

A meeting of the Manatee County Port Authority will be held on Thursday, September 15, 2016 at 9:00 a.m., or as soon thereafter as is practicable in the third floor meeting room of the Port Manatee Intermodal Center, 1905 Intermodal Circle, Palmetto, FL 34221, located at the intersection of South Dock Street and Reeder Road at Port Manatee.

Anyone wishing to attend this meeting who does not have an appropriate Port Manatee identification badge may enter Port Manatee by the north or south gate by displaying photo identification, generally a driver's license.



MANATEE COUNTY PORT AUTHORITY AGENDA

September 15, 2016

The Manatee County Port Authority may take action on any matter during this meeting, including those items set forth within this agenda. The chairperson, at the option of the chairperson, may take business out of order if the chairperson determines that such a change in the agenda's schedule will expedite the business of the Port Authority.

CALL TO ORDER

Invocation – Tim Huppert, Anchor House

Pledge of Allegiance

Public Comments

1. Audience Introductions
2. Employee Recognition
3. Presentation – Ryan DeHahn, Orion Marine Construction
4. Consent Agenda
5. Berth Reconstruction Change Order No. 004
6. Southgate Improvement Change Order No. 001
7. Mutual Aid Interlocal Agreement
8. Gulf Shellfish Institute Inc. Lease

Executive Director Comments

Public Comments

Commissioner Comments

According to Section 286.0105, Florida Statutes, any person desiring to appeal any decision made by the Port Authority with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is to be based.

Betsy Benac, Chairman
John Chappie, 1st Vice-Chairman; Charles Smith, 2nd Vice-Chairman;
Robin DiSabatino, 3rd Vice-Chairman; Vanessa Baugh, Member;
Larry Bustle, Member; Carol Whitmore, Member

September 15, 2016

AGENDA ITEM 1.: AUDIENCE INTRODUCTIONS

September 15, 2016

AGENDA ITEM 2.:

**EMPLOYEE RECOGNITION -
DELORES JAMESON, 10 YEARS
DENISE STUFFLEBEAM, 25 YEARS**



**Delores Jameson
Finance Assistant**



**Denise Stufflebeam – 25 years
Director of Business Admin/Finance**

September 15, 2016

AGENDA ITEM 3.:

**PRESENTATION – RYAN DEHAHN, ORION
MARINE CONSTRUCTION**

BACKGROUND:



Ryan DeHahn is an established Project Manager in the marine construction industry with 8 years of experience with Orion Marine Construction f/k/a Misener Marine Construction. Past projects range in scope from repair and rehabilitation to new construction for clients including the US Navy, Florida Department of Transportation, Port Tampa Bay and Infrastructure Corporation of America. In his free time, the Sarasota native and University of Florida alumnus enjoys spending time on the water with friends and family.

September 15, 2016

4. CONSENT AGENDA

A. Warrant List

B. Minutes for Approval: August 18, 2016

C. Budget Resolution

D. 2016 Port Security Grant Program (PSGP) Agreement

E. Authorization to File Claim Against Fresh Quest Inc.

RECOMMENDATION:

Move to approve the Consent Agenda incorporating the language as stated in the recommended motions on the cover sheets for the Consent Agenda items.

**Manatee County Port Authority
Warrant Listing
August 11 - September 7, 2016**

8/16/2016	V019302	ABBOTT, PAUL SCOTT	243.75
8/23/2016	V109817	AMERICAN ASSOCIATION OF, THE	975.00
8/25/2016	V109817	AMERICAN ASSOCIATION OF, THE	7,526.00
8/16/2016	V109681	AMERICAN ROLL UP DOOR CO	350.00
8/23/2016	V019994	ARGOS READY MIX LLC	12,175.00
8/23/2016	V118009	AT AND T	66.33
8/23/2016	V118009	AT AND T	34.14
8/23/2016	V013140	AT AND T MOBILITY	44.59
8/29/2016	V019152	AUTOZONE	199.20
8/12/2016	V019189	BANK OF AMERICA	4,959.30
8/23/2016	V002730	BANK OF AMERICA	132.17
8/11/2016	L173024	BRADENTON HERALD, THE	198.90
8/11/2016	V022286	BREKBUK EVENTS AND MEDIA	155.00
8/11/2016	V021131	BREKBUK US OPCO INC	4,095.00
8/23/2016	V007624	BRIGHT HOUSE	477.47
8/16/2016	V022142	BUILDERS FIRSTSOURCE	321.80
8/11/2016	V018317	BUSH ROSS PA	3,434.50
8/16/2016	V022294	CED SARASOTA	108.56
8/16/2016	V022182	DIXIE METAL PRODUCTS INC	20,195.02
8/25/2016	V020796	DRYMON REFRIGERATION INC	150.00
8/23/2016	V013107	ELECTRICAL WHOLESALERS OF FLOR	1,853.20
8/23/2016	V022096	ENTECH	419.00
9/2/2016	L017178	EVERGLADES FARM EQUIPMENT CO I	305.54
8/23/2016	V019619	FLORIDA POWER AND LIGHT COMPAN	2.30
9/6/2016	V019619	FLORIDA POWER AND LIGHT COMPAN	41,630.20
9/6/2016	V334006	FLORIDA PUBLIC RELATIONS ASSOC	260.00
8/22/2016	V334679	FLORIDA UNEMPLOYMENT COMPENSAT	(75.00)
8/29/2016	V021937	FRONTIER COMMUNICATIONS OF FLO	2,181.77
8/18/2016	V013436	GALLAGHER RISK MANAGEMENT SVCS	31,697.00
8/29/2016	V012146	GERDAU AMERISTEEL US INC	61,936.82
9/6/2016	V019179	GLOBAL EVENT TEAM LLC,THE	1,250.00
8/16/2016	V385628	GRAINGER INC, W W	539.44
8/16/2016	V388816	GRAYBAR ELECTRIC CO INC	1,296.00
8/26/2016	V020386	HANCOCK BANK	37,277.13
8/23/2016	V457001	HOME DEPOT COMMERCIAL ACCOUNT,	157.76
9/6/2016	V457001	HOME DEPOT COMMERCIAL ACCOUNT,	301.97
8/16/2016	V896015	INTERISK CORPORATION	6,614.45
8/25/2016	V004875	J2 ARTS INC	400.00

**Manatee County Port Authority
Warrant Listing
August 11 - September 7, 2016**

8/23/2016	V000060	JH WILLIAMS OIL CO INC	1,263.21
8/25/2016	V000060	JH WILLIAMS OIL CO INC	1,005.22
8/25/2016	V015114	JOHNSTONE SUPPLY	60.92
8/11/2016	L507891	KEETONS OFFICE SUPPLY CO INC	144.68
8/18/2016	L507891	KEETONS OFFICE SUPPLY CO INC	150.28
9/2/2016	L507891	KEETONS OFFICE SUPPLY CO INC	294.03
8/16/2016	V020720	L AND W SUPPLY CORP	574.50
8/11/2016	V000423	LEWIS LONGMAN AND WALKER PA	665.00
9/6/2016	V000423	LEWIS LONGMAN AND WALKER PA	21,255.83
8/16/2016	V022184	LOUIS PRYOR SUPPLY INC	340.59
8/29/2016	V022184	LOUIS PRYOR SUPPLY INC	95.08
9/6/2016	V022184	LOUIS PRYOR SUPPLY INC	88.72
8/16/2016	V004489	LOWES HOME CENTER INC	387.30
8/25/2016	V004489	LOWES HOME CENTER INC	201.33
8/18/2016	L625403	MAINTENANCE TOO PAPER CO INC	297.07
8/16/2016	V002305	MCGEE TIRE STORES	878.24
8/23/2016	V021927	MESA PRODUCTS INC	1,240.65
8/25/2016	V681573	NATIONWIDE CHEMICAL COATING MF	2,968.92
8/11/2016	V022265	NEWSPAPERS IN EDUCATION	1,200.00
8/16/2016	V696537	NORTHSIDE AUTO PARTS	525.13
8/25/2016	V696537	NORTHSIDE AUTO PARTS	198.65
8/16/2016	V006004	OMEGA OFFICE SYSTEMS	6,645.00
8/25/2016	V021625	ORION MARINE CONSTRUCTION INC	3,000.00
9/6/2016	V706455	ORKIN PEST CONTROL	455.00
8/23/2016	V010854	P & T FILTER SALES INC	150.68
8/16/2016	V021946	PEPPER CONTRACTING SERVICES IN	132,853.16
8/11/2016	V021677	PROPELLER CLUB OF THE UNITED S	180.00
8/23/2016	V748180	PUBLIX SUPER MARKET	168.10
9/6/2016	V022324	REALTOR ASSOCIATION OF SARASOT	250.00
8/16/2016	V776386	RING POWER CORP	172.18
8/25/2016	V001425	RYAN HERCO PRODUCTS CORPORATIO	16,994.86
8/18/2016	L825005	SCOTT PAINT	477.60
8/25/2016	L825005	SCOTT PAINT	106.65
9/6/2016	V826612	SEARS COMMERCIAL CREDIT	129.99
8/22/2016	V874841	STATE OF FLA DEPT OF REVENUE	11,516.48
8/25/2016	V875019	STATE OF FLORIDA	819.27
8/16/2016	V923227	TROPHY AND SPORTS WORLD	40.00
8/16/2016	V004721	TWENTY FIRST CENTURY GROUP INC	3,500.00

Manatee County Port Authority
Warrant Listing
August 11 - September 7, 2016

8/25/2016	V006904	UNITED REFRIGERATION INC	428.20
8/29/2016	V009667	VERIZON WIRELESS	1,021.19
8/16/2016	V021915	WEBTIVITY MARKETING AND DESIGN	65.00

Total warrants for period reported: \$ 456,698.02
Total cash receipts for period reported: 1,094,543.34

**MANATEE COUNTY PORT AUTHORITY
REGULAR MEETING
PORT MANATEE INTERMODAL CENTER, THIRD FLOOR
1905 Intermodal Circle
Palmetto, Florida
AUGUST 18, 2016**

Present were:

Betsy Benac, Chairman
Charles B. Smith, Second Vice-Chairman
Robin DiSabatino, Third Vice-Chairman
Lawrence E. Bustle, Jr.
Carol Whitmore


Absent were:

John Chappie, First Vice-Chairman
Vanessa Baugh

Also present were:

Carlos Buqueras, Executive Director
Jennifer R. Cowan, Port Authority Attorney
Dan Wolfson, Finance Director, Clerk of the Circuit Court
Amanda Cornwell, Board Clerk, Clerk of the Circuit Court

Chairman Benac called the meeting to order at 9:01 a.m.


 **INVOCATION AND PLEDGE OF ALLEGIANCE**
The Invocation was delivered by Tim Huppert, Anchor House Chaplin, followed by the Pledge of Allegiance.


PUBLIC COMMENT


There being no public comment, Chairman Benac closed public comment.


AGENDA

PA20160818DOC001

1.  **INTRODUCTIONS**
Members of the Audience introduced themselves.

2. **PRESENTATION – PRESTIGE CONCRETE PRODUCTS**
 Mark Arbuckle, VCNA Prestige Concrete Products, utilized a slide presentation to highlight the national and global history of Prestige Concrete Products, discussing product lines, the Florida market and proposed expansion, goals for the Port Manatee Facility, business focus, plant layout, Ready Mix product makeup, water management methods, and environmental, safety and health policies.


 Discussion ensued regarding maximum distance the product can be transported from a plant, and encouragement to develop vacant land around the Port.


 Mr. Arbuckle stated that Ready Mix transport operates on a maximum driving radius of approximately 15 miles, or 40 minutes, and that a longer transport time decreases the quality of the product.

PA20160818DOC002

3.  **PRESENTATION – PORT MANATEE COMMERCE CENTER**

Stanley Riggs and Kevin Button, Port Manatee Commerce Center, utilized a slide presentation to review the status of the Port Manatee Commerce Center and current projects.


 Kevin Button, Operations Manager, presented an aerial video to highlight the physical characteristics and storage capacity of the Port Manatee Commerce Center (<https://youtu.be/8nVznkehDqs>).

 Discussion ensued regarding types of storage facilitated and Board support for the promotion of the Commerce Center.

Mr. Button spoke on the varying types of materials and products the Center accommodates, reviewing individual building capacities and limitations. PA20160818DOC003

4. **CONSENT AGENDA**

PA20160818DOC004

 Carlos Buqueras, Executive Director, requested that the minutes of June 21, 2016 be corrected to list Kevin Hennessy as the attorney representing the Port.

A motion was made by Member DiSabatino, seconded by Commissioner Bustle, and carried 5-0 with Members Baugh and Chappie absent, to approve the Consent Agenda incorporating the language as stated in the recommended motions on the cover sheets for the Consent Agenda, with the correction made to the minutes of June 21st.

A. **WARRANT LIST**

Accepted the Warrant Listing from June 9, 2016 – August 10, 2016. PA20160818DOC005

B. **MINUTES**

Approved the minutes of June 16 and June 21, 2016.

C. **BUDGET RESOLUTION**

Adopted Budget Resolution PA-16-17. PA20160818DOC006

D. **CHANGE ORDER**

Ratified and affirmed the approval of Change Order No. 002 to the contract between the Manatee County Port Authority and Orion Marine Construction, Inc., for berth reconstruction to provide a reduction in the contract price of \$1,357,215.80, and the issuance of the following purchase orders:

1. Tekmarine in the amount of \$201,250;
2. Dixie Metals in the amount of \$20,195.02;
3. Tampa Tank in the amount of \$36,223;
4. Williams Form Engineering in the amount of \$154, 220.23;
5. Argos in the amount of \$806,362.50; and
6. Gerdau Ameristeel in the amount of \$62,000.

PA20160818DOC007

E. **AGREEMENT MODIFICATION**

Approved and authorized execution of the Port Manatee Lease Rent Modification Agreement between the Manatee County Port Authority and American Cement Company LLC.

PA20160818DOC008

F. **INSURANCE RENEWALS**

Approved the following insurance coverage for the Port Authority with possible increases/decreases due to changes in insurance coverage:

1. The Florida Municipal Insurance Trust (FMIT) for Real and Personal Property for a premium of \$144,054; Boiler and Machinery and Crime included in Real and Personal Property coverage;

2. Boyd Insurance & Investment Services for Inland Marine, Vehicle Liability and Workers' Compensation for premiums of \$22,639, \$8,933, and \$34,992, respectively;
3. Arthur J. Gallagher & Company for Railroad Liability for a premium of \$38,000; and
4. Hugh Wood, Inc., for Port Liability, Umbrella and Public Officials Coverage for premiums of \$45,000, \$70,000, and \$9,500, respectively. PA20160818DOC009

G. STORAGE AGREEMENT AND AMENDMENT

Approved and authorized the execution of the Cargo Pad Construction/ Storage Agreement and Lease Amendment Two between the Manatee County Port Authority and Gulf Coast Bulk Equipment for the lease and construction of a cargo pad.

PA20160818DOC010


5.  **LEASE EXTENSION AND MODIFICATION - DEL MONTE FRESH PRODUCE N.A. INC.**
Carlos Buqueras, Executive Director, introduced the proposed modification to the existent lease agreement with Del Monte Fresh Produce.


Discussion ensued regarding the Port's ongoing partnership with Del Monte Fresh Produce.

Motion was made by Member Whitmore, seconded by Member DiSabatino and carried 5-0 with Baugh and Chappie absent, to approve and authorize the execution of the Port Manatee Lease Extension and Modification Agreement #2 between the Manatee County Port Authority and Del Monte Fresh Produce N.A. Inc.


PA20160818DOC011

6.  **FISCAL YEAR 2016-2017 OPERATING BUDGET RESOLUTION**
Denise Stufflebeam, Port Manatee Finance Director, utilized a video presentation to review the 2017 proposed budget.

