



Walton County  
Board of County Commissioners  
**AGENDA ITEM REPORT**

**20-1423**

**Meeting:** Board of County Commissioners - Nov 10 2020  
**Department:** Board of County Commissioners  
**Submitted by:** Stacey Infiger  
**Staff Contact:** Brian Kellenberger, Director of Beach Operations

**Consent Agenda**       **Regular Agenda**       **Public Hearing**

**TITLE/REQUESTED ACTION:**

Request approval to award, approve and authorize the Chairman to sign Construction Contract No.: 20-036 for the Santa Clara Regional Beach Access Renovation project to Custom Built Marine for the lump sum of \$478,136.00 with the unit price of \$185.00/cy for replacement of additional sand if required to meet FDEP permit

**PURPOSE / SUMMARY EXPLANATION OR HISTORY:**

Contract for Santa Clara RBA replacement project.

**ATTACHMENTS:**

[CONSTRUCTION CONTRACT](#)  
[ITB Santa Clara RBA - Bid Tabulation 10.26.2020](#)

# CONSTRUCTION CONTRACT FOR THE SANTA CLARA REGIONAL BEACH ACCESS RENOVATION

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CONTRACT NO.: **020-036**

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2020, between **WALTON COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 76 North Sixth Street, DeFuniak Springs, Florida 32433, ("County"), and **CUSTOM BUILT MARINE CONSTRUCTION, INC.**, a Florida corporation whose address is 3119 Hammond Road, Fort Pierce, Florida 34946, ("Contractor").

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the County, the Contractor hereby agrees with the County to commence and complete the Santa Clara Regional Beach Access Renovation Project as described in the plans, drawings, specifications and other documents contained in the Contract Documents, hereinafter referred to as the "Project".

## **ARTICLE 1. SCOPE OF WORK.**

The Contractor's duties and responsibilities are as follows.

A. The furnishing of all services, labor, equipment and material necessary to complete the Santa Clara Regional Beach Access Renovation Project. The Project shall be performed in strict accordance with the Contract Documents.

B. Contractor shall supervise and direct work on the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to complete the Project in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction unless otherwise provided in the Contract Documents. Contractor shall be responsible to see that the finished Project complies strictly with the Contract Documents. Contractor shall perform the work on the Project in such a manner as to cause a minimum of inconvenience to the public, travel, and adjoining property owners.

C. Contractor shall provide all labor, material, equipment, tools, machinery, utilities, insurance and supplies necessary for the construction of the Project in accordance with the Contract Documents.

D. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Project Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of material and equipment. All material and equipment shall be

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applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instruction of the applicable supplier, except as otherwise provided in the Contract Documents.

E. The Contractor shall solely and without qualification be responsible for all construction methods and results, for use of equipment and personnel, and for the safety of its employees and other persons, and for the protection of public and private property. The County shall have no right to hire or fire, nor any power of supervision or direction, over the construction methods, nor over use of equipment or personnel unless otherwise provided in the Contract Documents, nor for Contractor's compliance with Local, State, and Federal laws and regulations in completing the Project.

F. The Contractor shall comply with all applicable federal, state, and local rules and regulations in providing services to the County under this Contract. The Contractor acknowledges that this requirement includes compliance with all applicable federal, state, and local health and safety rules and regulations. The Contractor further agrees to include this provision in all subcontracts issued as a result of this Contract.

G. The Contractor shall comply with the Florida Historical Resources Act (Chapter 267, Florida Statutes), the regulations of the appropriate historic preservation boards, as applicable, and protect against potential loss and destruction of significant scientific, historical and archaeological data, sites and properties in connection with the Project.

H. The Contractor shall maintain at the Project job site a full-time superintendent who will devote 100% of his or her working hours to this Project. Contractor shall provide competent, suitably qualified personnel to construct the work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except as otherwise indicated in the Contract Documents, all work at site shall be performed during daylight hours, and may be performed Sunday through Saturday.

I. The Contractor shall be responsible for the receiving, unloading, handling and storage of any equipment or materials supplied or utilized by the Contractor hereunder. Contractor shall store equipment and materials, as necessary, only in those areas designated by the County. The Contractor shall be responsible for all storage costs and expenses, including costs of any relocation of stored material directed by County. Materials and equipment shall be kept neatly piled and compactly stored in such locations that will cause a minimum of inconvenience to public travel and adjoining property owners.

J. Before any work on the Project site is started, the Contractor shall have prepared a written plan for Project-specific safety precautions and programs, complete with respect to procedures and actions that the Contractor and all others intend to follow in order for the Contractor and all others to comply with all applicable Laws and Regulations. The Contractor's plan for safety precautions and programs shall have been

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approved and endorsed by the Contractor's designated safety representative. The Contractor shall submit a copy of the safety plan to the County. Submittal of the plan shall in no manner be implied to impose a duty on the part of the County to review or approve said plan.

