

## EXCHANGE AGREEMENT

**This Exchange Agreement** ("Agreement") is made and entered into as of the last date of signature below by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special district authorized and existing by virtue of the laws of the State of Florida ("FIND"), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "COUNTY").

**WHEREAS**, FIND is the owner of certain property in Brevard County, Florida containing 83.19 acres, more or less, and depicted in red on Exhibit "A" attached hereto as Parcel A, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "FIND Parcel"); and

**WHEREAS**, the COUNTY is the owner of a parcel of real property in Brevard County, Florida containing 69.36 acres, more or less, and depicted in green on Exhibit "A" attached hereto as Parcel B, which will be more fully described in the boundary survey performed pursuant to Section 6 of this Agreement (the "EEL Parcel"); and

**WHEREAS**, the COUNTY has proposed to FIND an exchange of properties between the parties, such that COUNTY will own the FIND Parcel, and FIND will own the EEL parcel; and

**WHEREAS**, FIND will combine the EEL Parcel with other lands it currently owns to create a new Dredged Material Management Area known as the FIND BV-24A Site; and

**WHEREAS**, FIND has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by providing the land required for dredged material management for the Atlantic Intracoastal Waterway; and

**WHEREAS**, the COUNTY has determined that, subject to the provisions of this Agreement, such an exchange would be in the public interest and within its statutory responsibilities by obtaining land for scrub jay habitat and preservation.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Incorporation of Recitals: Agreement to Exchange.** The foregoing recitals are true and correct and are incorporated herein by reference. FIND and the COUNTY hereby agree to exchange with one another parcels of real property, described in this Agreement, pursuant to the terms and conditions set forth in this Agreement.

**Section 2. Property to be Transferred to the COUNTY.** FIND will convey the FIND Parcel to the COUNTY. Should the COUNTY, now or in the future, use the FIND Parcel for creation of a Scrub-Jay (*Aphelocoma coerulescens*) Preserve, the COUNTY shall, without cost to FIND, accept into such a Scrub-Jay Preserve any and all scrub-jays that require relocation from the FIND BV-24A Site. If the COUNTY does not create a Scrub-Jay Preserve but should habitat space be present within the FIND Parcel and state and federal agencies approve, the COUNTY shall allow the transfer of any and all Scrub-Jays that require relocation from the FIND BV-24A Site as a result of the Dredged Material Management Area footprint on the BV-24A Site, without charge or cost for the transfer of Scrub-Jays to County lands.

**Section 3. Property to be Transferred to FIND.**

A. The COUNTY will convey the EEL Parcel to FIND.

B. The COUNTY will convey a perpetual non-exclusive access, ingress, egress and pipeline easement sixty (60) feet in width to FIND over, upon and across Tax Parcel ID No. 29-38-21-00-511, between the FEC Railroad right of way and the eastern boundary of the EEL Parcel (the "Access and Pipeline Easement") as depicted in yellow "Alternative Pipeline Route" on Exhibit "B" attached hereto and made a part hereof by reference. The Access and Pipeline Easement shall include the Pipeline Monitoring and Incident Management Plan attached hereto as Exhibit "C". FIND, to the extent (if any) permitted by Section 768.28, Florida Statutes, shall indemnify and hold the COUNTY harmless, from and against any liability for personal injuries, death or property damage due to or arising out of FIND's use of the Access and Pipeline Easement. FIND shall require any of FIND's contractors performing work in or utilizing the Access and Pipeline Easement to indemnify and hold the COUNTY harmless from and against any liability for personal

injuries, death or property damage due to or arising out of the use of the Access and Pipeline Easement by such contractor or its employees, agents or subcontractors.

**Section 4. Exchange Values.** The COUNTY and FIND stipulate that the EEL Parcel and the FIND Parcel are approximately equal in value and neither party shall owe the other party any additional consideration as a result of any actual difference between the values of the respective properties.