 Discussion ensued regarding staff success in reducing overhead costs and attracting new Port clients, Mr. Buqueras and Mr. Sanford thanked for their financially responsible leadership, and the importance of budgeting with conservative revenue projections.

 Mr. Buqueras confirmed that Port reserves are growing to meet any emergency or unexpected expenses.

Motion was made by Member Bustle, seconded by Member Whitmore, and carried 5-0 with Members Baugh and Chappie absent, to adopt Budget Resolution PA-16-18. PA20160818DOC012

7.  **BERTH RECONSTRUCTION CHANGE ORDER NO. 003**
Dave Sanford, Deputy Executive Director, reviewed the Berth 9 reconstruction currently underway, stating that an obstruction was found at minus 50 feet and underwater exploration identified approximately 15 large metal ingots embedded in the substrate. The contractor has advised that further extraction could undermine the wall structure, and recommends with the engineer that a smaller 36 inch pile be driven inside the 60 inch pile currently in process, prompting the requested change order.

 Discussion ensued regarding whether there would be any value to retrieving the ingots.

 Mr. Sanford responded that the retrieval expense would exceed any value.

Motion was made by Member DiSabatino, seconded by Member Whitmore and carried 5-0 with Members Baugh and Chappie absent, to ratify and affirm the approval of Change Order No. 003 to the contract between the Manatee County Port Authority and Orion Marine Construction, Inc., for berth reconstruction for an increase of \$60,654 due to unanticipated subsurface obstructions and an additional five days for substantial completion.

PA20160818DOC013

8.  **DRY BULK TERMINAL AGREEMENT AND LEASE**

Mr. Buqueras introduced the proposed agreement and spoke on the jobs to be created by expanding with the construction of a dry bulk terminal.

Motion was made by Member DiSabatino, seconded by Member Whitmore and carried 5-0 with Members Baugh and Chappie absent, to approve and authorize the Chairman to execute the Dry Bulk Terminal Agreement and Lease between the Manatee County Port Authority and Gulf Coast Bulk Equipment for the lease and construction of a dry bulk terminal.

PA20160818DOC014

9.  **SUPPLIMENTAL JOINT PARTICIPATION AGREEMENT – DRY BULK TERMINAL**

Carlos Buqueras, Executive Director, spoke on the expansion of the original capital investment and the ongoing partnership with the Florida Department of Transportation.

Motion was made by Member DiSabatino, seconded by Member Whitmore and carried 5-0 with Members Baugh and Chappie absent, to adopt Resolution PA-16-19 authorizing the execution of a Joint Participation Agreement with the Florida Department of Transportation for a dry bulk terminal.

PA20160818DOC015

 **EXECUTIVE DIRECTOR COMMENTS**

Carlos Buqueras, Executive Director, utilized a slide presentation to highlight recent Port events:

- Port Manatee welcomes New World Direct Shipping Vessel
- Port Manatee 2016 Directory wins “Gold Medal”, official directory received an award of excellence
- Finished Vehicle Logistics Conference, August 10, 2016, Baltimore

 Matti Appice, Chief Commercial Officer, spoke on his attendance at the Baltimore conference.

- 15TH Ship Shape Showcase, August 4, 2016 and next year to coordinate meetings
- Senator Galvano and Senator Simpson toured Port Manatee, August 17, 2016



Chairman Benac spoke on the senators’ visit to the Port, positive reaction to investments and private business model.


Discussion ensued regarding the scheduling of Air Products events.

 **PUBLIC COMMENTS**

There being no being no comment, Chairman Benac closed public comment.

COMMISSIONER COMMENTS

-  Member DiSabatino thanked Port staff for the quality of their presentations.
-  Chairman Benac raised concerns over the possibility of the zika virus spreading through Port contact, remarking that the mosquito variety which carries the virus is very local with a short travel range and transmission of that type is unlikely.

 Dave Sanford, Deputy Executive Director, stated that the staff has been in contact with Dr. Jennifer Bensi of the Manatee County Health Department, adding that there are currently no Zika related mandates from either the Customs Office or U.S. District Attorney's office in Tampa. He confirmed that Mosquito Control services the Port regularly, tenants have been made aware of mosquito concerns, and Port Security is addressing issues of standing water. He added that the Port has determined a low risk of transmission through cargo, and will continue to be in contact with the Department of Health to address the possibility of the human transmittal through travel.

ADJOURN

There being no further business, Chairman Benac adjourned the meeting at 10:14 a.m.

Minutes Approved: _____

September 15, 2016

CONSENT

AGENDA ITEM 4.C.:

BUDGET RESOLUTION

BACKGROUND:

The purpose of this budget resolution is to decrease existing budgets of completed and/or terminated capital projects for year-end closing. It also decreases berths 4 and 5 improvement budgets \$19,250 and \$1,712, respectively, and increases berths 10 and 14 the same amount based on current budget estimates.

ATTACHMENT:

Budget Resolution PA-16-18.

COST AND FUNDING SOURCE:

N/A

CONSEQUENCES IF DEFERRED:

Delay in budget allocations

LEGAL COUNSEL REVIEW: N/A

RECOMMENDATION:

Move to adopt Budget Resolution PA-16-18.

RESOLUTION PA-16-18
AMENDING THE ANNUAL BUDGET
FOR MANATEE COUNTY PORT AUTHORITY
FOR FISCAL YEAR 2015-2016

WHEREAS, Florida Statutes 129.06, authorizes the Manatee County Port Authority to amend its budget for the current fiscal year as follows:

- a) Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased, provided the total appropriations of the fund are not changed.
- b) Appropriations from reserves may be made to increase the appropriation for any particular expense in the same fund, or to create an appropriation in the fund for any lawful purpose.
- c) Unanticipated revenues, including increased receipts for enterprise or propriety funds, may be appropriated for their intended purpose, and may be transferred between funds to properly account for the unanticipated revenue.

NOW, THEREFORE, BE IT RESOLVED by the Manatee County Port Authority that the 2015-2016 budget is hereby amended in accordance with Section 129.06, Florida Statutes as described on the attached summary and specified in the budget adjustment batch files which are listed below:

<u>Item No.</u>	<u>Batch ID No.</u>	<u>Reference No.</u>
1	BADS909A/B	BU16000438
2	BADS909A/B	BU16000440

ADOPTED with a quorum present and voting this the 15th day of September, 2016.

ATTEST: ANGELINA M. COLONNESO
CLERK OF CIRCUIT COURT

MANATEE COUNTY PORT AUTHORITY

By: _____

BUDGET ADMENDMENT RESOLUTION NO. PA-16-18

AGENDA DATE: September 15, 2016

1) Fund: FDOT

Section: Master Plan Update
Cold Storage Warehouse

Description: Decreases the balances of the Master Plan Update and the Cold Storage Warehouse for year-end closing.

Batch ID: BADS909A/B Reference: BU16000438

2) Fund: FDOT

Section: Berth 4 Improvement
Berth 5 Improvement
Berth 10 Improvement
Berth 14 Improvement

Description: Decreases Berth 4 Improvement budget \$19,250 and increases Berth 10 Improvement budget the same amount. Decreases Berth 5 Improvement budget \$1,712 and increases Berth 14 Improvement budget the same amount based on current project estimates.

Batch ID: BADS909A/B Reference: BU16000440

September 15, 2016

CONSENT

**AGENDA ITEM 4.D: 2016 PORT SECURITY GRANT PROGRAM (PSGP)
AGREEMENT**

BACKGROUND:

The Department of Homeland Security has awarded the Authority \$53,337 under the 2016 Port Security Grant Program (PSGP). The funding will allow the purchase of one port security vehicle equipped with a marine radio, emergency light bar and radiation detection unit. The grant also includes licensing and software upgrade of the Port's existing TWIC-based access control system. The accepted agreement is presented to enter into the records.

ATTACHMENT:

Agreement No. EMW-2016-PU-00294

COST AND FUNDING SOURCE:

FEMA grant funding of \$53,337 and \$17,779 from port cash

CONSEQUENCES IF DEFERRED:

Delay in entering agreement into record

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to accept into the record Agreement Number EMW-2016-PU-00294 from FEMA for the purchase of one security response vehicle and the upgrade of the TWIC access control system.

U.S. Department of Homeland Security
Washington, D.C. 20472

David St. Pierre
Manatee County Port Authority
300 Tampa Bay Way
Palmetto, FL 34221 - 6608

Re: Grant No.EMW-2016-PU-00294

Dear David St. Pierre:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2016 Port Security Grant Program has been approved in the amount of \$53,337.00. As a condition of this award, you are required to contribute a cost match in the amount of \$17,779.00 of non-Federal funds, or 25 percent of the total approved project costs of \$71,116.00.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2016 Port Security Grant Program Notice of Funding Opportunity.

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>.

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at <http://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help use to make the necessary updates and avoid any interruptions in the payment process.

BRIAN KAMOIE

U.S. Department of Homeland Security
Washington, D.C. 20472

AGREEMENT ARTICLES
Port Security Grant Program

GRANTEE: Manatee County Port Authority
PROGRAM: Port Security Grant Program
AGREEMENT NUMBER: EMW-2016-PU-00294-S01

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Article I - Summary Description of Projects

Project #1: CBRNE Response Vehicles is funded at \$34,587 (Fund only one vehicle and 1 of each listed equipment)

Project #2: TWIC Reader Software Update funded at \$18,750

Article II - Assurances, Administrative Requirements, Cost Principles, and Audit Requirements

DHS financial assistance recipients must complete either the [OMB Standard Form 424B Assurances - Non-Construction Programs](#) or [OMB Standard Form 424D Assurances - Construction Programs](#) as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the financial assistance office if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at [2 C.F.R. Part 200](#), and adopted by DHS at [2 C.F.R. Part 3002](#).

Article III - DHS Specific Acknowledgements and Assurances

All recipients, sub-recipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.

3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS financial assistance office and the DHS Office of [Civil Rights and Civil Liberties](#) (CRCL) by e-mail at crcl@hq.dhs.gov or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.
6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS financial assistance office and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

Article IV - Whistleblower Protection Act

All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at [10 U.S.C section 2409](#), [41 U.S.C. 4712](#), and [10 U.S.C. section 2324](#), [41 U.S.C. sections 4304](#) and [4310](#).

Article V - Use of DHS Seal, Logo and Flags

All recipients must obtain permission from their financial assistance office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article VI - USA Patriot Act of 2001

All recipients must comply with requirements of the [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act \(USA PATRIOT Act\)](#), which amends [18 U.S.C. sections 175 175c](#)

Article VII - Universal Identifier and System of Award Management (SAM)

All recipients are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at [2 C.F.R. Part 25, Appendix A](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

Article VIII - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at [2 C.F.R. Part 200, Appendix XII](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

Article IX - Rehabilitation Act of 1973

All recipients must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, [29 U.S.C. section 794](#), as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Article X - Trafficking Victims Protection Act of 2000

All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act of 2000*, (TVPA) as amended ([22 U.S.C. section 7104](#)). The award term is located at [2 CFR section 175.15](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

Article XI - Terrorist Financing

All recipients must comply with [E.O. 13224](#) and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the Order and laws.

Article XII - SAFECOM

All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the [SAFECOM](#) Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article XIII - Reporting Subawards and Executive Compensation

All recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at [2 C.F.R. Part 170, Appendix A](#), the full text of which is incorporated here by reference in the terms and conditions of your award.

Article XIV - Procurement of Recovered Materials

All recipients must comply with Section 6002 of the [Solid Waste Disposal Act](#), as amended by the [Resource Conservation and Recovery Act](#). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 C.F.R. Part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article XV - Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the [Bayh-Dole Act, Pub. L. No. 96-517](#), as amended, and codified in [35 U.S.C. section 200](#) et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at [37 C.F.R. Part 401](#) and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVI - Notice of Funding Opportunity Requirements

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the terms and conditions of your award. All recipients must comply with any such requirements set forth in the program NOFO.

Article XVII - Non-supplanting Requirement

All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources.

Article XVIII - Lobbying Prohibitions

All recipients must comply with [31 U.S.C. section 1352](#), which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

Article XIX - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article XX - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, [15 U.S.C. section 2225a](#), all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with

the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, as amended, [15 U.S.C. section 2225](#).

Article XXI - Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under [49 U.S.C. section 41102](#)) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974* ([49 U.S.C. section 40118](#)) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, [amendment](#) to Comptroller General Decision B-138942.

Article XXII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Award recipients may also find as a useful resource the DHS Privacy Impact Assessments: [Privacy Guidance](#) and [Privacy template](#) respectively.

Article XXIII - Americans with Disabilities Act of 1990

All recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. ([42 U.S.C. sections 12101 12213](#)).

Article XXIV - Age Discrimination Act of 1975

All recipients must comply with the requirements of the *Age Discrimination Act of 1975* ([Title 42 U.S. Code, section 6101 et seq.](#)), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance

Article XXV - Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article XXVI - Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds

Article XXVII - Federal Leadership on Reducing Text Messaging while Driving

All recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in [E.O. 13513](#), including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

Article XXVIII - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See [OMB Circular A-129](#).

Article XXIX - False Claims Act and Program Fraud Civil Remedies

All recipients must comply with the requirements of [31 U.S.C. section 3729](#) - 3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See [31 U.S.C. section 3801-3812](#) which details the administrative remedies for false claims and statements made.

Article XXX - Energy Policy and Conservation Act

All recipients must comply with the requirements of [42 U.S.C. section 6201](#) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

Article XXXI - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

All recipients must comply with the requirements of Title IX of the Education Amendments of 1972 ([20 U.S.C. section 1681 et seq.](#)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. DHS implementing regulations are codified at [6 C.F.R. Part 17](#) and [44 C.F.R. Part 19](#)

Article XXXII - Duplication of Benefits

Any cost allocable to a particular Federal award provided for in [2 C.F.R. Part 200, Subpart E](#) may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a recipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

Article XXXIII - Drug-Free Workplace Regulations

All recipients must comply with the *Drug-Free Workplace Act of 1988* ([41 U.S.C. section 701 et seq.](#)), which requires all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at [2 C.F.R Part 3001](#).

Article XXXIV - Debarment and Suspension

All recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders [12549](#) and [12689](#), and [2 C.F.R. Part 180](#). These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article XXXV - Copyright

All recipients must affix the applicable copyright notices of [17 U.S.C. sections 401 or 402](#) and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards.

Article XXXVI - Civil Rights Act of 1968

All recipients must comply with [Title VIII of the Civil Rights Act of 1968](#), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex ([42 U.S.C. section 3601 et seq.](#)), as implemented by the Department of Housing and Urban Development at [24 C.F.R. Part 100](#). The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators) be designed and constructed with certain accessible features (See [24 C.F.R. section 100.201](#)).

Article XXXVII - Civil Rights Act of 1964 - Title VI

All recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* ([42 U.S.C. section 2000d et seq.](#)), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. DHS implementing regulations for the Act are found at [6 C.F. R., Part 21](#) and [44 C.F.R. Part 7](#).

Article XXXVIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@dhs.gov if you have any questions.

Article XXXIX - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. For awards with an approved budget greater than \$150,000, you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XL - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XLI - National Environmental Policy Act

All recipients must comply with the requirements of the [National Environmental Policy Act \(NEPA\)](#) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XLII - Nondiscrimination in Matters Pertaining to Faith-based Organizations

Faith-based organizations are, under [6 C.F.R. Part 19](#), afforded certain protections as it relates to eligibility to receive financial assistance from DHS for social service programs, or to participate in social service programs administered or financed by DHS. Organizations that receive financial assistance from DHS for a social service program or participate in DHS social service programs have an obligation to comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19, which, among other provisions, prohibit recipient organizations from discriminating against beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice; and generally require recipients subject to the rule to provide certain protections, and notice of those protections, to their beneficiaries. Recipients must also comply with any other policies and procedures regarding the participation of faith-based organizations contained in applicable statutes, regulations, and guidance governing individual DHS programs.

