESS:

By: 
Secretary of Corporation

BOARD OF COUNTY COMMISSIONERS
CHARLOTTE COUNTY, FLORIDA

By: 
Sara J. Devos, Chair



Date: 8/11/05

ATTEST:
Barbara T. Scott,
Clerk of the Circuit Court
and Ex-Officio Clerk of the
Board of County Commissioners

By: Paul Hawley 8/12/05
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney
(205-322 176

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LR 05-322

**PIRATE HARBOR DREDGING
SCOPE OF WORK
DREDGE DESIGN, PERMITTING & CONSTRUCTION SERVICES
CEC FILE NO. 05.100
JUNE 20, 2005**

TASK I: EVALUATE EXISTING CONDITIONS

A. Project Initiation Meeting (optional)

Arrange, prepare for, and attend one meeting with County staff and stakeholders designated by the County Manager to discuss the Project goals, identify concerns and issues, obtain initial input, establish lines of communication and contact people, and identify additional stakeholders.

B. Existing Data Review

Meet with Charlotte County and contact NEP, CHEC, FDEP and ACOE to obtain and review existing data on the waterway including bathymetry, boat counts, water quality, natural resources, environmental habitats, derelict vessels, etc...

C. Data Collection

Prepare field work plan for County review and approval using bathymetry and aerial photos provided by the County. Perform the following surveys within the Project Area according to approved plan. The County shall provide horizontal and vertical control points in close proximity to the work. The budget includes three (3) survey days to accomplish the survey plan.

- Submerged resources mapping including submerged or emergent vegetation, oyster beds, hard or soft corals, and sponges.
- Geotechnical survey via jet probing and sediment cores to determine subsurface characteristics within the proposed dredge areas. Probes extending to a minimum of -7' MLW or refusal shall be performed. Sample the subsurface rock using appropriate techniques and procedures. Conduct laboratory analyses to determine the grain size/character of the sediments and the density/character of the rock to be removed. Conduct stratigraphy analysis of sediments in accordance with DEP guidelines.
- Conduct additional bathymetric survey of the work areas to supplement the bathymetry provided by the County.

D. Existing Conditions Plan

Prepare a plan depicting the existing conditions of the waterway and shoreline including the following information.

- Bathymetric contour lines
- Environmental and resource protection areas, e.g., wetlands, mangroves, sea grass beds, oyster beds
- Locations of sediment sampling

- Rock locations and extent
- Signage and marking locations (provided by the County)
- Approximate shoreline
- Shoreline features, e.g., seawalls, revetments, canals, vegetation, exotics
- Shoreline amenities including docks, piers, etc...
- Jurisdictional boundaries
- Adjacent property owners

TASK II: DREDGE PLAN DESIGN

A. Draft Proposed Dredge Plan

Using the Existing Conditions Plan described above as a base map, produce a draft Proposed Dredge Plan to accommodate the existing vessel design criteria including the following information. Work with the County in siting an appropriately sized upland disposal site as a temporary offloading site with ultimate disposal offsite via trucking.

- Existing Conditions Plan (including all the items prepared in Task ID.)
- Shoreline features and amenities
- Proposed limits of dredging in plan view and cross sections.
- Proposed dredge depths and volumes.
- Proposed limits of rock removal.
- Proposed temporary upland disposal site plan view & cross sections.

B. Preliminary Opinion of Construction Cost

Based on the proposed design, prepare a preliminary opinion of the construction cost.

C. Client Coordination & Stakeholder Outreach

Submit the draft Proposed Dredge Plan and Cost Opinion to the County Project Manager for review and comment. Arrange, prepare for, and attend one meeting with County staff to obtain input, identify outstanding issues, and outline presentation for stakeholders. Arrange, prepare for, and attend one meeting with stakeholders designated by County Project Manager to present proposed plan. Obtain stakeholder input and together with County input, finalize the Proposed Dredge Plan and Cost Opinion. Prepare and distribute meeting minutes to County Project Manager.

TASK III: PERMITTING

A. Pre-Application Meeting

Prepare for, and attend one pre-application meeting or hold teleconferences with the DEP, COE, CHAP, and CHEC to present the Project goals and Proposed Dredge Plan, identify agency concerns and issues, and outline all permit requirements. Prepare and distribute meeting minutes to County Project Manager.

Task Items B thru E include preparing two separate Environmental Resource Permit (ERP) Applications.

B. Permit Drawings

Prepare the necessary permit drawings on "8 ½ X 11" detailing the proposed Dredge Plan including the following information.

- Existing bathymetry (completed above).
- Locations of jet probes and sediment cores (completed above).
- Proposed limits of dredging in plan view and cross sections (completed above).
- Proposed dredge depths and volumes (completed above).
- Proposed limits of rock removal.
- Proposed construction access, staging area, and barge transport routes.
- Proposed disposal site details including temporary containment and permanent offsite disposal.
- Proposed construction methods; erosion, sediment, and turbidity control measures; and best management practices;
- Water quality and sea grass protection plans during construction.
- Manatee and shorebird protection plans during construction.

C. Permit Applications

Prepare draft technical materials for inclusion in the Project's Environmental Resources Permit (ERP) Application to the DEP / COE including the following attachments. Provide County with a list of items they will be required to provide support of application (e.g. permit fees, executed application, letter of consistency with County Zoning and Comprehensive Plan).