K. The Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with all applicable Laws and Regulations.

L. The Contractor shall clean the project site during progress of the work, and at completion of the Project. Waste materials, debris and rubbish shall be removed from the site periodically and disposed of at a legal disposal area away from the site.

M. The County may undertake to award other contracts for additional work, and the Contractor shall fully cooperate with other contractors and County employees and carefully coordinate his own work to such additional work as may be directed by the County. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by County employees.

N. Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the County who shall promptly correct such inconsistencies or ambiguities in writing. Any work done by Contractor after such findings, until authorized, will be done at Contractor's risk.

O. The use of Global Navigation Satellite Systems (GNSS) is considered a "means and methods" choice of the contractor. If used, the Florida Department of Transportation Specifications 5-7.6 and 5-7.7 must be followed. All costs of performing layout work is to be included in the Contract unit prices for the various items of work that require layout. Any costs incurred due to in progress changes to the model are the responsibility of the contractor.

Omissions from the drawings and specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

It is understood that the Contractor has, by personal examination and inquiry, satisfied himself as to the local conditions and as to the meaning, requirements, and reservations of the specifications and drawings.

O. County will provide limited rights of way and easements necessary for equipment access to the beach in the areas where work is to be performed by

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Contractor under this Contract. The Contractor shall be required to document via videotape the condition of all access locations prior to initiating any construction activity. A copy of the videotape shall be provided to the County. The Contractor shall be responsible for any repairs required to restore equipment access locations utilized during the work, including but not necessarily limited to paving, fencing, boardwalks, dunes and vegetation

## **ARTICLE 2. COMPENSATION.**

A. Total lump-sum compensation for the Scope of Work of this Contract shall be in the amount of FOUR HUNDRED SEVENTY-EIGHT THOUSAND ONE HUNDRED THIRTY-SIX AND 00/100THS DOLLARS (\$478,136.00). Placement of DEP and Walton County approved beach compatible sand in addition to the quantity listed in the plans for the project will be at the rate of ONE HUNDRED EIGHTY-FIVE AND 00/100THS DOLLARS (\$185.00) per cubic yard. All costs and expenses of the work contemplated by the Project described in these Contract Documents shall be considered as part of the general cost of doing the work and are included in the compensation.

B. Within 20 calendar days after the execution of the Contract, the Contractor shall submit an initial (baseline) Progress Schedule in critical path method (CPM) form, using software generally accepted in the construction industry. The schedule shall be submitted to the County for approval prior to the first Application for Progress Payment. The Progress Schedule shall be updated and submitted with each Application for Progress Payment. Failure on the part of the Contractor to progress with the Project in strict accordance with the Progress Schedule shall constitute grounds for retaining 5% of the progress payments during the period the Contractor is not progressing in strict accordance with the Project Schedule.

C. Within 20 calendar days of execution of this Contract but not less than 15 calendar days before the first Application for Progress Payment is to be submitted, Contractor shall submit to County a Schedule of Values covering various general and specific tasks enumerated by the County. The Schedule of Values shall contain for each enumerated task an estimate of the value that may be ascribed to completion of the task. Said Schedule of Values must be approved by the County prior to the payment of the first Application for Progress Payment. Failure to provide a Schedule of Values acceptable to the County shall result in a delay of first payment until an acceptable Schedule of Values is submitted and approved by County.

D. Payments shall be made in accordance with the Florida Prompt Payment Act.

1. On the 20th day of each month Contractor shall submit to the Project Engineer for review and approval an Application for Progress Payment, and shall submit a revised Progress Schedule and updated As-Built drawings of the Project. The Application for Progress Payment shall specify the value of the work performed on the Project to date, the value of the materials stored on site at

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the close of this period, the amount of the previous progress payment(s) and the amount retained.

2. Upon verification by the Project Engineer that the work on the Project specified in the Application for Progress Payment has been completed, the Project Engineer shall approve the application and submit the same to the County Finance Director. The Application for Progress Payment, approved by the Project Engineer, will be deemed received by the County on the date the Application for Progress Payment, is stamped as received by the County Finance Director. Notwithstanding the Project Engineer's approval of the Application for Progress Payment, the County shall retain the right to reject the application within twenty (20) business days of the date the approved application is stamped as received by the County Finance Director. Such rejection shall be in writing and shall specify the deficiency and action necessary to make the application proper. The County shall pay Contractor for Ninety Five percent (95%) of the value of the work completed on the Project; five percent (5%) shall be retained by the County. The value of the work completed on the Project shall be calculated by taking a percentage of the value ascribed to an enumerated general task in the Schedule of Values that is equal to the percentage of work completed on that task. Approved progress payments shall be paid within twenty (20) business days of the date the approved Application for Progress Payment is stamped as received by the County Finance Director in accordance with the Florida Prompt Payment Act. If an application is rejected by the County, payment shall be made within ten (10) business days after the date the corrected application is stamped as received by the County Finance Director or the first business day after the next regularly scheduled meeting of the Board of County Commissioners held after the corrected application is stamped as received by the County Finance Director whichever should occur later. Applications for Final Payment shall be submitted to the Project Engineer for approval. The Final Payment of the Five percent (5%) retainage shall be paid within twenty (20) business days after the approved Application for Final Payment is stamped as received by the County Finance Director, subject to final approval and acceptance of the Project by the County.