Personnel	\$0.00
Fringe Benefits	\$0.00
Travel	\$0.00
Equipment	\$71,116.00
Supplies	\$0.00
Contractual	\$0.00
Construction	\$0.00
Indirect Charges	\$0.00
Other	\$0.00

Obligating Document for Award/Amendment

1a. AGREEMENT NO. 2. 3. RECIPIENT NO. 4. TYPE OF ACTION 5. CONTROL NO.
 EMW-2016-PU-00294-S01 AMENDMENT510202754 W510977N
 NO. AWARD

6. RECIPIENT NAME AND ADDRESS Manatee County Port Authority 300 Tampa Bay Way Palmetto, FL, 34221 - 6608	7. ISSUING FEMA OFFICE AND ADDRESS Grant Operations 245 Murray Lane - Building 410, SW Washington DC, 20528-7000 POC: 866-927-5646	8. PAYMENT OFFICE AND ADDRESS Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20472
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9. NAME OF RECIPIENT PROJECT OFFICER David St. Pierre	PHONE NO. 941-722-6621	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov
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11. EFFECTIVE DATE OF THIS ACTION 09/01/2016	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement	14. PERFORMANCE PERIOD From: 09/01/2016 To: 08/31/2019 Budget Period 09/01/2016 08/31/2019
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15. DESCRIPTION OF ACTION
 a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Port Security Grant Program	97.056	2016-SL-B411-P410- -4101-D	\$0.00	\$53,337.00	\$53,337.00	See Totals
TOTALS			\$0.00	\$53,337.00	\$53,337.00	\$17,779.00

b. To describe changes other than funding data or financial changes, attach schedule and check here.
 N/A

16 a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)
 Port Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.
 16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN
 This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) David St. Pierre, Mr	DATE Tue Aug 30 13:44:33 GMT 2016
18. FEMA SIGNATORY OFFICIAL (Name and Title) ANDREW MCLARTY ,	DATE Tue Aug 23 09:52:28 GMT 2016

September 15, 2016

CONSENT

AGENDA ITEM 4.E.: AUTHORIZATION TO FILE CLAIM AGAINST FRESH QUEST, INC.

BACKGROUND:

Manatee County Port Authority (“MCPA”) and Fresh Quest, Inc. (“Fresh Quest”) entered into a Lease Agreement and extension through May 15, 2016. Fresh Quest advised MCPA of its intent not to use the lease premises and owes the Manatee County Port Authority \$152,983.21 in past due rent. On June 23, 2016, Fresh Quest moved to dissolve the corporation pursuant to Chapter 727, Florida Statutes. Fresh Quest listed MCPA on its Schedule of Creditors, and MCPA now has until November 3, 2016 to file a proof of claim. Counsel now seeks authorization to file the proof of claim against Fresh Quest.

ATTACHMENT:

N/A

COST AND FUNDING SOURCE:

N/A

CONSEQUENCES IF DEFERRED:

Manatee County Port Authority will be unable to recover the past due rent

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve and authorize Counsel to file a proof of claim on behalf of Manatee County Port Authority and against Fresh Quest, Inc. and proceed accordingly.

September 15, 2016

AGENDA ITEM 5.: BERTH RECONSTRUCTION CHANGE ORDER NO. 004

BACKGROUND:

On December 17, 2015, the Port Authority awarded the contract for berth reconstruction to Orion Marine Construction Inc. (Orion) in the amount of \$9,139,099. The original contract price included sales tax of the various subcontractors. Change Order 001 was approved by the Authority on April 21, 2016, and Change Orders 002 and 003 were approved by port staff and ratified by the Authority on August 18, 2016, which reduced the contract price due to saving sales tax on direct purchase orders for materials and increased the contract price due to unanticipated subsurface obstructions. The overall net change in contract price from Change Orders 001-004 is a decrease of \$84,753.50.

A large void has been discovered at the Berth 9/Berth 10 project limit. Change Order 004 is presented for approval to install a bulkhead at the edge of the slab and fill the void at a cost of \$19,250.00 which will be funded 75% with FDOT grant funding and 25% Port loan. FDOT approves this change order.

ATTACHMENT:

Change Order No. 004 to the contract for berth reconstruction with Orion.

COST AND FUNDING SOURCE:

FDOT grant of \$14,437.50 and Port loan of \$4,812.50. Net savings to date including this change order - \$84,753.50.

CONSEQUENCES IF DEFERRED:

Project delays.

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve and authorize the execution on behalf of the Port Authority, Change Order No. 004 to the contract between the Manatee County Port Authority and Orion Marine Construction Inc. for berth reconstruction for an increase of \$19,250.00 due to a void found at the Berth 9/Berth 10 project limit.

PORT MANATEE
BERTH 9 RECONSTRUCTION AND BERTHS 4, 5, 12 & 14 CATHODIC PROTECTION

SECTION 00 63 63 CHANGE ORDER FORM

Change Order No. 004

Date of Issuance:

Effective Date:

Owner: Manatee County Port Authority
 Contractor: Orion Marine Construction, Inc.
 Engineer: AECOM Technical Services, Inc.
 Project: Berth 9 Reconstruction and Berths 4, 5, 12 & 14
 Cathodic Protection

FDOT Contract No.: AR790
 Contractor's Project No.: 06-P-00770
 Engineer's Project No.: 60341080
 Contract Name: Berth 9 Reconstruction and
 Berths 4,5,12 & 14 Cathodic Protection

The Contract is modified as follows upon execution of this Change Order:

Description: Includes additional labor, material, and equipment required to fill the void discovered near the West end of the project site under the the Berth 10 existing concrete slab, per RFI-023 response/direction. Orion will pour up to 20 CY of Flowable Fill into the void.
 0-13 CY Poured = \$17,850 Lump Sum.

13-20 CY Poured = \$200 / CY

Attachments: [List documents supporting change] Total Not To Exceed: \$19,250.00
 RFI-023 Response Letter (PDF)

RECOMMENDED:

By: [Signature]
 Title: VICE PRESIDENT
 Date: 8/24/16

ACCEPTED:

By: _____
 Authority (Authorized)

ACCEPTED:

By: [Signature]
 Title: Operations Manager
 Date: 8/31/16

Approved by Funding Agency (if applicable)

By: _____ Date: _____

Title: _____

12/22/2015 – ISSUED FOR CONSTRUCTION

CHANGE ORDER FORM

PORT MANATEE BERTH 9 RECONSTRUCTION
 BERTHS 4, 5, 12, & 14 CATHODIC PROTECTION
 FDOT CONTRACT#: AR790
 OMCI #: 06-P-00770



CONTRACTOR REQUEST FOR INFORMATION

RFI NO: 023	DATE: 04-15-2016
SUBMITTED TO: John Carel Vice President	RESPONSE REQUESTED BY: Earliest Convenience
SUBMITTED BY: David Kimich Project Manager	

Drawing
 Specification
 Contract Schedule
 Site Condition

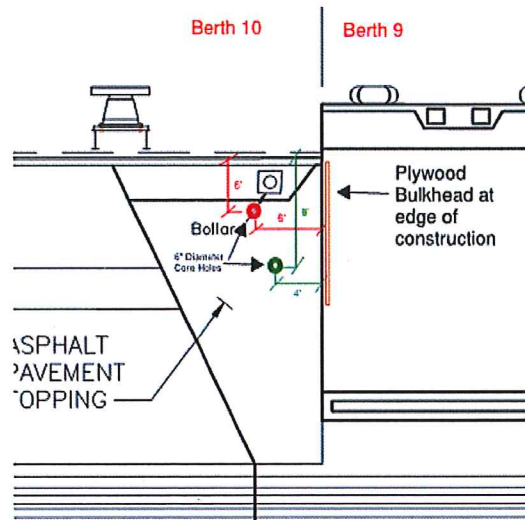
Drawings			Specifications		
Drawing No.	Sheet No.	Detail	Spec. Section No.	Part No.	Page No.

Subject: Void Under Berth 10 Near Project Limits

Detail Statement of Problem

A large void was discovered at the Berth 9/Berth 10 project limit during demolition (pictures below). It was noted in the bi-weekly construction progress meeting that the void should be filled with flowable concrete fill before the Berth 9 Reconstruction is finished. Would it be acceptable to install a bulkhead at the edge of the slab, core-drill (2) 6" holes in the Berth 10 concrete slab, and fill the void with flowable fill? The flowable fill will be placed in two separate placements. The first placement (approximately 3 yards) would be of a lower slump followed by a second placement of a higher slump (quantity unknown) the following day.

Please confirm the above is acceptable or provide an alternate solution.



<p>Cost Impact</p> <input checked="" type="checkbox"/> Yes (Potentially) <input type="checkbox"/> No	<p>Time Impact</p> <input checked="" type="checkbox"/> Yes (Potentially) <input type="checkbox"/> No	<p>Photo Attached</p> <input type="checkbox"/> Yes (See Attached) <input checked="" type="checkbox"/> No	<p>Drawing Attached</p> <input type="checkbox"/> Yes (See Attached) <input checked="" type="checkbox"/> No
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September 15, 2016

**AGENDA ITEM 6.: SOUTHGATE IMPROVEMENT CHANGE ORDER
NO. 001**

BACKGROUND:

On April 21, 2016, the Authority awarded the contract for the South Access Modification project to Pepper Contracting Services, Inc., (Pepper) in the amount of \$807,769.50. It has been discovered that the existing force main was found to be at a different location than shown on the available as-built plans and in conflict with the planned south canopy column foundations thus requiring re-routing of the force main. Abandoned storm pipes were also discovered which will require removal and other incidentals. The total increase for change order 001 is \$28,160.53. In addition, a 45-day extension is also requested due to unavoidable project delays.

ATTACHMENT:

Change Order 001 to the contract for south gate improvements with Pepper.

COST AND FUNDING SOURCE:

FEMA grant funding representing 75% of costs and contributions representing 25%

CONSEQUENCES IF DEFERRED:

Project delays.

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve and authorize the execution on behalf of the Port Authority, Change Order No. 001 to the contract between the Manatee County Port Authority and Pepper Contracting Services, Inc. for south gate improvements for an increase of \$28,160.53 due the relocation of the force main, storm pipe removal and an additional 45 days for project completion.

**PORT MANATEE
SOUTH ACCESS MODIFICATION**

SECTION 00 63 63 CHANGE ORDER FORM

Change Order No. 001

Date of Issuance:	Effective Date:
Owner: Manatee County Port Authority	FDOT Contract No.:
Contractor: Pepper Contracting Services	Contractor's Project No.: <u>3604</u>
Engineer: Inc. Atkins North America, Inc.	Engineer's Project No.: <u>EMW 2014 PU 0032</u>
Project: SOUTH ACCESS MODIFICATION	Contract Name: <u>South Access Mod. Feature</u>

The Contract is modified as follows upon execution of this Change Order: Description: F&I 6" Force Main offset to avoid conflict with canopy columns discovered in the field contrary to available as built information. Time Extension 45 Calendar days. Subsequently discovered existing abandoned storm runs which required a portion to be removed and a portion to be plugged/grouted. Added work also included pavement restoration Attachments: [List documents supporting change] Email, 8/31/16, Letter 8/30/16, Revised Drawing and Cost Proposal from Pepper Contracting Services

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
Original Contract Price: \$807,769.50 \$ _____	Original Contract Times: Substantial Completion: <u>8/15/16</u> Ready for Final Payment: <u>9/31/16</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___ : \$ <u>0.00</u>	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___ : Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price prior to this Change Order: \$ <u>807,769.50</u>	Contract Times prior to this Change Order: Substantial Completion: <u>8/15/16</u> Ready for Final Payment: <u>8/31/16</u> days or dates
[Increase] [Decrease] of this Change Order: \$ <u>28,160.50</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>45 day</u> Ready for Final Payment: <u>45 day</u> days or dates
Contract Price incorporating this Change Order: \$ <u>835,930.03</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>9/29/16</u> Ready for Final Payment: <u>10/15/16</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (if required)	By: _____ Authority (Authorized)	By: <u>[Signature]</u> Contractor (Authorized Signature)
Title: _____	Title: _____	Title: <u>Vice President</u>
Date: _____	Date: _____	Date: <u>9/9/16</u>

PORT MANATEE
SOUTH ACCESS MODIFICATION

Approved by Funding Agency (if applicable)

By: N/A Date: _____
Title: _____

END OF SECTION 00 63 63

Robert VanValin

From: George Isiminger <gisiminger@portmanatee.com>
Sent: Wednesday, August 31, 2016 10:36 AM
To: Bob Tolsma
Cc: Bill Johnson; Robert VanValin
Subject: County plans approval and approved plan - SAMOD force main re-route
Attachments: 2016-08-30 SAMOD County force main reroute plans approval letter.pdf; 2016-08-30 SAMOD Force main re-route approved plan.pdf

Bob,

Please note the second page of the letter not included yesterday.

Attached are the approval letter and approved plan for the South Access Modification project force main re-route that I picked up from the County today. This is the same as sent yesterday except this transmittal contains both pages of the letter.

George

George F. Isiminger, P.E.
Senior Director of Planning, Engineering and Environmental Affairs Port Manatee
300 Tampa Bay Way
Palmetto, FL 34221
941-650-3451 (mobile)
gisiminger@portmanatee.com



Manatee County Public Works Department
 Growth Management Engineering
 1022 26th Avenue East
 Bradenton, FL 34208
 Phone: (941) 708-7450
 www.mymanatee.org

August 30, 2016

Atkins
 2639 N. Monroe Street
 Building C
 Tallahassee, FL 32303

Attention: Mr. William K. Johnson, P.E . (william.johnson@atkinsglobal.com)

RE: **PORT MANATEE – SOUTH ACCESS MODIFICATION**
 (PDMU-05-45/FSP-16-09) - (DTS #20160089)
 Approved Plan Pickup – Revised 08/23/2016

Dear Mr. Johnson

I have reviewed the above referenced “Site Plan” and the plans that are accepted by Utility Engineering, which are hereby approved by Growth Management Engineering for construction. I am returning two (2) sets of plans marked "Approved" for your use.

These plans consist of the following sheets:

SHEET	DATED	LATEST REVISION
C-302	-----	08/23/2016

CONSTRUCTION IS NOT AUTHORIZED WITH THIS APPROVAL. Two separate inspections SHALL BE required after your receipt of this Approval Letter, and as appropriate, the FSP Sign-Off Letter AND your receipt of the STAMPED Construction Drawings and Signed FSP's. The first inspection shall occur BEFORE the start of ANY land clearing or construction activities EXCEPT AS FOLLOWS:

1. You are authorized to stake erosion and sediment control (SEC) device locations. After staking ESC measures, EPD staff SHALL be contacted to inspect the staked locations. If staking locations are approved, EPD shall authorize the placement of the ESC devices and any land clearing required relative to their placement.
2. After the installation of the ESC devices has been completed, a second EPD inspection SHALL be required to ensure the adequacy of the devices. If adequate EPD will authorize land clearing and project construction to begin.
3. Please notify the Environmental Planning Division (EPD) at 749-3070 to schedule the above described ESC staking and installation inspections.

Page 2
August 30, 2016

One copy of this approval letter and "Approved Construction Drawings" shall be located in a conspicuous place on the property as required by Section 722.3.3.1 of the Land Development Code.