- Permit drawings (prepared above).
- Justification Statement to document the need for dredging.
- Public Easement drawings (prepared above).
- Maps and Aerial photos
- Adjacent property owners

Note: Hydrographic analysis, water quality testing, and sediment chemistry are specifically excluded from this scope of work. Should the permit agencies require these services, an estimate and schedule to conduct additional services as required shall be provided to the County, and approved by the County prior to conducting the additional work.

D. Mitigation Plan

Prepare draft Mitigation Plan to offset Project impacts including such items as removing the derelict piles at the Ice House and Linear Park at Bayshore, and using the removed rock to construct an artificial reef.

E. Client Review and Submittal

Submit draft Permit Applications to the County Project Manager for review and comment. Arrange, prepare for, and attend one meeting with the County staff to obtain input, obtain County's required submittal information (e.g. permit fees, required signatures, local approval) and address outstanding issues. Based on County's

comments, finalize and submit the Permit Applications to the DEP/COE, FWC and USCG.

TASK IV: PERMIT COORDINATION

A. Permit Processing

Monitor the progress of the ERP Application with the DEP / COE and coordinate receipt of needed jurisdictional, regulatory and operational information from all required agencies to effect a timely complete submission for the Dredge Plan. Assist County in preparing and responding to two (2) agency RAI's, (1) each for DEP and COE, to answer questions and address their concerns. Should the permit agencies issue additional RAI's, an estimate and schedule to conduct additional services as required shall be provided to the County.

B. Permit Issuance

Prepare for County a summary of the agency approvals listing the special permit conditions, responsible party, and time frame for implementation and construction for the Dredge Plan.

TASK V: CLIENT COORDINATION AND PROJECT ADMINISTRATION

A. Project Administration

Communicate routinely with County Project Manager via telephone and emails. Prepare Gant Chart of Project Schedule and update Gant Chart and provide County with same at Project milestones. Provide County elections copies of all design plans and drawings.

TASK VI: CONTINGENCIES

Due to the complex nature of the work involving marine surveys and environmental permitting, it is anticipated that additional work may be necessary such as additional field work, stakeholders meetings, or agency coordination. A contingency budget is recommended for these circumstances. All scopes of work under this task must be reviewed and approved by the County prior to conducting the additional work.

Note: Construction Management Services can be provided as Additional Services.

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Pirate Harbor Dredging

CEC File No. 05.100
Detailed Schedule
June 20, 2005

Task Description	2005												2006		
	July	August	September	October	November	December	January	February	March	April	May	June	July	August	September
Task 1: Evaluate Existing Conditions															
A. Project Initiation Meeting (Optional)															
B. Existing Data Review															
C. Data Collection															
D. Existing Conditions Plan															
Task 2: Dredge Plan Design															
A. Draft Proposed Dredge Plan															
B. Preliminary Opinion of Construction Cost															
C. Client Coordination & Stakeholder Outreach															
Task 3: Permitting															
A. Pre-Application Meeting															
B. Permit Drawings															
C. Public Assessment (Optional)															
D. Permit Applications															
E. Mitigation Plan															
F. Client Review and Submittal															
Task 4: Permit Coordination															
A. Permit Processing															
B. Permit Issuance															
Task 5: Client Coordination & Project Administration															
A. Project Administration															
Task 6: Project Contingencies additional meetings, surveys, analyses, etc															

EXHIBIT B

Pirate Harbor Dredging

CEC File No. 05.100
Detailed Summary of Estimated Fees
June 20, 2005

Task Description	Coastal Engineering Consultants										Total Fees	Direct Costs Amount	Description	Subtask Total	Task Total	
	Principal Engineer \$160	Associate Engineer \$140	Managing Engineer \$130	DRMP Scientist \$120	Project Scientist \$100	Senior Design Technician \$70	Admin \$40									
Task 1: Evaluate Existing Conditions																
A. Project Initiation Meeting (Optional)	4			4											\$1,200	\$28,890
B. Existing Data Review	2	4		8	4										\$2,320	\$2,320
C. Data Collection	2	40	2	32	40	2							\$8,220		\$22,350	\$22,350
D. Existing Conditions Plan	2	2	2	6	4	2									\$2,820	\$2,820
Task 2: Dredge Plan Design																
A. Draft Proposed Dredge Plan	2	8	8	8	8	18									\$4,960	\$4,960
B. Preliminary Opinion of Construction Cost	2	4	2												\$1,220	\$1,220
C. Client Coordination & Stakeholder Outreach	2	8		10											\$2,720	\$2,720
Task 3: Permitting																
A. Pre-Application Meeting	2	12		12											\$3,600	\$3,600
B. Permit Drawings	2	8	4		4	20									\$3,520	\$3,520
C. Permit Applications	2	2	4	4	4	4									\$2,160	\$2,160
D. Mitigation Plan	2	4	4	16	8	2									\$3,680	\$3,680
E. Client Review and Submittal	2	8		8		2									\$2,480	\$2,480
Task 4: Permit Coordination																
A. Permit Processing	4	8	8	20	8	8									\$6,640	\$6,640
B. Permit Issuance		2		2	2	2									\$560	\$560
Task 5: Client Coordination & Project Administration																
A. Project Administration	4	8				4									\$1,820	\$1,820
													\$300	Reimbursables	\$2,220	\$2,220
Task 6: Project Contingencies																
additional meetings, surveys, analyses, etc.	2	2	2	4	3	3									\$2,750	\$2,750
Total Hours:	34	130	34	138	77	57	40	500								
Total Costs:	\$5,440	\$16,800	\$4,420	\$18,320	\$7,700	\$200	\$3,980	\$1,800	\$8,130						\$46,000	\$46,000
Total Cost of Project:															\$46,000	\$46,000