3. As a prerequisite to each progress payment hereunder, the Contractor shall furnish to the County a Waiver of Right to Claim Against Payment Bond (Progress Payment), in the form specified in Section 255.05, Florida Statutes, from each subcontractor, person, firm or corporation who provided work, labor, equipment, or materials for the Project, to the date of the preceding progress payment. In addition, the Contractor shall furnish proof to the County of the payment of all laborers working directly for the Contractor through the date of each preceding progress payment. As a prerequisite to final payment hereunder, the Contractor shall furnish to the County a Waiver of Right to Claim Against Payment Bond (Final Payment), in the form specified in Section 255.05, Florida Statutes, from each subcontractor, person, firm or corporation who provided work, labor, equipment or materials for the Project, and furnish proof to the County of the payment of all laborers working directly for the Contractor through the entire term of the Project.

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4. Payment shall not be payable or due at the option of County in the event any of the following conditions exist:
  - a. Defective or damaged work on the Project is not remedied;
  - b. Contractor fails to make proper application for payment;
  - c. Contractor becomes bankrupt or insolvent;
  - d. This Contract or any other Contract between County and Contractor is in breach;
  - e. Any insurance required of Contractor ceases to be effective or in force;
  - f. Any surety providing a bond required of Contractor ceases to be effective or in force;
  - g. If the Contractor fails to maintain monthly updated As-Built drawings and revised Progress Schedule.

E. All representations, indemnifications, warranties and guaranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Project and termination or completion of the Contract.

### **ARTICLE 3. CONTRACT TIME.**

A. **Contractor shall substantially complete the Project within NINETY (90) calendar days of issuance of the Notice to Proceed.** Final completion of the Project shall be accomplished within THIRTY (30) calendar days from the date a punch list of the remaining items to be completed is issued by the County. Substantial completion shall be defined as the point where the Project is NINETY PERCENT (90%) complete and can be used for the purpose it was intended. Final completion shall be defined as completion of the Project in all respects and in accordance with the Contract Documents as approved and accepted by the County. An additional Notice to Proceed shall not be required for any Change Order. The Contractor shall work on the Project continuously and expeditiously from the time of issuance of Notice to Proceed. In the event that Contractor is delayed by acts of God, changes in the Project, extras to the Project, or failure of the owner to make timely and proper payments, then Contractor shall, within forty-eight (48) hours of start of the delay, give written notice and request to the County for an extension of time. Failure to give timely notice within forty-eight (48) hours shall be deemed as a waiver of any claim for an extension of time to complete the Project.

#### **B. LIQUIDATED DAMAGES.**

1. **SUBSTANTIAL COMPLETION.** The County shall withhold and collect from Contractor liquidated damages in the sum of SEVEN HUNDRED FIFTY AND 00/100THS DOLLARS (\$750.00) per calendar day, for every calendar day the Project's substantial completion exceeds the Contract's substantial completion date.

2. **FINAL COMPLETION.** The County shall withhold and collect from Contractor liquidated damages in the sum of THREE HUNDRED SEVENTY-FIVE AND 00/100THS DOLLARS (\$375.00) per calendar day if punch list items have not been completed within 30 calendar days after the County's issuance of the punch list.

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Approved by the Board of County Commissioners November 10, 2020.

Liquidated damages for punch list items shall commence on the 31<sup>st</sup> calendar day after the County's issuance of the punch list and accrue until Application for Final Payment has been approved by the County.

3. LIQUIDATED DAMAGES NOT A PENALTY. These liquidated damages represent a reasonable estimate of the County's extra expenses and losses for denied use of the facility, financing costs, additional extended overhead, and any lost revenues. The Contractor agrees that these liquidated damages do not constitute a penalty or forfeiture.

C. NO DAMAGES FOR DELAY/CUMULATIVE IMPACT. Contractor shall not be entitled to any recovery for loss, expense or damage due to delay. The Contractor shall not be entitled to any recovery for loss, expense or damage as a result of cumulative impact due to change orders.