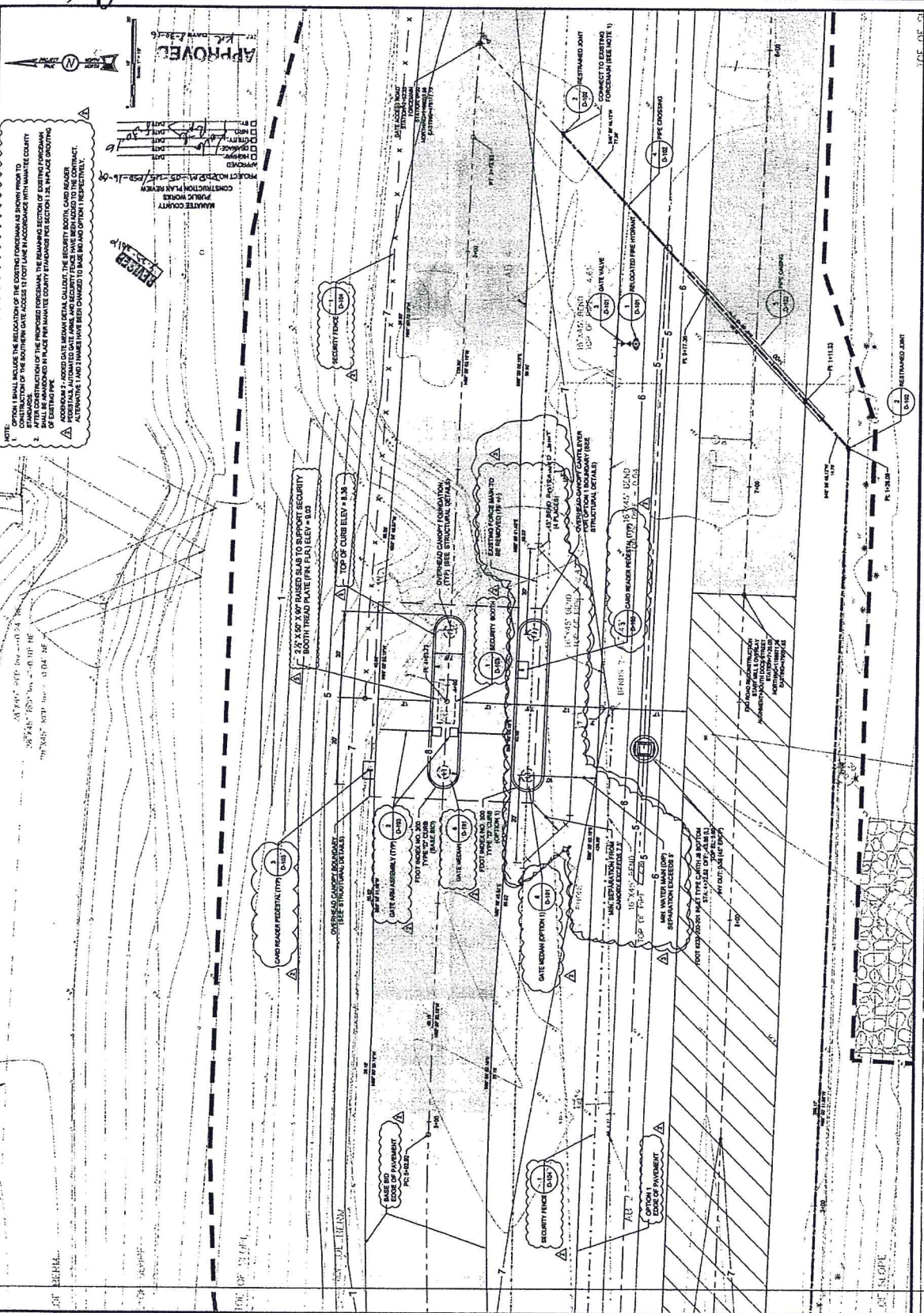
If we can be of further assistance, please contact me at (941) 708-7450, Ext #7337.

Sincerely,

Karla K. Ripley
Growth Management Engineering

Cc: Planning Records – Admin Bldg (GM File - 1 set of plans)
Andy Fischer, MCPWD - 26th Ave. E. (1 set of plans)
Sia Molanazar, P.E., MCPWD - 26th Ave. E. (1 set of plans)

(VIA EMAIL):
Thomas Gerstenberger, P.E., MCPWD – 26th Ave. E.



September 15, 2016

AGENDA ITEM 7.: MUTUAL AID INTERLOCAL AGREEMENT

BACKGROUND:

In the event of an emergency, or for training for an emergency, Port Manatee, Port Tampa Bay and the Port of St. Petersburg may need assistance in the form of supplemental equipment, supplies, docks, mooring areas, facilities or other support. By entering into the Mutual Aid Interlocal Agreement, each party is willing to provide assistance and support to the other parties.

ATTACHMENT:

Mutual Aid Interlocal Agreement

COST AND FUNDING SOURCE:

N/A

CONSEQUENCES IF DEFERRED:

Delay in approving agreement.

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve and authorize the execution on behalf of the Port Authority, the Mutual Aid Interlocal Agreement between the Manatee County Port Authority, Port Tampa Bay and the Port of St. Petersburg.

MUTUAL AID INTERLOCAL AGREEMENT

THIS MUTUAL AID INTERLOCAL AGREEMENT (“**Agreement**”) is made and entered into as of the _____ day of _____, 2016 (“**Effective Date**”), by and among the TAMPA PORT AUTHORITY, a body politic and corporate existing under the laws of the State of Florida, d/b/a Port Tampa Bay (“**PTB**”), whose address is 1101 Channelside Drive, Tampa, Florida 33602, the MANATEE COUNTY PORT AUTHORITY, a political entity of the State of Florida (“**MCP**”), whose address is Port Manatee, 300 Tampa Bay Way, Palmetto, Florida 34221, and the CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, owner and operator of the Port of St. Petersburg (“**PCP**”), whose address is 250 Eighth Avenue Southeast, St. Petersburg, Florida 33701 (PTB, MCP and PSP are hereinafter individually referred to as a “**Party**” and collectively referred to as the “**Parties**”).

WHEREAS, it is the purpose and intent of this Agreement, the Parties, and Section 163.01, Florida Statutes, known and referred to as the Florida Interlocal Cooperation Act (“**Cooperation Act**”), to permit and authorize the Parties to enter into this Agreement to facilitate and encourage assistance among the Parties to prepare for and respond to emergencies; and,

WHEREAS, it is the purpose of the Cooperation Act to provide a means by which the Parties may exercise their respective powers, privileges and authority which they may have separately, but which pursuant to this Agreement and the Cooperation Act they may exercise collectively; and,

WHEREAS, in the event of an emergency, as defined herein, or training for such an event, any Party to this Agreement may need assistance in the form of supplemental equipment, supplies, docks, mooring areas, facilities, or other support; and

WHEREAS, each Party owns equipment, supplies, docks, mooring areas, and facilities and is willing, subject to and in accordance with the terms of this Agreement, provide its equipment, supplies, docks, mooring areas, facilities, or other support to other Parties as provided herein; and

WHEREAS, each Party has the authority pursuant to the Cooperation Act and its respective enabling legislation or charter to enter into this Agreement to provide mutual aid to each other in the event of an emergency.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, each undersigned Party agrees as follows:

1. **PURPOSE.** The purpose of this Agreement is to provide the terms and conditions under which the Parties will provide assistance and make their equipment, supplies, docks, mooring areas, facilities, or other support available to other Parties in the event of an emergency, as defined herein, or training for such an event in accordance with the terms and conditions of this Agreement.

2. **DEFINITIONS.** The following definitions shall be used in this Agreement:
- 2.1. "**Asset**" means anything that has value provided by a Party. Assets include, but are not limited to, any physical asset, including, but not limited to equipment, disposable supplies, docks, mooring areas, facilities, or other support provided in support of an Event.
 - 2.2. "**Assistance**" means the provision of Assets in support of an Event.
 - 2.3. "**Assistance Costs**" means the usual and customary expenses incurred by a Provider in providing Assistance.
 - 2.4. "**Designated Representative**" shall be identified and designated by each Party to serve as the representative of their respective Party in any meeting to coordinate the implementation of this Agreement.
 - 2.5. "**Emergency**" means unforeseen circumstances beyond the control of a Party that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. The term "Emergency" includes, but is not limited to, any human-caused or natural event or circumstance which requires immediate action to preserve public health, protect life, protect public property, and which circumstance is causing or threatening loss of life, damage to the environment, injury to person or property, human suffering or financial loss, such as: fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of hazardous materials, contamination, utility or transportation emergencies, disease, infestation, civil disturbance, riots, act of terrorism or sabotage.
 - 2.6. "**Event**" refers to an incident, emergency, disaster, training, drill or exercise which causes a Recipient to request assistance from a Provider under this Agreement.
 - 2.7. "**Provider**" means a Party who has subscribed to this Agreement and has agreed to deliver Assistance to another Party pursuant to the terms and conditions of this Agreement.
 - 2.8. "**Recipient**" means a Party that has executed this Agreement and has made a request for Assistance and has received commitment(s) for Assistance pursuant to the terms of this Agreement.
3. **PARTICIPATION.** Participation in providing Assistance to a Party pursuant to this Agreement is purely voluntary. The execution of this Agreement in and of itself creates no legal obligation of a Party to provide any Assets; however if any Assets are provided the terms and conditions of this Agreement will apply to such action.
- 3.1. No Party shall be liable to another Party for, or be considered to be in breach of, or default under this Agreement on account of any delay in or failure to provide Assistance under this Agreement.
 - 3.2. Each Party is encouraged to provide the other Parties with an updated list each year listing emergency contact information for such Party and available Assets which such Party will make available to the other Parties during an Event.

4. **DESIGNATED REPRESENTATIVE.** Each Party shall identify its Designated Representative and inform the other Parties in writing of any change to the Designated Representative who shall serve on behalf of their respective Party to discuss implementation and/or amendment of this Agreement. The Designated Representative may be changed by a Party at any time. Such change shall be communicated to the other Parties in accordance with section 21 of this Agreement.

4.1. As of the Effective Date, the Designated Representative of Port Tampa Bay is:

Name: _____

Title: _____

Address: 1101 Channelside Drive
Tampa, Florida 33602

Telephone No. (813) _____ - _____

Email Address: _____ @tampaport.com

4.2. As of the Effective Date, the Designated Representative of the Manatee County Port Authority is:

Name: _____

Title: _____

Address: _____

Telephone No. (____) _____ - _____

Email Address: _____ @ _____

4.3. As of the Effective Date, the Designated Representative of the Port of St. Petersburg is:

Name: _____

Title: _____

Address: _____

Telephone No. (____) _____ - _____ Email Address:

_____ @ _____

5. **TERM AND TERMINATION.** This Agreement shall commence on the Effective Date and shall remain in effect for twenty-five (25) years unless rescinded by all Parties. A Party opting to withdraw from this Agreement shall provide written withdrawal notification to the Designated Representatives of the other Parties. Notice of withdrawal becomes effective upon the date specified in the Party's written withdrawal. Any withdrawing Party shall remain liable for all obligations incurred during its period of participation, until the obligation is satisfied.

6. **PAYMENT FOR SERVICES AND ASSISTANCE.** Recipient shall pay the Provider for all customary, usual, commercially reasonable and invoiced Assistance Costs within sixty (60) days of receipt of the

Provider's invoice, for the assistance provided by the Provider. In the event Provider provides equipment, supplies or parts, the Provider shall have the option to accept payment of cash or in kind for the equipment, supplies or parts supplied.

7. **INDEPENDENT ENTITY.** Provider shall be and operate as an independent entity in the performance of any Assistance. Employees of Provider shall, at all times while providing assistance, continue to be employees of Provider and shall not be deemed employees of Recipient or "loaned servants" to Recipient for any purpose. Provider shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Recipient shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to the Provider's employees. In no event shall Provider or its officers, employees, agents, or representatives be authorized (or represent that they are authorized) to make any representation, enter into any agreement, waive any right or incur any obligation in the name of, on behalf of, or as agent for Recipient under or by virtue of this Agreement.
8. **REQUESTS FOR ASSISTANCE.** A Party may request Assistance from other Parties for an Event. In the event of an Emergency, a request for Assistance may be made verbally followed up with a written request as soon as practical. The Provider shall give verbal approval of the request to the requesting Party. Provider shall follow up any verbal approval with written approval as soon as practical. The extent to which the Provider provides any Assistance shall be at the Provider's sole discretion.
9. **GENERAL NATURE OF ASSISTANCE.** Assistance may be in the form of resources, such as equipment, supplies, and facilities such as docks, mooring areas, warehouses and terminal areas. The execution of the Agreement shall not create any duty to respond on the part of any Party. A Party shall not be held liable to any other Party for failing to provide Assistance. A Party has the absolute discretion to decline to provide any requested Assistance and to withdraw Assets it has provided at any time without incurring any liability. The Parties may separately agree on reimbursement and terms of exchange for Assets in each Event. The Parties hereto recognize that time is critical during an Emergency and diligent efforts shall be made to respond to a request for resources as rapidly as possible, including any notification(s) that requested resources are not available. A Party maintains the option of submitting a request for assistance directly to local emergency management coordinating organizations.
10. **ASSISTANCE.** A Provider may provide Assets, in its sole discretion, upon request of a Party. Unless mutually agreed upon otherwise, the first eight (8) hours of use shall be without cost to the Recipient, after which use of equipment, such as construction equipment, vehicles, tools, pumps, motors and other movable property (collectively, "**Personalty**") shall be at the Provider's actual cost or at their current equipment rate. The provision of Personalty shall be subject to the following conditions:
 - 10.1. Personalty of a Provider shall continue under the command and control of the Provider, but shall be under the operational control of the appropriate officials within the incident management system of the Recipient.
 - 10.2. At the option of the Provider, Personalty may be loaned with an operator.
 - 10.3. Loaned Personalty shall be returned to the Provider as soon as reasonably possible after Recipient's emergency or training needs end, or immediately upon the Recipient's receipt of an oral or written notice from the Provider for the return of Personalty. When notified to return equipment to a Provider, the Recipient shall make every effort to return Personalty to the Provider's possession within

twentyfour (24) hours following receipt of notification from the Provider, and in good operating condition.

- 10.4. Recipient shall, at its own expense, provide any consumable supplies needed to operate the Personality unless mutually agreed upon otherwise. The Recipient shall take proper precaution in its operation, storage and maintenance of Provider's Personality. Parties are responsible to ensure that Personality shall be used only by properly trained and supervised operators. Provider shall endeavor to provide Personality in good working order. All Personality shall be provided "as is," with no representations or warranties as to its fitness for particular purpose.
- 10.5. Provider's cost related to the transportation, handling, and loading/unloading of Personality, even within the initial eight (8) hour period, shall be borne by the Recipient unless mutually agreed upon otherwise. Provider shall provide copies of invoices for such charges and shall provide hourly accounting of charges for Provider's employees who perform such services.
- 10.6. Without effecting a Provider's right to indemnification as provided in this Agreement and even within the initial eight (8) hour period, in the event loaned Personality is lost or damaged while in the custody and use of the Recipient, or while being returned by Recipient to the Provider, Recipient shall promptly reimburse the Provider for the reasonable cost of repairing or replacing (as the case may be) said damaged Personality. If the Personality cannot be repaired or replaced within a reasonable time period then Recipient shall reimburse Provider for the cost of replacing such Personality with Personality that is of equal condition, quality, kind, and capability. If Provider must lease or rent replacement Personality for that which was loaned while the Provider's Personality is being repaired or replaced, Recipient shall reimburse Provider for such costs. Recipient shall have the right of subrogation for all claims against persons other than Parties to this Agreement who may be responsible in whole or in part for damage to, or loss of the Personality. Recipient shall not be liable for damage or loss caused by the sole negligence of Provider's operator(s).
11. **EXCHANGE OF MATERIALS AND SUPPLIES.** Recipient shall reimburse Provider in kind or at Provider's actual replacement cost for use of partially consumed or non-returnable materials and supplies, as mutually agreed between Recipient and Provider, even within the initial eight (8) hour period. Reusable materials and supplies which are returned (unused) to Provider in clean, damage-free condition shall not be charged to the Recipient.
12. **INDEMNIFICATION AND LIMITATION OF LIABILITY** Each Party agrees to be fully responsible for all claims arising out of its own acts of negligence or its respective employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages proximately caused thereby; provided, however, that the Party's liability is subject to the monetary limitations and defenses imposed by Section 768.28, F.S. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything herein be construed as consent by the Parties to be sued by any third party for any cause or matter arising out of or related to this Agreement except to the extent provided by 768.28, F.S."
 - 12.1. No Party shall be liable to another Party for, or be considered to be in breach of or default under this Agreement on account of any delay in or failure to provide Assistance under this Agreement.
 - 12.2. The provisions of this section 12 shall survive termination or expiration of this Agreement.

- 12.3. To the extent permitted by any applicable insurance policy, Recipient expressly waives any subrogated claim against the Provider, which it may have on account of, or in connection with, the Provider providing assistance to the Recipient under this Agreement.
13. **MODIFICATIONS.** No provision of this Agreement may be modified, altered, or rescinded without affirmative concurrence of each the Parties to this Agreement. Modifications to this Agreement must be in writing, must be approved by affirmative vote of the Parties, and must be signed by the Designated Representative of each Party. Any Party which disagrees with the modification, alteration or rescission shall have the right to withdrawal as of the effective date of the modification, alteration or rescission, and any Party so choosing shall provide its intent to do so in writing to the Designated Representatives of the other Parties.
14. **NON-EXCLUSIVENESS AND PRIOR AGREEMENTS.** This Agreement is not intended to be exclusive among the Parties. Any Party may enter into separate assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under this Agreement. To the extent that prior agreements between Parties are inconsistent with this Agreement, prior agreements for assistance between the Parties shall supersede this Agreement, until and unless the inconsistency is reconciled by the affected Parties in writing.
15. **GOVERNMENTAL AUTHORITY.** This Agreement is subject to laws, rules, regulations, orders, and other requirements, now or as amended, of all governmental authorities having jurisdiction over the events covered by this Agreement. A Party and its employees providing Assistance under this Agreement shall be entitled to all privileges and immunities from liability as are authorized by section 768.28, *Florida Statutes*, and all other State or Federal laws.
16. **NO PUBLIC DUTY, THIRD PARTY BENEFICIARIES, PARTNERSHIPS.** No undertaking by one Party to the other Party under any provision of this Agreement shall create any special duty to the public or otherwise enhance or modify the obligation of the Party with regard to the public or any person.
- 16.1. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Parties. This Agreement shall not release or discharge any obligation or liability of any third party to any Party.
- 16.2. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Parties or to impose any partnership obligation or liability upon any Party. Further, no Party shall have any authority or undertaking for or on behalf of, or to act as or be an agent or representative of, or to otherwise bind any other Party.
17. **NO SUCCESSORS AND ASSIGNS.** This Agreement and the rights, liabilities and obligations contained herein are not transferable or assignable, in whole or in part.
18. **GOVERNING LAW AND VENUE.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida. Any action which may arise out of this Agreement shall be brought in the circuit court of the State of Florida, within the County of the Provider's jurisdiction.
19. **WAIVER.** Any waiver at any time by any Party of its rights with respect to this Agreement shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection

with this Agreement. Any delay in asserting or enforcing any right, except those related to the statutes of limitations, shall not constitute or be deemed a waiver.

- 20. **SEVERABILITY.** Should a court of competent jurisdiction rule any portion, section or subsection of this Agreement invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.
- 21. **NOTICES.** Any notice, demand, information, report, or item otherwise required, authorized, or provided for in this Agreement shall be given in writing and shall be deemed properly given if (i) delivered personally, or (ii) sent by United States Mail, postage prepaid, to the Designated Representative for each Parties at the address stated for such Designated Representative.
- 22. **COPIES FILED WITH CLERK OF THE CIRCUIT COURT.** Copies of this Agreement shall be filed with the clerk of the circuit court of each Parties' County after execution.
- 23. **COUNTERPARTS.** This Agreement may be executed in counterparts and by facsimile signature with the same force and effect as if all original signatures were set forth in a single document.
- 24. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and incorporates all previous oral and written discussions. It is noted that prior agreements of the Parties may take precedent over certain terms set forth in this Agreement.

IN WITNESS WHEREOF, the each Party hereto has caused this Agreement to be duly approved and executed by a duly authorized representative as of the date of their signatures.

[SEPARATE SIGNATURE PAGES FOLLOW]

MUTUAL AID INTERLOCAL AGREEMENT PTB
SIGNATURE PAGE

TAMPA PORT AUTHORITY
d/b/a Port Tampa Bay

A. Paul Anderson
Port President & CEO
Date: _____

Approved as to form and content this ____ day
of _____, 2016.

Charles E. Klug, Principal Counsel

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

PTB ____
MCP ____
PSP ____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by A. Paul Anderson, Port President and CEO of the Tampa Port Authority, d/b/a Port Tampa Bay, on behalf of the Authority. He ____ is personally known to me or ____ produced _____ as identification.

Notary Public, State of Florida at Large

(Seal)

My Commission Expires: _____

MUTUAL AID INTERLOCAL AGREEMENT MCP
SIGNATURE PAGE

MANATEE COUNTY PORT AUTHORITY

By: _____ Approved as to form and content this ____ day
Name: _____ Title: of _____, 2016.

Date: _____

STATE OF FLORIDA)
COUNTY OF MANATEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, _____ of the Manatee County Port Authority, on behalf of the Authority. She/He ____ is personally known to me or ____ produced _____ as identification.

Notary Public, State of Florida at Large

(Seal)

My Commission Expires: _____

MUTUAL AID INTERLOCAL AGREEMENT PSP
SIGNATURE PAGE

**CITY OF ST. PETERSBURG, FLORIDA
PORT OF ST. PETERSBURG**

By: _____
Rick Kriseman
As its: Mayor

Attest: _____
Chandrahasa Srinivasa
City Clerk

STATE OF FLORIDA)
COUNTY OF PINELLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Rick Kriseman, Mayor of the City of St. Petersburg, Florida, on behalf of the City. He is personally known to me and appeared before me at the time of notarization.

Notary Public, State of Florida at Large (Seal)

Approved as to Content

City Attorney (Designee)
By: _____
Assistant City Attorney

Approved as to Form

City Attorney (Designee)
By: _____
Assistant City Attorney

Legal: 00282809.doc V. 3

September 15, 2016

AGENDA ITEM 8.: GULF SHELLFISH INSTITUTE INC. LEASE

BACKGROUND:

Gulf Shellfish Institute Inc. (GSI), a non-profit corporation, was recently awarded a grant from the Tampa Bay Environmental Restoration Fund to demonstrate the effectiveness of adding bivalve filter feeders to the Tampa Bay ecosystem for the purposes of improving water quality and increasing the production of seagrasses. GSI is desirous of leasing an office at Port Manatee and raise 600,000 clams suspended above two acres of submerged lands owned by the Authority in an effort to facilitate increased seagrass coverage in the submerged acreage. The success of the increased seagrass coverage will be used for future seagrass mitigation credits.

ATTACHMENT:

Lease

COST AND FUNDING SOURCE:

N/A

CONSEQUENCES IF DEFERRED:

Delay in approving the Lease

LEGAL COUNSEL REVIEW: Yes

RECOMMENDATION:

Move to approve and authorize the execution on behalf of the Port Authority, the Lease and the Sovereign Submerged Lands License between the Manatee County Port Authority and Gulf Shellfish Institute, Inc.

LEASE

THIS LEASE (“Lease”) made and entered into by and between the MANATEE COUNTY PORT AUTHORITY, a political entity of the State of Florida, with its principal place of business located at Port Manatee, 300 Tampa Bay Way, Suite One, Palmetto, Florida 34221, hereinafter referred to as the “Authority” and GULF SHELLFISH INSTITUTE, INC., a non-profit corporation duly authorized to transact business in the State of Florida, with a place of business located at 1720 Bayshore Drive, Terra Ceia, FL 34250, hereinafter referred to as the “Lessee” or “GSI.”

WHEREAS, the Authority owns and operates a public seaport facility in the northwestern portion of Manatee County, Florida, known as “Port Manatee” and owns sovereign submerged lands at Port Manatee; and

WHEREAS, the Authority adopted a Master Plan wherein it identified aquaculture as part of its strategic visions and proposed to increase seagrass in maintaining estuarine quality as part of its environmental stewardship and sustainability goal; and

WHEREAS, the Authority must obtain permits periodically for the dredging of Port Manatee berths and those permits require seagrass mitigation plans, which often involves great expense in seagrass plantings; and

WHEREAS, the Authority desires a more cost-effective option for augmenting seagrass habitat and mitigation and desires to fulfill its Master Plan’s goals, objectives and policies; and

WHEREAS, GSI is a Florida non-profit corporation, organized exclusively for charitable and scientific purposes, whose overall goal is to facilitate the development of the shellfish aquaculture in Florida and the Gulf region through cooperative, industry-driven research and outreach; and

WHEREAS, GSI was recently awarded a grant from the Tampa Bay Environmental Restoration Fund, to demonstrate the effectiveness of adding bivalve filter feeders to the Tampa Bay ecosystem for the purposes of improving water quality and increasing the production of seagrasses; and

WHEREAS, GSI desires to lease an office at Port Manatee, raise 600,000 clams suspended above 2 acres of submerged lands owned by the Authority in an effort to increase the water clarity, light penetration and biodeposition of organics sediment to facilitate increased seagrass coverage in the submerged acreage; and

WHEREAS, it is expedient and in the best interests of the Authority to enter into an agreement with GSI to lease an office and license the use of 2 acres of submerged lands for GSI's scientific purpose of facilitating increase seagrass coverage through raising of clams as a bivalve filter feeder to improve water quality and increase the production of seagrass; and

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. RECITALS. The above recitals are true and correct and are agreed to by the Authority and Lessee as if such recitals were fully set forth herein.

2. PURPOSE. The Lessee shall use the demised premises solely as an office and for the purpose of conducting such activities as are customarily associated therewith. The demised premises will not be used for any unlawful purposes and the Lessee will not use the demised premises in such a manner as to create a nuisance or otherwise violate any law, rule or regulation, and the Lessee will neither suffer nor commit any waste of the demised premises. The Authority shall have the right at any time to enter and examine the demised premises for any reason.

3. DEMISED PROPERTY. The Authority does hereby demise, let and rent unto the Lessee and the Lessee shall hire and take as tenant on an exclusive basis an office and conference room located in Suite 330 of the Intermodal building 1905 Intermodal Circle, Palmetto, FL as depicted and described in Exhibit A. In accordance with the Master Plan, the Authority agrees, covenants and warrants that the Lessee may peacefully occupy, have, use, hold and quietly enjoy the demised premises, subject to the provisions of this lease. The Lessee agrees to use the demised premises so as to not interfere with, interrupt, or impact the use or operation of any other entity, tenant, user, or customer at Port Manatee.

4. TERM OF LEASE. The initial duration or term of this lease shall commence on the 1st day of October, 2016 and shall terminate two (2) years thereafter on September 30, 2018, ("Initial Term"), unless terminated pursuant to other provisions contained herein. The Initial Term may be extended for two (2) additional terms of five (5) year each, upon the parties mutual written agreement.

5. RENT. Beginning the effective date of this Lease and in recognition of GSI's scientific and charitable purpose, the Lessee shall pay to the Authority as rent for the demised premises, \$1 per year in advance for the Initial Term. If the Lease is extended beyond the Initial Term, the Lessee shall pay to the Authority a monthly rent based on the then current tariff rate. The Lessee shall also pay the applicable sale taxes on said rent at the same time rental payments are made. Payment for the first years' rent shall be due and payable upon the date of execution of this Lease. If any Rent or other payment due under this Lease is not received by Authority within ten (10) days of the due date of such payment, interest shall accrue daily on the past due amount

from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen percent (18) per annum and the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of any other remedy available to the Authority.

6. **LESSEE REPRESENTATIONS.** The Lessee represents unto the Authority with the intent that the Authority rely thereon as a major inducement to the Authority to enter into this Lease that:

- A. The Lessee has officers, directors, employees or agents with the appropriate education, experience or training to perform all of the provisions of this Lease to be performed by the Lessee and to conduct the activities and operations of the Lessee contemplated by this Lease in a clean, orderly, productive and safe manner. Lessee agrees to keep its facilities properly maintained and removal of any debris, etc. and will promptly comply if the Port Authority request attention to such.
- B. The Lessee has, or will have, sufficient financial resources to completely and timely pay all costs and expenses reasonably anticipated to be incurred in connection with the conduct of activities and operations by the Lessee upon the demised premises.
- C. The information and representations furnished by the Lessee to the Authority during negotiations for this Lease relating to financial resources, loan commitments and other matters concerning the Lessee and the activities and operations to be conducted by the Lessee contemplated by this Lease were true and correct to the best of the knowledge and belief of the Lessee.
- D. GSI represents and warrants to the Authority that to its actual and constructive knowledge: 1) neither GSI (which shall include for purposes of this section its parent and affiliate companies, owners, members, managers, shareholders, directors, officers, representatives, agents, employees, distributors, vendors and suppliers collectively) nor any of its funding sources are identified on the Special Designated Nationals and Blocked Persons List of the U.S. Treasury Office of Foreign Asset Control; 2) neither GSI nor any guarantor of all or any part of GSI'S obligations under this Lease are directly or indirectly owned or controlled by a government or country that is subject to an embargo imposed by the U.S. Government; 3) neither GSI nor a grantor of all or any part of GSI 's obligations under this Lease are acting on behalf of a government or have been in the past ten years involved in business arrangements or other transactions with any country that is subject to such embargo. GSI hereby agrees to notify the Authority in writing immediately upon the occurrence of any of that which would cause the foregoing representation and warranties of this section to be incorrect in any respect and the

Authority shall have the right then or thereafter to terminate this Lease at its sole and absolute discretion.

- E. In connection with any aspect of this Lease or other transaction involving GSI, neither GSI (which shall include for purposes of this section its parent and affiliate companies, owners, members, managers, shareholders, directors, officers, representatives, agents, employees, distributors, vendors and suppliers collectively) nor any of its funding sources has engaged or will engage in prohibited conduct, as defined in the Foreign Corrupt Practices Acts, directly or indirectly in the performance of this Lease or otherwise on behalf of itself or GSI. In the event of or during the term of this Lease GSI is not in compliance with this section, GSI shall make prompt disclosure of such non-compliance to the Authority and the Authority shall have the right to terminate the Lease.

7. LICENSE. At the time of execution of this Lease, the parties shall execute a license for the use of certain Authority's sovereign submerged lands located at Port Manatee as defined in the License as the "license area." See Exhibit B for License. GSI's use of the license area shall be limited to that necessary to perform its obligations and purpose pursuant to the grant it received from the Tampa Bay Environmental Restoration Fund, which is understood to encompass raising 600,000 clams over the 2 acre license area to increase the water clarity, light penetration, and biodeposition of organics to the sediment and facilitate an increase in seagrass coverage. During the term of the Lease Port staff will captain port-owned vessel and transport GSI board members to license area. The parties agree that this transportation to the license area will occur no more than once a month during the term of this Lease and only after a 24 hour written email notice is provided to the Director of Port Security at dstpierre@portmanatee.com, and the Director of Port Security agrees to such transport given the then existing conditions at the Port (including but not limited to weather, vessel use, vessel traffic, environmental concerns, etc.). Furthermore, the parties agree that if the Authority is unable to transport GSI at the time GSI requests, the Authority will make such transportation as close to the requested time as is reasonably feasible under the existing conditions. Additionally, to the extent it does not disrupt, impede, hamper or burden the Authority and its operations, the Authority will allow GSI to use the Authority's global positioning software for GSI scientific study in the license area.