#### **ARTICLE 4. THE COUNTY'S RESPONSIBILITY.**

Except as provided in the Scope of Work, the County's responsibilities are as follows:

A. To designate the Director of the Tourist Development Council or his designee to act on the County's behalf with respect to the Scope of Work. Only the Walton County Board of County Commissioners shall have the authority to issue change orders.

B. To designate Cliff Knauer, P.E. as the Project Engineer and to notify Contractor of any changes in the Project Engineer.

C. County shall pay the Contractor for construction of the Project in accordance with Article 2.

D. The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners.

#### **ARTICLE 5. CONTRACT DOCUMENTS.**

The Contract Documents which comprise this Contract between the County and the Contractor consist of:

- A. This Contract;
- B. Construction Plans entitled, "Santa Clara Regional Beach Access" for Project Number 50082554, prepared by Dewberry, dated November 2017, consisting of a Cover Sheet and Sheet Numbers EX-01, D-01, PP-01, GP-01, P-01 through P-03, TD-01 through TD-06 and AV-01; Construction and Technical Specifications entitled, "Santa Clara Regional Beach Access Renovation" for Project Number 50082554, prepared by Dewberry, dated September 2020;
- C. Bid Form submitted by Contractor;
- D. Change Order(s);
- E. The Notice of Award;
- F. The Notice to Proceed;

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- G. Any written amendments, modifications or Addenda to this Contract;
- H. Walton County Invitation to Bid No. 020-036 for Santa Clara Regional Beach Access Renovation;
- I. Instructions to Bidders; and
- J. Florida Department of Environmental Protection Permit No. WL-1323.

In the event of a conflict between any documents comprising this Contract, the documents shall be construed in the following order of priority: 1) the terms of this Contract; 2) the provisions of the Invitation to Bid No.020-036; and then 3) the Contractor's bid response to Invitation to Bid No. 020-036.

#### **ARTICLE 6. BONDS**

A. Contractor shall furnish performance and payment Bonds with the executed Contract, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Bonds shall remain in effect at least until one (1) year after the date of final payment, except as otherwise provided by law. All bonds shall be in substantially the form provided in, and include all required elements of, Section 255.05, Florida Statutes. Contractor shall also furnish such other Bonds as are required by the Contract Documents. All Bonds shall be executed by such Sureties as are authorized to conduct business in the state of Florida and who shall have an A. M. Best rating of **V-A** or better and who is listed on the United States Treasury Department's T-list as acceptable to issue bonds for the applicable dollar amount. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

It is further mutually agreed between the parties hereto that if, at any time, the County shall deem the Surety or Sureties upon any Bond to be unsatisfactory, or if, for any reason, such Bond ceases to be adequate, the Contractor shall, at his expense within five (5) business days after the receipt of notice from the County to do so, furnish an additional or replacement Bond or Bonds on the County's standard form, in an amount, and with Surety or Sureties as shall be satisfactory to the County. In such event, no further payments to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the County.

It is the Contractor's responsibility to notify the Surety of any changes affecting the general scope of the work or change in the contract price, and the amount of the application bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to the County.

#### **ARTICLE 7. INSURANCE.**

A. Contractor shall purchase and maintain through the Contract period workers compensation, comprehensive general liability (occurrence form), comprehensive automobile liability, builder's risk, and other insurance as is appropriate for the Project being performed hereunder by Contractor, its employees, subcontractors or agents. The amounts and types of workers compensation, comprehensive general liability

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(occurrence form), and comprehensive automobile liability insurance shall conform to the following minimum requirements:

1. Worker's Compensation. Coverage must apply for all employees and statutory limits in compliance with the applicable state and federal laws unless Contractor provides a current Florida Workers Compensation exemption certificate. In addition, the policy must include the following:
  - a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
  - b. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the County with thirty (30) days' written notice of cancellation and/or restriction.
2. Comprehensive General Liability. Coverage must include:
  - a. \$1,000,000 combined limit per occurrence for bodily injury, personal injury and property damage.
  - b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification Contract.
  - c. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the County with thirty (30) days' written notice of cancellation and/or restriction.
3. Comprehensive Automobile Liability. Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:
  - a. \$300,000 combined single limit per accident for bodily injury and property damage.
  - b. Owned Vehicles.
  - c. Hired and Non-Owned Vehicles.
  - d. Employee Non-Ownership.
  - e. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide the County with thirty (30) days' written notice of cancellation and/or restriction.

B. Certificates of Insurance evidencing the insurance coverage specified in this Article shall be submitted to the County with the executed Contract. The Certificates of Insurance shall be filed with the County before this Contract is deemed approved by the County. The required Certificates of Insurance not only shall name types of policies provided, but also shall refer specifically to this Contract. All the policies of insurance so required of Contractor shall be endorsed to include as additional insured the County, its officers, employees, and agents, except for Worker's Compensation. If the initial insurance policy expires prior to completion of the Project, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of the policy expiration.