8. SIGNS. Lessee shall not place any signs on the demised premises except with the prior written consent of the Authority, including consent as to location and design, which may be withheld in Authority's reasonable discretion, provided that any and all such signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all applicable laws. Lessee shall be responsible to the Authority for the installation, use, or maintenance of all signs and any damage caused thereby. Lessee agrees to remove all signs prior to termination of the Lease and upon such removal to repair all damage incident to such removal.

9. TAXES AND LICENSE FEES. The Lessee shall pay any and all ad valorem taxes, special assessments, tangible and intangible personal property taxes, sales tax and use taxes,

excises, levies, impact fees, penalties and fines levied against the demised premises and its improvements as a result of any construction performed upon same by the Lessee or its contractors, and license fees which may be levied or assessed against any portion of the demised premises, other improvement or imposed in connection with the activities and operations of the Lessee or in connection with the possession of any portion of the demised premises by the Lessee. Any failure of GSI to pay any and all taxes and license fees prior to the date when same become delinquent in any instance shall be a breach of this Lease, at the Authority's sole option.

GSI shall apply for, obtain and maintain all licenses and permits required by every governmental authority that has jurisdiction over GSI's use and occupancy of the demised premises including the business conducted by GSI thereon and any aspect thereof.

10. **EXISTING FACILITIES.** This Lease and the right of the Lessee to the possession and use of the demised premises are subject to any existing electric lines, telephone lines, water and sewer lines or mains, lift stations, substations and other utility facilities located through, under or upon the demised premises and the Authority, Florida Power & Light Company, Verizon Florida, Inc., Manatee County Public Works Department, U.S. Coast Guard, U.S. Department of Agriculture and their agents, employees, servants and subcontractors shall have access to such facilities to the extent necessary for the operations, maintenance and repair thereof.

11. **EASEMENT(S).** Authority reserves the right to maintain such easements on the Premises as may now or in the future be determined to be necessary to serve the needs of the Port, and Lessee agrees to take the demised premises subject to said easement requirements. Such easements may be used for, among other things, ingress and egress for other Lessees, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting and power poles. However, it is understood and agreed that Authority will restore any improvements which Lessee has made, if such improvements are damaged by any installation made by Authority. Furthermore, Authority shall take reasonable steps to insure that any such installation be the least disruptive to Lessee's operations.

12. **UTILITIES.** The Lessee shall arrange for and pay for all utilities, including installation costs, connection fees, initial deposits and other similar charges required by the various utility companies or utility systems for connecting and commencing service and for providing service to the demised premises throughout the duration or term of this lease.

13. **COMMON AREAS.** Lessee and its employees and customers will have the nonexclusive right during the term of this Lease to use the parking areas, streets, driveways, aisles, sidewalks, curbs, delivery passages, loading areas, lighting facilities, and all other areas designated by Authority from time to time, for use by any tenants of the Port (collectively, the "Common Areas"), in common with Authority, other tenants of the Port and other persons designated by the Authority.

14. MAINTENANCE. The Lessee shall cause the demised premises to be duly maintained and kept in good operating condition throughout the duration or term of this Lease. The Lessee shall also maintain the demised premises and improvements to be kept in a safe, tenantable and workable condition, including the making of any prompt repairs necessary to said improvements due to damage done thereto by any act, default, negligence or omission of the Lessee, its agents, employees, invitees, patrons, servants or any other persons whomsoever under the control of the Lessee.

15. TARIFF. To the extent same are not in conflict with or in derogation of the terms and conditions of this Lease, the Lessee shall throughout the term hereof and any renewal or extension thereof abide by and comply with all of the rates, rules and regulations of the Authority set forth in the current Port Manatee Tariff as published by the Authority and duly filed with the Federal Maritime Commission. The covenant by the Lessee to abide by and comply with said Port Manatee Tariff was a material inducement for the Authority to enter into this Lease constituting substantial consideration to the Authority for this Lease, and any failure by the Lessee to fully abide by and comply therewith shall at the option of the Authority constitute a default by the Lessee entitling the Authority to exercise any or more of the remedies set forth in the paragraph of this Lease entitled Events of Default. The Lessee acknowledges receipt from the Authority of a copy of the current Port Manatee Tariff as published by the Authority and further acknowledges that the Lessee understands all of the provisions of said Port Manatee Tariff.

16. ENVIRONMENTAL MATTERS. The Lessee shall comply with all federal, state, regional and Authority laws, statutes, ordinances, rules and regulations applicable to its activities and operations on the demised premises, including but not limited to such Port Manatee Master Plan, Memorandum of Agreement for Land Use Controls between the Authority and the Florida Department of Environmental Protection, agency agreements, rules and regulations of general application at Port Manatee, adopted by the Authority, which are not in degradation of any rights granted to the Lessee under the terms of this lease. The Lessee shall not allow, cause, condone, license, permit or sanction any activities, conduct or operations on the demised premises or the license area that enable or result in any contaminants, hazardous materials or substances, pollutants, toxic materials or substances or other waste (hereinafter collectively referred to as "substances") to be generated, accumulated, deposited, placed, released, spilled, stored, transported, or used upon, over, or under any portion of demised premises or license area contrary to or in violation of any of said laws, statutes, ordinances, rules and regulations.

A. The Authority shall have the right at any time to examine or inspect the demised premises and license area for any reason, including but not limited to performing an Environmental Site Assessment and determining the existence of said substances, during the normal business hours of the Lessee with reasonable notice to the Lessee and at no cost or expense to the Lessee.

B. The Lessee shall immediately notify the Authority of any accumulation, deposit, placement, release, spill, storage or use of any of said substances upon or under the

demise premises or license area. Such notification shall be in addition to and shall not replace any notice required by applicable laws.

- C. The Authority shall have the right, in its sole discretion, to cause an environmental assessment, audit or survey to be conducted or made of the demised premises or license area by a competent qualified environmental consultant or engineer on substantially the same basis and using the same criteria as any Environmental Site Assessment carried out under subparagraph A above, identifying the existence and the levels or quantities of any of the above mentioned substances on or under any portion of the demised premises or license area during a time period between 60 and 90 days prior to the expiration of the duration or term of this Lease. A copy of any written assessment, audit or survey obtained by the Authority pursuant to the provisions of this subparagraph shall be immediately furnished to the Lessee. If any worsening of the environmental condition of the demised premises or license area attributable to the Lessee from that disclosed in any Environmental Site Assessment Reported carried under subparagraph A above is evident from this written assessment, audit or survey, the Lessee shall cause any necessary action to be immediately taken to remediate such worsening. After the expiration of the lease term, unless otherwise agreed by the Authority and the Lessee, the Lessee shall be deemed to be “holding over” until such time as said remediation has been completed to the satisfaction of the Authority or any applicable regulatory agency. The Lessee shall pay to the Authority rent together with any applicable Florida sales taxes thereon, for each and every month during the time the Lessee is holding over due to required remediation. The Lessee shall not conduct any activities or operations upon the demised premises or license area during the time this remediation of the demised premises is being completed to the extent required by the applicable regulatory agencies without the express written consent of the Authority.
- D. In the event any federal, state, regional or county governmental authority with jurisdiction to enforce or regulate the construction and operation of the facilities of the Lessee determines that there is any significant or substantial deviation from the conditions, restrictions and limitations hereinabove set forth or any provisions of applicable environmental laws, statutes, ordinances, rules, regulations, agency agreements, or requirements of any such federal, state, regional or county governmental authority (hereinafter referred to as “violation”), the Authority shall have the right, upon providing due notice to the Lessee, to require a hearing before the Authority for the purpose of determining the cause and extent of the violation and to issue a notice to the Lessee to correct such violation within thirty (30) days or within such period of time as may be reasonable under the circumstances, such period of time to be determined by the Authority. In the event the Lessee fails to correct the violation within the period of time determined by the Authority, then and in that event, the Authority shall have the right to terminate the operation of any such facilities by the Lessee until such violation has been corrected or take such lawful action as may be appropriate under the circumstances.

- E. The remedies herein granted to the Authority are in addition to all other remedies which may be available to the Authority under the laws of the United States and the State of Florida and nothing herein contained shall be construed as limiting the remedies of the Authority or any federal, state, regional or county governmental authority with jurisdiction to regulate the construction and operation of said facilities.
- F. Nothing herein contained shall be construed to impair or limit the lawful rights of the Lessee to challenge or contest any such applicable laws, statutes, ordinances, rules, regulations or requirements.
- G. Throughout the term of this Lease, Lessee shall not use, generate, release, discharge, store, dispose, or transport any substances in, under, in, above, to or from the demised premises or license area in any manner other than in strict compliance with all applicable laws. If Lessee's activities at the demised premises or Lessee's use of the demised premises or license area (a) result in a release of substances that are not in compliance with applicable laws or permits issued thereunder; (b) gives rise to any claim or requires a response under applicable laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to Authority as well as notice to Authority in the manner required by this Lease, which notice shall identify the substances involved and the emergency procedures taken or to be taken to remove and abate the condition; and (ii) promptly take all action in response to such situation required by applicable laws, provided that Lessee shall first obtain Authority's approval of the non-emergency remediation plan to be undertaken, which plan shall be to the satisfaction of Authority in its reasonable discretion. If Lessee fails to promptly take action to contain, remove or remediate, as appropriate, the substances, Authority shall be entitled to take all actions that it deems appropriate to contain, remove or remediate the substances that have been released in a manner that is not in compliance with applicable laws, at Lessee's sole expense and Lessee shall immediately reimburse Authority for all such reasonable expenses due upon demand. In the event that Authority has reasonable evidence that substances have been used, generated, released, discharged, stored or disposed by Lessee at the demised premises in violation of applicable laws, Authority shall have the right to perform or cause to be performed environmental audits of the property, at Lessee's expense, in and around the demised premises or license area to determine whether any violation of applicable laws has occurred. Lessee shall fully cooperate in the performance of such environmental audits.

The environmental provisions of this Lease shall survive the termination of this Lease and shall continue in full force and effect so long as the possibility exists of any environmental liability obligation or loss of or claim against the Authority and attributable to any act or omission of GSI, its agents or invitees. GSI agrees to diligently seek a "no further action determination" from the applicable governmental agency with respect to any environmental claim that may have been identified before the termination of this Lease.

17. **LABOR DISPUTES.** Port Manatee consists of various facilities operated by tenants pursuant to leases with the Authority and by the Authority itself, and it is necessary for the operation of Port Manatee that there be a degree of cooperation between the Lessee and the Authority. In the event there are any strikes, boycotts, walkouts, picketing or other labor disputes at Port Manatee impacting upon the activities and operations of the Lessee pursuant to the provisions of this lease, then and in that event, the Lessee shall cooperate with the Authority in taking reasonable action and undertakings necessary to preserve and protect normal lawful activities and operations at Port Manatee. Such action may include the exchange of information between the Lessee and the Authority, arranging for a separate entrance to certain facilities at Port Manatee and/or the institution and prosecution of legal proceedings. The Lessee shall exercise a reasonable effort to discourage and prevent any such labor disputes in connection with its activities and operations pursuant to the provisions of this lease. In the event of any such labor dispute in connection with said activities and operation by the Lessee, then and in that event, the Lessee shall take all reasonable actions consistent with its requirements necessary to resolve said disputes and to prevent the disruption of the normal activities and operations at Port Manatee. Nothing herein contained shall be construed to impair or limit the lawful rights of employees of the Lessee or the Authority, or to limit the lawful rights of any labor organization representing said employees.

18. **RELATIONSHIP BETWEEN THE PARTIES.** The Authority is not exercising any dominion, control or supervision over the activities and operations of the Lessee upon the demised premises, and the only interest the Authority has in and to said activities and operations is as the lessor or landlord of the demised premises pursuant to the provisions of this lease and as the owner and operator of Port Manatee pursuant to the provisions of the then current Port Manatee Tariff. The Authority and Lessee disclaim any intention to create a joint venture, partnership or agency relationship.

19. **ASSIGNMENT OR SUBLETTING.** This Lease shall not be assigned and no portion of the demised premises shall be sublet by the Lessee without the express written approval of the Authority. Said approval shall be set forth in a written addendum or supplement to this lease executed with the same formality as the execution of this lease.

Upon any assignment of this Lease, the assignee shall assume all obligations of the Lessee and the parties shall provide Authority with an executed copy of the assignment and assumption (in form reasonably acceptable to Authority) for Authority's written approval as provided above. Furthermore, the parties acknowledge that in connection with any such assignment or sublease, the Lessee shall not be released of any liability hereunder. In connection with any sublease, such sublease shall be subject to all terms and provisions of this Lease and the Lessee shall be required to assign such sublease to Authority as additional security for the Lessee's obligation under this Lease. It is the intent of the parties that in the event that the Lessee defaulted under this Lease, that the Authority would have the right, at its sole and exclusive option, to terminate any such sublease or to exercise its rights under such assignment, whereupon such sublessee shall be directly liable to Authority pursuant to such assignment of the sublease.

20. LESSEE'S INSURANCE. During the term of the Lease, the Lessee shall provide, pay for, and maintain with insurance companies satisfactory to the Authority, the types of insurance described herein. All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Manatee County, Florida, and shall be construed in accordance with the laws of the State of Florida.

A. General Terms.

The Authority shall be specifically included as an "Additional Insured" on the Lessee's Commercial General Liability, Umbrella Liability and Business Automobile Liability policies and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The Authority's additional insured status should be extended to the Completed Operations coverage. ISO's standard "Blanket Additional Insured" will not be acceptable.

All insurance coverage of the Lessee shall be primary to any insurance or self-insurance program carried by the Authority. The Authority's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the Lessee in this Lease.

No work or occupancy of the premises shall commence at the site unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued to the Lessee by the Authority. The Lessee shall deliver to the Authority, prior to the Authority issuing the Notice to Proceed, properly executed "Certificate(s) of Insurance", setting forth the insurance coverage and limits required herein. The Certificates must be personally, manually signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true and exact copies of the insurance policies required herein shall be provided the Authority, on a timely basis, if requested by the Authority. Ten days after the Authority has issued the Notice to Proceed, if Lessee refuses or otherwise neglects to deliver the required Certificate(s) of Insurance personally and manually signed by the authorized representative of the insurance company(s), the Authority may, at the Authority's sole discretion, (a) terminate or suspend this agreement and seize the amount of Lessee's bid security (Bid Bond, cash or other security acceptable to the Authority) or, (b) purchase such insurance coverage and charge Lessee for such coverage purchased plus fifteen percent (15 %) for administrative costs. The Authority shall be under no obligation to purchase such insurance or be responsible for the coverage purchased or the financial stability or responsibility of the insurance company used. The decision of the Authority to purchase such insurance coverage shall in no way be construed as a waiver of its rights under this Lease. The Lessee shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the Authority requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the Lessee shall promptly authorize and have delivered such statement to the Authority.

The Lessee authorizes the Authority and/or its insurance consultant to confirm all information furnished to the Authority, as to its compliance with its Bonds and Insurance Requirements, with the Lessee's insurance agents, brokers, surety, and insurance carriers.

The acceptance of delivery to the Authority of any Certificate of Insurance evidencing the insurance coverage and limits required in the Lease does not constitute approval or agreement by the Authority that the insurance requirements in the Lease have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Lease requirements.

All policies of insurance required herein shall require that the insurer give the Authority thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Lease, except for the application of the Aggregate Limits Provisions. Renewal Certificate(s) of Insurance shall be provided to the Authority at least twenty (20) days prior to expiration of current coverage so that there shall be no interruption in the work due to lack of proof of the insurance coverage required of the Lessee in this Lease.

All of the required insurance coverage shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein. The insurance coverage and limits required of the Lessee under this Lease are designed to meet the minimum requirements of the Authority. They are not designed as a recommended insurance program for the Lessee. The Lessee alone shall be responsible for the sufficiency of its own insurance program. Should the Lessee have any question concerning its exposures to loss under this Lease or the possible insurance coverage needed therefore, it should seek professional assistance.

The Authority and its Tenants may continue to operate their businesses on the Authority's premises during the activities of the Lessee. No property used in connection with their activities shall be considered by the Lessee's insurance company as being in the care, custody, or control of the Lessee.

Should any of the required insurances specified in this Lease provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, and the insurance company providing the coverage will not agree in writing to pay the deductible or retention including the costs of defense as provided for in its policy without consideration of the deductible or retention in the settlement of insured claims, then the Lessee agrees, if required by the Authority, to provide, pay for, and maintain a surety bond acceptable to the Authority from an insurance company acceptable to the Authority (or a standby irrevocable Letter of Credit acceptable to the Authority) in the amount of the deductible or retention, guaranteeing payment of the deductible or retention. Said guarantee is to continue for four (4) years following completion of the

Work.

If the Lessee fails to provide or maintain the insurance coverage required in this Lease at any time during the term of the Lease, the Authority may terminate or suspend this Lease, or, at the Authority's sole discretion, be authorized to purchase such coverage and charge the Lessee for such coverage purchased plus 15% for administrative costs. The Authority shall be under no obligation to purchase such insurance or be responsible for the coverage purchased or the financial stability or responsibility of the insurance company used. The decision of the Authority to purchase such insurance coverage shall in no way be construed as a waiver of its rights under this Lease.

If the Lessee utilizes contractors or sub-contractors to perform any work governed by this agreement, the Lessee will ensure all contractors and sub-contractors maintain the same types and amounts of insurance required of the Lessee. In addition, the Lessee will ensure that the contractors and sub-contractors insurances comply with all of the Insurance Requirements specified for the Lessee contained within this agreement. The Lessee shall obtain Certificates of Insurance comparable to those required of the Lessee from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to Authority upon request.

B. **Specific Insurance Coverage and Limits** - All requirements in this Insurance Section shall be complied with in full by the Lessee unless excused from compliance in writing by the Authority. The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the Authority.

1. **Workers' Compensation and Employers' Liability Insurance** shall be maintained in force during the term of this Lease for all employees engaged in this work under this Lease, in accordance with the laws of the State of Florida, and, if applicable to the Work involved, shall include U.S. Longshore and Harbor Workers' Compensation Act Coverage. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease Aggregate
	\$1,000,000.00 Limit Disease Each Employee

2. **Commercial General Liability Insurance** shall be maintained by the Lessee on the Full Occurrence Form. Coverage shall include but not be limited to Premises and Operations, Personal Injury, Contractual for this Lease, Independent Contractors, Broad Form Property Damage, and Products &

Completed Operations Coverage and shall not exclude coverage for the "X" (explosion), "C" (collapse) and "U" (underground) Property Damage Liability exposures. Limits of coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$5,000,000.00 Combined Single Limit Occurrence and aggregate.
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Completed Operations Liability Coverage shall be maintained by the Lessee for a period of not less than four (4) years following Final Completion and Acceptance by the Authority.

The use of an Excess and/or Umbrella policy shall be acceptable if the level of protection provided by the Excess and/or Umbrella policy is no less restrictive than the Primary General Liability policy.

3. **Business Automobile Liability Insurance** shall be maintained by the Lessee as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury	\$1,000,000.00 Limit Each Accident
Property Damage Liability	\$1,000,000.00 Limit Each Accident

or

Bodily Injury & Property Damage Liability	\$1,000,000.00 Combined Single Limit Each Accident
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21. **ACCESS.** The Authority hereby grants the Lessee a continuous right of ingress and egress through Port Manatee to the demised premises and berthing facilities. The Authority shall have free access to the demised premises at reasonable times and hours for the purpose of examination and inspection of the demised premises and all of the above identified facilities located thereon and for the purpose of conducting the routine business and operations at Port Manatee.

22. **SECURITY.** The Authority is subject to minimum standards, procedures and requirements imposed by federal and state laws and regulations, rules, policies and procedures in effect from time to time concerning security at Port Manatee, including the U.S. Maritime Transportation Security Act of 2002; Title 33, parts 101 and 105 of the U.S. Code of Federal Regulations; Chapter 311 of the Florida Statutes; and the security provisions of all tariffs in effect at Port Manatee, each as amended, supplemented, restated or otherwise modified from time to time, in connection with the security of Port Manatee as a seaport. Port Manatee consists of various facilities operated by the Authority and various facilities operated by tenants pursuant to leases with the Authority, and the security of facilities operated by the Authority and facilities operated by the Lessee pursuant to this Lease are beneficial to both parties necessitating that there be a degree of cooperation between the Authority and the Lessee. The Lessee shall comply with all of the provisions of the above mentioned laws and regulations applicable to the demised premises and to the activities and operations of the Lessee at Port Manatee.

23. **LESSEE'S COMPLIANCE.** Lessee shall comply with all applicable laws, and shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of any violation of applicable laws, in, upon, or connected with the demised premises, all at Lessee's sole expense. Lessee warrants that all improvements or alterations of the demised premises made by Lessee or Lessee's employees, agents or contractors, either prior to Lessee's occupancy of the demised premises or during the Term, will comply with all applicable laws. Lessee will procure at its own expense all permits and licenses required by the transaction of its business in the demised premises. In addition, Lessee warrants that its use of the demised premises will be in strict compliance with all applicable laws. During the Term, Lessee shall, at its sole cost and expense, make any modifications to the demised premises that may be required pursuant to any applicable laws.

24. **PUBLIC RECORDS.** All comments, papers, letters, maps, books, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristic, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Authority are public records of the Authority in accordance with the Florida Constitution and Florida Statutes. Every person has the right to examine, inspect and/or copy any such public records not specifically made exempt therefrom by provisions of the Florida Statutes. Any financial or proprietary information relating to the Lessee transmitted by the Lessee to the Authority may be a public record subject to disclosure to a requesting third person (not a party to this Lease). If the Authority receives a request by a third party for the disclosure of any such public records relating to the Lessee, the Authority shall immediately notify the Lessee of said request. The Authority will comply with said request to the extent required by law, unless the Lessee institutes an appropriate legal proceeding or suit against the Authority and/or the third person to restrain or otherwise prevent the particular public records' disclosure. If any such legal proceeding or suit is instituted by the Lessee and the Authority incurs any attorneys' fees, costs, damages or penalties in connection therewith or as a result thereof, the Lessee shall pay to the Authority an amount equal to the total amount of said attorneys' fees, costs, damages or penalties.

Lessee acknowledges that the portion of its books and records related to its activities with the Authority may become subject to inspection and copying under the Florida Public Records Act. Lessee agrees to comply with the Florida Public Records Act, as applicable, including, but not limited to section 119.0701 of the Florida Statutes. Lessee agrees, to the extent required by law, to:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in performing the services of the Agreement; and
- 2) provide the public with access to the public records under the same terms and conditions that the Authority would provide the records and at a cost that does not exceed the cost provided for by law; and
- 3) ensure that the public records that are exempt or confidential, and exempt from public record disclosure requirements, are not disclosed, except as authorized by law; and

- 4) meet all requirements where retained public records and transfer, at no cost, to the Authority, all public records in possession of Lessee, upon termination or completion of the Agreement and destroy any duplicate public records that are exempt or confidential, or exempt from public record disclosure requirements.

Furthermore, Lessee agrees that all records stored electronically shall be provided to the Authority in a format that is compatible with the information technology systems of the Authority. Lessee shall promptly provide the Authority with a copy of any request to inspect or copy public records that Lessee receives and a copy of its response to each request. Lessee understands and agrees that failure to provide access to the public records shall be a material breach of the Agreement.

IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE AUTHORITY AS PROVIDED IN SECTION 32 OF THIS LEASE.

THE LESSEE ACKNOWLEDGES THAT THE AUTHORITY CANNOT AND WILL NOT PROVIDE LEGAL OR BUSINESS ADVICE TO THE LESSEE WITH RESPECT TO ITS OBLIGATIONS PURSUANT TO THIS SECTION RELATED TO PUBLIC RECORDS. THE LESSEE ACKNOWLEDGES THAT IT WILL NOT RELY ON THE AUTHORITY OR ITS ATTORNEY TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE AND THAT LESSEE HAS BEEN ADVISED TO SEEK PROFESSIONAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS AGREEMENT.

25. EVENTS OF DEFAULT. Any of the following events shall constitute an "Event of Default" of this Lease by Lessee:

- (i) If Lessee abandons or vacates (abandons or vacates means fails to physically possess or use the demise premises for at least four consecutive business days) the demised premises; or
- (ii) If the Rent, fees, charges, or other payments which Lessee agrees to pay or is obligated to pay hereunder are not received by the Authority within ten (10) business days after receipt of written notice of non-payment from the Authority; or

- (iii) If Lessee fails to observe, keep, or perform any of the terms, covenants, agreements, or conditions of this Lease for a period of ten (10) business days after receipt of written notice from the Authority; or
- (iv) If Lessee transfers substantial control of Lessee's assets or Lessee's business operations or activity to any other entity without prior written consent of the Authority, which will not be unreasonably withheld; or
- (v) If Lessee files a voluntary petition for bankruptcy or otherwise seeks the benefit of any bankruptcy, reorganization, arrangement, or insolvency law or makes a general assignment for the benefit of creditors; or
- (vi) If Lessee is adjudicated bankrupt; or
- (vii) If any act occurs which deprives Lessee permanently of the rights, powers, or privileges necessary for the proper conduct and operation of Lessee's business; or
- (viii) Any lien, claim or other encumbrance which is filed against the demised premises is not removed or if Authority is not adequately secured by bond or otherwise, within thirty (30) calendar days after Lessee has received notice thereof; or
- (ix) The discovery of any material misrepresentation or fraudulent statement made to Authority in connection with any lease or other application or forms submitted to Authority in connection with this Lease or the demised premises, following written notice by Authority and a failure by Lessee to explain the matter to Authority's satisfaction within thirty (30) calendar days; or
- (x) By or pursuant to, or under authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of Lessee, and such possession or control shall continue in effect for a period of thirty (30) calendar days; or
- (xi) Any business is conducted, or service is performed, or product is sold from the demised premises that is not specifically authorized by this Lease, and such activity does not cease within ten (10) calendar days after receipt of written notice to that effect; or
- (xiii) If at any time Lessee uses or permits the demised premises to be used for any purpose which has not been authorized by this Lease; or
- (xiv) If Lessee uses or permits the use of the demised premises in violation of any law, rule, or

regulation (including, but not limited to, Environmental Laws); or

- (xv) If Lessee attempts to or does mortgage or pledge Lessee's interest hereunder; or
- (xvi) If Lessee's interest under this Lease is being sold under execution or other legal process;
or
- (xvii) If Lessee's interest under this Lease is being modified or altered by any unapproved assignment or unauthorized subletting, or by operation of law; or
- (xviii) If any of the goods or chattels of Lessee used in, or incident to, the operation of Lessee's business in the demised premises are being or have been seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding; or
- (xix) GSI's failure to comply with the material terms of all port tariffs or Authority rules and regulations and such failure continues for more than thirty (30) days after delivery of written notice of such default to GSI by the Authority or the Authority's agents; or
- (xx) A lapse in coverage occurs with respect to any insurance required by this Lease or the Authority is not timely provided with any documentation required hereunder with respect to such insurance.

Then upon the occurrence of any default, or at any time thereafter during the continuance thereof, Authority, by its Board, may, at its option, immediately terminate this Lease, and all rights of Lessee hereunder. Authority shall provide Lessee with notice of the effective termination date in writing. In the event of any such termination, Lessee and its sublessee(s) shall immediately quit and surrender the demised premises to Authority and shall cease operations. In the event of any termination by Authority, Lessee shall have no further rights under this Lease and further covenants and agrees to yield and deliver peaceably and promptly to Authority, possession of the demised premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise. Authority, its agents, employees and representatives shall have the right to enter the demised premises and remove all property therefrom, and to accelerate and declare immediately due and payable all unpaid rents, minimum guaranteed payments due hereunder, and other sums required to be paid under this Lease. In addition, Lessee shall be liable for all damages incurred by Authority in connection with Lessee's default or the termination of this Lease upon such a default, including without limitation, all direct damages, such as collection costs and reasonable attorney's fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by Authority of any right of termination shall be without prejudice to and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No remedy herein conferred upon or

reserved to Authority is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative.

26. **HABITUAL DEFAULT.** Notwithstanding the foregoing, in the event Lessee defaults in the performance of or breaches any of the terms, covenants and conditions required herein to be kept and performed by Lessee two (2) or more times in two (2) consecutive months, and regardless of whether Lessee has cured each individual condition of breach or default, Lessee may be determined by Authority to be a "habitual violator". At the time that such determination is made, said Authority shall issue to Lessee a written notice advising of such determination and citing the circumstances thereof. Such notice shall also advise Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Lease. In the event of any such subsequent breach or default, Authority may terminate this Lease. Authority shall provide written notice to Lessee of the effective termination date.

27. **TERMINATION WITHOUT NOTICE.** The occurrence of any of the following during the Term hereof, shall immediately confer upon Authority the right to terminate this Lease without notice, in its sole discretion upon the terms and conditions set forth below:

- a. If Lessee or an officer, director, executive, partner, or a shareholder, employee or agent who is active in the management of Lessee is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (i) is considered to be a public entity crime as defined by Ch. 287, Florida Statutes, as amended, or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement or misappropriation of funds, or (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade principals or owners in society or bring them into public hatred, contempt, scorn or ridicule, or that tends to shock, insult or offend the community or ridicule public morals or decency or harm the image of Authority by virtue of its association with Lessee or (iv) results in a felony conviction. Lessee understands and agrees that neither the resignation nor the termination of the offending person does not impair Authority's right to terminate without notice under this Section; or
- b. Suspension or revocation of Lessee's operations by a governmental unit or agency having jurisdiction over the demised premises and/or the business being conducted thereon, regardless of the length of such suspension or revocation.

28. **NO HOLDING OVER.** Failure of Lessee to surrender the demised premises in accordance with the provisions of this Lease upon termination or expiration of this Lease, and the subsequent holding over by Lessee, with or without the consent of the Authority, shall result in the creation of a tenancy at will at double the Rent payable commencing at the time of the date of

termination or expiration. This provision does not give Lessee any right to hold over at the termination or expiration of the term of this Lease and shall not be deemed to be a renewal of the Lease term by operation of law or otherwise.

29. **INSOLVENCY.** If Lessee becomes insolvent or bankruptcy proceedings are begun by or against Lessee, and within thirty (30) days thereof Lessee fails to secure a discharge thereof, or if Lessee should make an assignment for the benefit of creditors before the end of the Term of this Lease, Authority is hereby irrevocably authorized, at its option, to forthwith cancel this Lease. Authority may elect to accept rent and other required compensation from the receiver, trustee or other judicial officer during the term of their authority in their fiduciary capacity, without affecting Authority's rights under this Lease, but no receiver, trustee or other judicial officer shall have any right, title or interest in the demised premises.