C. The purchase of any of the above-referenced insurance policies shall not release the Contractor from any obligation, warranty or guarantee provided for in this Contract.

D. The Insurance Company(ies) shall be authorized to conduct business in the State of Florida.

E. Any risk of loss of completed work or work in progress on the Project, equipment and material stored on or off the Project Site or in transit shall be borne by the Contractor through the date of final completion for the Project.

#### **ARTICLE 8. SUBCONTRACTORS.**

After receipt of the Notice of Award the successful bidder shall submit to the County with the executed Contract any changes to the list of names of the subcontractors or other persons or organizations (including those who are to furnish materials and equipment fabricated to a special design) proposed for the principal portions of the Project. The County shall notify the successful bidder in writing after due investigation if it has objection to any subcontractor on the list.

#### **ARTICLE 9. CHANGE ORDER.**

The work necessary to complete this Project shall only be amended by a written change order for extra work, deletions or revisions of the Project authorized by the County. For any given change order, the percentage of compensation allowable total for overhead, profit and bond premium shall not exceed the percentage for those types of cost included in the original bid. The change order shall set forth authorization to increase or decrease the contract amount and time for completion of the Project. The change order shall also act as a Notice to Proceed with the work specified in the change order. If the County and Contractor cannot agree to an adjustment in compensation or contract time the Contractor may be directed by the County, without invalidating the Contract, to perform any changes in the Project pending final determination of the adjustment in compensation or contract time.

#### **ARTICLE 10. CONCEALED CONDITIONS CLAUSE.**

Should unknown physical conditions exist in the ground or in an existing structure which are unusual in nature, or different from conditions ordinarily encountered, then upon claim made by either party hereto within ten (10) days of notice of the condition, an equitable adjustment shall be made. The Contractor shall provide written notice of such concealed condition within forty-eight (48) hours of its discovery thereof. If the parties cannot agree on the amount of the equitable adjustment, then the lowest amount offered shall be paid or credited and the Project shall proceed with the amount of the adjustment to be resolved later. The failure to reach agreement on an equitable adjustment shall not be considered a material breach of this Contract for the purposes of termination.

#### **ARTICLE 11. WARRANTY AND GUARANTEE.**

A. The Contractor warrants and guarantees to the County that all work on the Project, including work of any subcontractor or supplier, shall be in strict conformance with the contract documents and shall be free of Defective Work. "Defective Work" shall mean any work, material or equipment incorporated in the Project that the Project

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Engineer, in his sole discretion, determines is faulty, unsatisfactory, deficient, or damaged, or does not strictly conform to the requirements of the Contract Documents and all applicable state, federal, and local laws, regulations and permits, including but not limited to those permits identified in the List of Applicable Permits. This warranty and guarantee shall survive the one year Correction Period set forth in this Article.

B. One year after issuance of Substantial Completion Notice, the sea oats planted in accordance with the Project specifications must have an 80% survival rate. However, Contractor shall not be held responsible for damaged or dead sea oats, if neither the fault nor the negligence of Contractor or its employees or agents contributed to the damage or death and the damage or death is due directly to acts of God, wars, acts of public enemies, fires, floods, or other similar cause wholly beyond Contractor's control.

C. Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the County at the time of payment free and clear of all liens, claims, security interests and encumbrances.

D. The Contractor warrants and guarantees that any warranties of a manufacturer for goods, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the County at the time of payment.

E. The enumeration of any guarantee or warranty within the Contract Documents shall not be construed to waive any other express or implied warranties.

## **ARTICLE 12. CONTRACTOR'S REPRESENTATION.**

The Contractor represents to the County that:

A. The Contractor is properly certified and licensed; is solvent financially; is experienced in and competent to complete the Project;

B. The Contractor is familiar with all Federal, State, Local, or other regulatory laws, ordinances and regulations, which in any manner whatsoever may affect the Project.

**C. The Contractor utilizes the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the contract term by the Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract.**

D. Temporary and permanent construction which shall be necessary in performance of the Project can be constructed satisfactorily and can be used for the

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purposes for which it is intended and that such construction will not injure any person or damage any property;

E. The Contractor has examined carefully the Contract Documents; has examined carefully the site upon which the Project is to be performed, has become familiar, by its own investigation, with the various conditions which may affect the performance of the Project; hereby acknowledges that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the Project; and will make no claims for compensation due based solely upon the completeness or accuracy of the Contract Documents;

F. The Contractor has made its own estimate of the quantities required for completion of the Project; has determined the quantities estimated in the Contract Documents are accurate and adequate; hereby acknowledges that compensation in the Contract is premised upon performing and furnishing the service, labor, equipment and materials required to complete the Project described by the Contract Documents; and will make no claims for compensation in excess of the total compensation allowed by this Contract for reason of accuracy or adequacy of estimates contained in the Contract Documents;

G. The Contractor, in submitting its Bid, has complied with every requirement of the Instructions to Bidders and has knowledge of and ability to apply the means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents; and

H. In submitting a Bid for this Contract, the Contractor has not discussed its bid or bid amount with any person that submitted or contemplated submitting a bid for this Project nor engaged in any activity which may be collusive or fraudulent.

### **ARTICLE 13. TESTS AND INSPECTIONS.**

A. Contractor shall give the County timely notice of readiness of the Project for all required inspections, tests or approvals. If any work on the Project that is to be inspected, tested or approved is covered without written concurrence of the County, it must, if requested by the County, be uncovered for observation at Contractor's expense. Neither observations by the County nor inspections, tests or approvals by others shall relieve Contractor from its obligations to complete the Project in strict accordance with the contract documents.

B. If any defective work on the Project is discovered upon testing or inspection, Contractor shall promptly, without cost to the County and as specified by the County, either correct the defective work, whether or not fabricated, installed or completed, or, if the work has been rejected by the County, remove it from the site and replace it with non-defective work. The Contractor shall pay for all re-inspection costs.

C. If within one year after the date of final payment or as specified in the plans and specifications, whichever occurs later or such longer period of time as may be

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prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents (the Correction Period), any work on the Project is found to be defective, Contractor shall promptly, without cost to the County and in accordance with the County's written instructions, either correct such defective work, or, if it has been rejected by the County, remove it from the site and replace it with non-defective work. Upon correction of any Defective Work, an additional one (1) year Correction Period shall run for the repaired or replaced work. The County may, at its discretion, occupy and use portions of the Project before Substantial Completion of the entire Project. If the County should so elect to occupy and use a portion of the Project before Substantial Completion of the entire Project, the Project Engineer shall establish the date of Substantial Completion for that portion of the Project, and the Correction Period for that portion of the Project shall run for one (1) year after the date of Substantial Completion established for that portion of the Project. Defects identified for correction during the Correction Period but remaining defective after its expiration shall be considered as part of the Contractor's obligation to repair. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the County may have the defective work corrected or the rejected work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by Contractor. This provision shall not be construed as a limitation on any warranty provided by Contractor.

D. The performance or failure to perform any test or inspection shall in no manner be construed as a waiver of any express or implied warranty or guarantee.

#### **ARTICLE 14. INDEMNIFICATION.**

A. Contractor shall indemnify and save harmless the County, its officers, agents, and employees, from all claims, suits or actions at law or equity, damages, losses, and expenses, whether direct or indirect, or consequential, including but not limited to charges of engineers, attorneys, and other professionals and costs of both defense and appeal, in a court of law or other tribunal, for any reason whatsoever, including but not limited to bodily injury, sickness, disease or death of any persons, including employees of Contractor or any subcontractor, or injury to or destruction of property, including loss of use, which claims are arising out of, related to, connected with, or caused by (a) Contractor's or any subcontractor or supplier of Contractor's negligent performance or non-performance of the Project; (b) Defective Work, whether by Contractor or any subcontractor or supplier of Contractor; (c) the failure of Contractor or any subcontractor of Contractor to provide a safe work place; (d) noncompliance with federal, state, and local laws and regulations by Contractor or any subcontractor or supplier of Contractor; (e) the failure of Contractor or any subcontractor or supplier of Contractor to obtain or renew the insurance coverages required by the Contract Documents; (f) claims for damages to the Project itself, and claims for any other costs which any of them may incur arising from failure, neglect, or refusal of Contractor to faithfully perform the Project and other obligations under the Contract Documents; or (g) the failure of contractor to comply with public records requests made pursuant to Article 25 herein. The provisions of this indemnification agreement shall include all accidents,

Drafted by the Office of the County Attorney.

Approved by the Board of County Commissioners November 10, 2020.

injuries and claims made, provided, however, that the Contractor shall not be required to indemnify the County for damages arising solely from the negligence of the County and its officers, agents, or employees. Contractor shall, at its own cost and expense, defend such claims, actions or proceedings which are subject to this indemnification agreement, whether groundless or not, which may be commenced against the County, and Contractor shall pay any and all judgments which may be recovered in any such action, claim, proceeding, or suit, excluding that proportion of any judgment for which the County may be found negligent, and defray any and all expenses including costs and attorney's fees, which may be incurred in or be reason of such action, claim, proceeding or suit. The County and Contractor agree that one percent (1%) of the total compensation to Contractor for performance of this Contract is the specific consideration from the County to Contractor for Contractor's indemnity agreement.

B. Nothing herein is intended to serve as a waiver of sovereign immunity by County to which sovereign immunity applies. Nothing herein shall be construed as consent by County to be sued by third parties in any matter arising out of any contract.

C. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Project or the incorporation in the Project of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. Contractor shall indemnify and hold harmless the County, its officers, Commissioners, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Project or resulting from the incorporation in the Project of any invention, design, process, product or device not specified in the Contract Documents.

#### **ARTICLE 15. CONTRACT ASSIGNMENT.**

The Contractor shall not assign any monies due herein and shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof; or its right, title, or interest therein, without prior written consent of the County.

#### **ARTICLE 16. PROHIBITION AGAINST CONTINGENT FEES.**

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

#### **ARTICLE 17. SUCCESSORS AND ASSIGNS.**

The County and Contractor bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners,

Drafted by the Office of the County Attorney.

Approved by the Board of County Commissioners November 10, 2020.

successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the County nor Contractor shall assign, sublet or transfer any interest in this Contract without the written consent of the other.

**ARTICLE 18. INDEPENDENT CONTRACTOR.**

Neither the County nor any of its employees shall have any control over the conduct of Contractor or any of Contractor's employees, except as herein set forth, and Contractor expressly warrants not to represent at any time or in any manner that Contractor or any of Contractor's agents, servants or employees are in any manner agents, servants or employees of the County. It is understood and agreed that Contractor is, and shall at all times remain as to the County, a wholly independent contractor.

**ARTICLE 19. THIRD PARTY BENEFICIARIES.**

There shall be no third-party beneficiaries to the Contract. Nothing herein shall be deemed to create any obligation on the part of the County with respect to any third-party who is not in direct contractual privity with the County, including but not limited to any obligation on the part of the County to pay, or see to payment of, any third-party who is not in direct contractual privity with County.

**ARTICLE 20. EQUAL EMPLOYMENT AND NON-DISCRIMINATION.**

In connection with the Project, Contractor agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

**ARTICLE 21. TERMINATION AND SUSPENSION OF CONTRACT BY THE COUNTY.**

This Contract may be terminated by the County, at any time with or without cause, with ten (10) days' written notice. If this Contract is so terminated, Contractor shall be denied access to the construction site immediately upon termination and Contractor shall be prohibited from removing without County's prior approval any item from the construction site. Contractor shall be paid for all work performed on the Project, pursuant to the terms and conditions of this Contract, up to the date of termination and shall promptly deliver to the County copies, including As-Built drawings of all then completed deliverable items and all tracings, drawings, survey notes and other documents that directly support the deliverables prepared by Contractor. **Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from the termination.**

The County may, with or without cause, order the Contractor in writing to suspend, delay, or interrupt the work, in whole or in part, for such period of time as the County may determine.

**ARTICLE 22. SEVERABILITY.**

In the event that any provision of this Contract shall, for any reason, be determined invalid, illegal or unenforceable in any respect, the parties hereto shall

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negotiate in good faith and agree to such amendments, modifications or supplements of this Contract or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Contract, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

#### **ARTICLE 23. NOTICES.**

Any notices to be given under this Contract shall be given by United States Mail, addressed to Contractor at its address stated above, and to the County at its address stated above. Additional notice may also be given by facsimile in which case it shall be deemed that notice was provided on the date said facsimile was received. The party providing notice by facsimile shall confirm that the facsimile was received by the other party.

#### **ARTICLE 24. ACCESS TO THE PROJECT.**

The County, testing agencies, and governmental agencies with jurisdictional interest will have access to the Project at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

#### **ARTICLE 25. PUBLIC ACCESS.**

A. A request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, it shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time (§119.0701(3)). If Contractor fails to provide the public records within a reasonable time, Contractor may be subject to penalties under §119.10, F.S.

B. Contractor shall comply with the requirements of Florida's Public Records law. In accordance with Section 119.0701, Florida Statutes, the Contractor shall (1) Keep and maintain public records required by the public agency to perform the service; (2) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under Florida's Public Records law or as otherwise provided by law; (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the public agency; and (4) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this contract, the Contractor shall meet all applicable requirements for retaining public records. All

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records stored electronically must be provided to the public agency, upon request from public agency's custodian of public records, in a format that is compatible with the information technology system of the public agency.

**C. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTRACTOR SHALL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

Genara Roop, Records Management Liaison Officer  
161 E. Sloss Avenue  
DeFuniak Springs, Florida 32433  
850-892-8110  
[roogenara@co.walton.fl.us](mailto:roogenara@co.walton.fl.us)

**ARTICLE 26. RECORDS.**

The Contractor shall maintain records, and the County shall have inspection and audit rights as follows:

A. Maintenance of Records: The Contractor shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Contract including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this Contract.

B. Examination of records: The County or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this Contract. Such examination may be made only within five (5) years from the date of final payment under this Contract and upon reasonable notice, time, and place.