30. **FEDERAL MARITIME COMMISSION REQUIREMENTS.** The Authority shall comply with all approval or filing requirements relating to this lease under federal laws or regulations administered by the Federal Maritime Commission and the Lessee shall fully comply with all such approval or filing requirements relating to commercial carrier and/or marine terminal operator schedules. If it is determined by the Federal Maritime Commission or by either of the parties that this Lease is subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, the parties, in cooperation with each other, shall promptly comply with said requirements. If the activities and operations of the Lessee at Port Manatee pursuant to the provisions of this Lease result in a determination that the Lessee is a marine terminal operator and if the charges, fees, rates and other income received by the Lessee from others in connection with the activities and operations of the Lessee as a marine terminal operator are subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, the Lessee shall promptly comply with said requirements as a marine terminal operator including any required tariffs. If the Federal Maritime Commission by a duly entered order disapproves of any of the provisions of this lease subject to the jurisdiction or regulations of the Federal Maritime Commission, the particular disapproved provisions shall be deemed null and void and of no force and effect, with all of the remaining provisions of this lease remaining in full force and effect.

31. **INDEMNIFICATION.** Regardless of whether or not there is any applicable insurance, Lessee shall release, indemnify, defend, and hold harmless the Authority and its Port Authority members, officers, agents and employees, from all fines, taxes, assessments, penalties, claims, suits, actions, demands, losses, damages, liabilities, remediation and response expenses, costs, expenses (including, without limitation, attorneys' fees), and causes of action of every kind or character whatsoever, whether in law or equity, in connection with any loss of life, bodily or personal injury, violation of Environmental Laws (including, without limitation, those matters described in paragraph 16 of this Lease), violation of grant requirements, or damage to or loss of property arising from or out of any occurrence in, upon, at, or about the demised premises or license area or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act, omission, negligence, misconduct, or breach of this Lease by Lessee, its officers, employees, agents, representatives, contractors, licensee, invitees, or by any other person

entering the demised premises or license area under express or implied invitation of Lessee, or arising out of or relating to Lessee's use of the demised premises or license area, or operation at Port Manatee, except to the extent provided by law that any such loss or damage is caused in whole or in part by the gross negligence or willful misconduct of the Authority or any official, officer, director, employee, or other agent thereof. The Authority shall not be liable or responsible for any loss or damage to any property or the death of or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other Port Lessees or by any other matter beyond the control of the Authority. Lessee's obligations under this paragraph are not limited in amount, and specifically are not limited to the amount of any insurance. The indemnification set forth herein shall survive and continue in full force and effect and shall not be terminated, discharged or released in whole or in part for a period of five (5) years after the date of termination or expiration of this Lease.

32. **GOVERNMENTAL IMMUNITY.** Nothing herein is intended to serve as a waiver of sovereign immunity by Authority nor shall anything included herein, be construed as consent by Authority to be sued by third parties in any matter arising out of this Lease. Authority agrees to be fully responsible for the acts and omissions of its agents and employees to the extent permitted by law.

33. **NOTICES.** All notice(s) required by this Lease or by law shall be given in writing and shall be sent by registered or certified mail by depositing same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any notice mailed as provided hereunder, shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed effective and served as of the date of delivery. Authority and Lessee shall have the right, by giving written notice to the other, to change the address to which notice(s) are to be mailed or delivered. Until any such change is made, notice(s) shall be mailed or delivered to:

FOR PORT:

FOR GULF SHELLFISH INSTITUTE, INC.

Manatee County Port Authority
c/o Carlos Buqueras, Executive Director
300 Tampa Bay Way
Palmetto, FL 34221

Curtis Hemmel, President
Gulf Shellfish Institute, Inc.
1720 Bayshore Drive
Terra Ceia, FL 34250

With a copy to:

With a copy to:

Jennifer Cowan, Esq.
Lewis, Longman, & Walker, P.A.
101 Riverfront Blvd., Suite 620
Bradenton, FL 34205

Lessee shall be required to notify Authority, in writing, whenever there is a change in the address of Lessee (to the place) for which notice is to be sent (giving notice), as required herein. In the event Lessee fails to maintain a current address on record with the Authority as required herein, Authority shall be deemed to have notified Lessee by using the last known address on record and Authority shall not have any responsibility or obligation to investigate the validity of the address that Lessee has provided. As a result, Lessee agrees to hold Authority harmless and defend same for any action or occurrence or non-occurrence as a result of Lessee not receiving notice due to Lessee's failure to update its address for notification.

34. LEASE ADMINISTRATION. The Authority hereby authorizes the Executive Director of Port Manatee, or his designee, to administer the terms and conditions of this lease on behalf of the Authority and to make all managerial decisions on behalf of the Authority as they relate to the provisions of this Lease.

35. AUTHORITY TO EXECUTE. Each of the parties hereto covenants to the other party hereto that it has lawful authority to enter into this lease, that the governing body of each of the parties has approved this lease and that the governing body of each of the parties has authorized the execution of this lease in the manner hereinafter set forth.

36. COUNTERPARTS; SIGNATURES. This Lease shall become effective upon its execution by all of the undersigned. This Lease may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures may be given via facsimile, or e-mail transmission and shall be deemed given as of the date and time of the transmission of this Lease to the other Parties.

37. GOVERNING LAW, JURISDICTION, AND VENUE. The enforcement of this Lease and the interpretation of all provisions contained herein shall be controlled and governed by the laws of the State of Florida. In the event of any dispute hereunder, the Parties agree that sole and exclusive jurisdiction for any dispute shall lie in the Circuit Court of the 12th Judicial Circuit in Manatee County, Florida. Sole and exclusive venue for any civil action or legal proceeding arising out of or relating to this Lease shall be in the Circuit Court of the 12th Judicial Circuit in Manatee County, Florida.

The Authority and GSI recognize that this Lease involves relatively complex business transactions; that this Lease is lengthy and its terminology is technical in nature and thus may be especially susceptible to misinterpretation; and in the event of a dispute as to rights and obligations hereunder, a Judge rather than a jury would be the most efficient and qualified trier of fact. Accordingly, the parties are each desirous of leaving their respective rights to a jury trial with respect to any litigation or other legal proceedings relating to or arising out of or in connection with this Lease or its subject matter as follows:

EACH PARTY BY EXECUTION HEREOF DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ANY RIGHT WHICH EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, ACTION, SUIT, OR PROCEEDING WHETHER AT LAW OR INEQUITY BASED ON THIS LEASE, ANY AMENDMENT OR ADDITION TO THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY OR THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS OR REPRESENTATIVES IN CONNECTION HEREWITH, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE. NEITHER PARTY SHALL SEEK TO CONSOLIDATE ANY LITIGATION, ACTION, SUIT OR PROCEEDING WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PROVISION IS MATERIAL AND MUTUAL INDUCEMENT TO ENTERING INTO THIS LEASE.

38. ATTORNEYS FEES. If any legal action or other proceedings (judicial or otherwise), including but not limited to any trial proceeding or appellate proceeding, are brought for the enforcement of this Lease, or because of any dispute, breach, default or misrepresentation in connection with any provision of this Lease, the successful or prevailing Party shall be entitled to recover all costs incurred, including pre-suit costs, reasonable attorneys' fees and costs (at trial and on appeal).

39. AMENDMENTS. No modifications, amendments, or alterations in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality and of equal dignity as this Lease and executed by Authority and Lessee.

40. WAIVER AND DELAY. No waiver or delay in enforcing the terms of this Lease shall be construed as a waiver of any subsequent breach. No waiver of any portion of this Lease shall be effective unless it is in writing and signed by the party against whom it is asserted.

41. INTERPRETATION. The captions and headings contained in this Lease are for reference purposes only and shall not affect the meaning or interpretation of this Lease. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. Herein, hereof, hereinunder and other similar compounds of the word here when used in this Lease shall refer to the entire Lease rather than any particular provision. The word including is to be construed without limitation unless otherwise expressly provided. References to specific law shall be construed as including any and all laws which subsequently amend, extend, consolidate or replace the specific laws involved. References to specific standards, codes of practice, and/or guidelines shall be construed as including any and all amendments, supplements, redrafts, and/or substitutes there to. This Lease will not be construed more or less favorable with respect to either party as a consequent of the Lease or various provisions hereof having been drafted by one of the parties hereto. The Parties hereto acknowledge that they have sought and received

whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. This Lease, including all exhibits and addenda attached hereto, and other documents referenced herein contain the complete Lease of the parties.

42. NO THIRD PARTY BENEFICIARIES. Neither Authority nor Lessee intend to directly or indirectly benefit a third party by this Lease. Therefore, Authority and Lessee agree that this Lease does not and is not intended to confer any rights or remedies upon any person or entity other than Authority.

43. SEVERABILITY. In the event that any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of this Lease.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed in duplicate, this the _____ day of _____, 2016, effective as of October 1, 2016.

ATTEST: ANGELINA M. COLONNESO MANATEE COUNTY PORT AUTHORITY
Clerk of Circuit Court

By: _____

By: _____

Printed: _____

Betsy Benac
Chairman
AUTHORITY

WITNESSES:

GULF SHELLFISH INSTITUTE, INC. (LESSEE)

By: _____

As Its: _____

EXHIBIT A

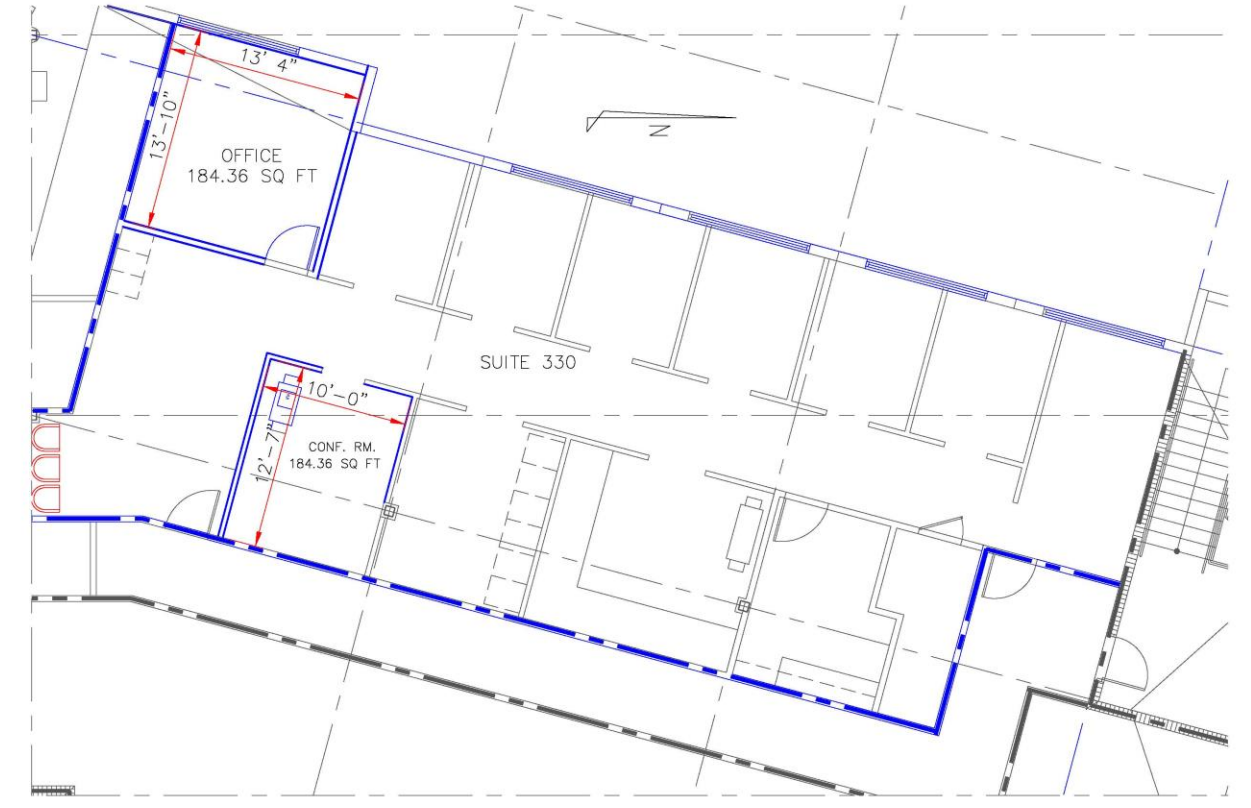


EXHIBIT B

SOVEREIGN SUBMERGED LANDS LICENSE

The MANATEE COUNTY PORT AUTHORITY, a political entity of the State of Florida, with its principal place of business located at 300 Tampa Bay Way, Palmetto, Florida 34221-6608, hereinafter referred to as the “Authority”, for good and valuable consideration in hand paid GULF SHELLFISH INSTITUTE, INC., a non-profit corporation duly authorized to transact business in the State of Florida, with a place of business located at 1720 Bayshore Drive, Terra Ceia, FL 34250, (hereinafter referred to as “GSI”) in connection with the Lease dated September 15, 2016 between the Authority and GSI hereby grants and sets over unto GSI a license to use Authority’s sovereign submerged lands located at Port Manatee, in Manatee County, Florida, and more particularly described in Exhibit 1 (hereinafter “license area”). GSI’s use of the license area shall be limited to that necessary under its Tampa Bay Environmental Restoration Fund grant to raise 600,000 clams over the 2 acre license area to increase the water clarity, light penetration, and biodeposition of organics to the sediment to facilitate an increase in seagrass coverage. The Authority and other licensees shall have access to and the right to utilize any portion of the above identified real property as long as same does not infringe upon or interfere with maintenance, operation and utilization by GSI of said license area.

The duration or term of this license shall be concurrent with the duration or term of the above identified as the Lease dated September 15, 2016 between the Authority and GSI. In the event that said Lease is lawfully cancelled, rescinded or terminated, then and in that event, this license or permission shall automatically be cancelled, rescinded or terminated.

By the acceptance hereof, GSI agrees that it shall be solely responsible for said license area, that GSI will not use any portion of said real property in such a manner as to create a

nuisance or otherwise violate any law, rule or regulation, and that GSI will neither suffer nor commit any waste of any portion of said real property. Further, this license is granted subject to GSI obtaining all necessary licenses and permits required by every governmental authority that has jurisdiction over GSI's use and occupancy of the license area including the activities conducted by GSI thereon and any aspect thereof.

Regardless of whether or not there is any applicable insurance, GSI shall release, indemnify, defend, and hold harmless the Authority and its members, officers, agents and employees, and assigns from all fines, penalties, claims, suits, actions, demands, losses, damages, liabilities, remediation and response expenses, costs, expenses (including, without limitation, reasonable experts' and attorneys' fees), and causes of action of every kind or character whatsoever, whether in law or equity, in connection with any loss of life, bodily or personal injury, violation of environmental laws, or damage to or loss of property arising from or out of any occurrence in, upon, at, or about the existing seawater delivery pipeline and other related facilities or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act, omission, negligence, misconduct, of GSI, its officers, employees, agents, representatives, contractors, invitees, or by any other person using the license area under express or implied invitation of GSI, or arising out of or relating to GSI's use of the license area, except to the extent provided by law that any such loss or damage is caused in whole or in part by the negligence or willful misconduct of the Authority or any official, officer, director, employee, or other agent thereof. Neither party shall be liable or responsible for any loss or damage to any property or the death of or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other licensee or by any other matter beyond the control of that party. GSI's obligations are not limited in

amount, and specifically are not limited to the amount of any insurance. The indemnification set forth herein shall survive and continue in full force and effect and shall not be terminated, discharged or released in whole or in part the respect of any termination or expiration of this license for a period of five (5) years after the date of termination or expiration of this license. Nothing herein is intended to serve as a waiver of sovereign immunity by Authority nor shall anything included herein, be construed as consent by Authority to be sued by third parties in any matter arising out of this License. Authority agrees to be fully responsible for the acts and omissions of its agents and employees to the extent permitted by law.

IN WITNESS WHEREOF, the Authority has caused this license to be duly executed, this the ___ day of September, 2016, effective October 1, 2016.

ATTEST: Angel Coloneso
Clerk of the Circuit Court

Manatee County Port Authority

By: _____

By: _____

Manatee County Port Authority, Chairman

WITNESSES:

Gulf Shellfish Institute, Inc.

By: _____

Its: _____