C. Cost and pricing data: The Contractor, by executing this Contract, certifies to truth-in-negotiation, specifically that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of Contracting. The Contractor agrees that the County may adjust the consideration for this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The County shall make any such adjustment within one (1) year following the termination of this Contract.

**ARTICLE 27. CONTROLLING LAW AND ATTORNEY FEES.**

A. This Contract is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this Contract shall be in Walton County, Florida.

Drafted by the Office of the County Attorney.

Approved by the Board of County Commissioners November 10, 2020.

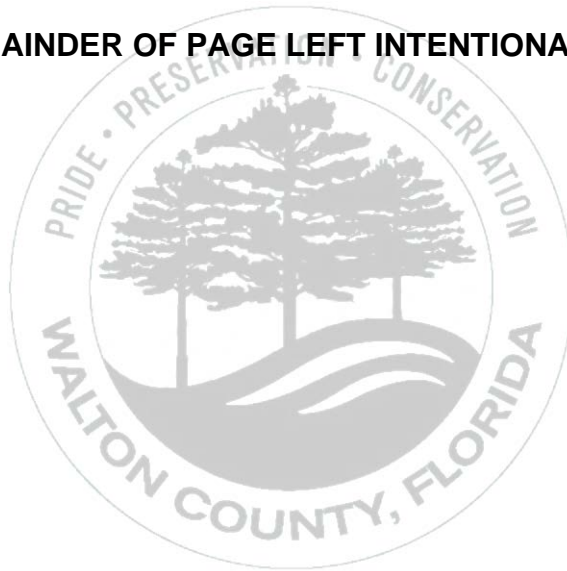
B. Should litigation be necessary to enforce any term or provision of this Contract, or to collect any portion of the amount payable under this Contract, then the prevailing party shall be entitled to recover all costs, including but not limited to reasonable attorneys' fees, expert witness fees, costs of suit, witness fees, and expenses necessary to aid in the enforcement of collection of any and all amounts due, incurred, or otherwise expended as part of said litigation and any subsequent appeals

**ARTICLE 28. EXTENT OF CONTRACT.**

A. This Contract represents the entire and integrated agreement between the County and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

B. This Contract may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**



**IN WITNESS WHEREOF**, the parties to these presents have executed this contract in the year and day first mentioned above.

ATTEST:

WALTON COUNTY, FLORIDA

\_\_\_\_\_  
Alex Alford, Clerk of Circuit Court  
And County Comptroller

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Board of County Commissioners, Chair

Date: \_\_\_\_\_

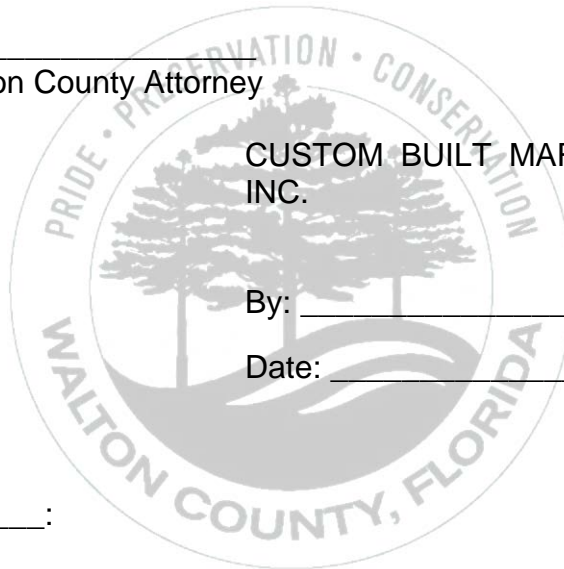
Approved As To Form.

\_\_\_\_\_  
Sidney N. Noyes, Walton County Attorney

CUSTOM BUILT MARINE CONSTRUCTION,  
INC.

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

Date: \_\_\_\_\_



STATE OF FLORIDA:

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

Acknowledged and subscribed before me the undersigned notary by means of  physical presence or  online notarization, on this \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ (insert title) of Custom Built Marine Construction, Inc., with legal corporate authority, and who is known to me or has produced identification of: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

# BID TABULATION

BID NUMBER: 020-036

BID NAME: SANTA CLARA REGIONAL BEACH ACCESS

DATE OF OPENING: 10/26/20 TIME: 3:00 PM

<u>COMPANY NAME (PRINT)</u>	<u>REPRESENTATIVE (PRINT)</u>	<u>BID TOTAL</u>
<i>Flouccian Const.</i>		<i>517,209.00 140cy</i>
<i>RBM Contracting</i>		<i>628,625.00 45cy</i>
<i>Custom Sweet Marie</i>		<i>478,136.00 185cy</i>

OPENED BY: MB TABULATED BY: 8 VERIFIED BY: \_\_\_\_\_