**Section 5. Title to be Conveyed: Evidence of Title.** Each party shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Agreement. Within thirty (30) days after the delivery of the boundary survey of the FIND Parcel, as described in Section 6, the COUNTY may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title insurance company insuring marketable title to the FIND Parcel. Within thirty (30) days after the delivery of the boundary survey of the EEL Parcel, as described in Section 6, FIND may obtain, at its expense, a title insurance commitment, to be followed by an owner's title insurance policy from a title insurance company, insuring marketable title to the EEL Parcel. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

**Section 6. Surveys.** Within ninety (90) days of the Effective Date, the COUNTY shall obtain a boundary survey of the FIND Parcel, at its expense and FIND shall obtain a boundary survey of the EEL Parcel, at its expense. The boundary surveys shall be prepared and certified by a Florida registered land surveyor and mapper. The legal descriptions of the respective parcels created pursuant to said boundary surveys shall be reasonably satisfactory to both parties and shall be used in the deeds of conveyance. In the event either boundary survey shows any encroachment on either parcel or that improvements intended to be located on either parcel encroach on the land of others, or if either survey shows evidence of unrecorded easements, the same shall be treated as a title defect in the manner provided in Section 7.

**Section 7. Defects in Title.** If the title insurance commitments of Surveys obtained pursuant to Section 6 of this Agreement disclose any matters that would render title to the FIND Parcel unmarketable and/or matters that would render title to the EEL parcel unmarketable, the affected party shall notify the other party, in writing, within fifteen (15) days of receipt of the title

commitment or boundary survey, as the case may be, specifying the defect or defects. Such other party shall have one hundred twenty (120) days from the date of receipt of such notice to remove the defect or defects and shall use diligent efforts in connection therewith. However, such other party shall not be required to file a lawsuit to cure such defect or defects. If such other party is unsuccessful in removing the defects within such one hundred twenty (120) day period, the objecting party shall have the right to either (a) waive such defects and accept title as it then is, without any claim for damages, or (b) terminate this Agreement, in which event the COUNTY and FIND shall be released from any and all further obligations and liabilities hereunder. Any matters disclosed by the title insurance commitment or the survey which are not timely objected to by the grantee party, or which are waived by the grantee party, shall be deemed a "Permitted Exception" as to that parcel.

**Section 8. Environmental Site Assessment.** Each party, within ninety (90) days of the Effective Date and at its sole expense, may conduct an Environmental Site Assessment of the parcel to be conveyed to it to determine the existence and extent, if any, of any Hazardous Material on the parcel. In the event that the Environmental Site Assessment discloses one or more Recognized Environmental Conditions, the applicable party shall have an additional ninety (90) days to conduct such other and additional sampling, analysis and investigations as said party deems necessary. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law, as defined in Section 9 below.

**Section 9. Hazardous Materials.** If the environmental site assessment provided for in Section 8 confirms the presence of Hazardous Materials on either parcel, either party, at its sole option, may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should neither party elect to terminate this Agreement, the grantee of the contaminated parcel shall accept title "as-is" and is responsible, at its sole cost and expense, for pursuing any assessment, clean up and monitoring of the parcel necessary as to Hazardous Materials existing on the parcel, to bring the parcel into full compliance with Environmental Law. "Environmental Law" shall mean all federal, state and local laws, including statutes, regulations, ordinances, codes, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to the protection of the environmental or human health, welfare or safety, or to the emission, discharge, seepage, release or threatened release of any contaminant, chemical, waste, irritant, petroleum product, waste

product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyl, asbestos, hazardous or toxic substance, material or waste or any kind into the environment, including, without limitation, ambient air, surface water, ground water, or land including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource and Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act of 1986, Chapters 161, 253, 373, 376 and 403, Florida Statutes, Rules of the U.S. Environmental Protection Agency, Rules of the Florida Department of Environmental Protection, and the rules of the Florida water management districts now or at any time hereafter in effect.

Nothing contained herein shall be construed to limit either party's legal liability under any Environmental Law for Hazardous Materials located on the property. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes or other limitations imposed on potential liability under state or federal law.

**Section 10. Representations and warranties.** For the purpose of this section each party hereby represents and covenants, in its capacity as grantor of the parcel it proposes to convey to the other, as follows:

(a) This Agreement has been duly executed, and is a valid and binding agreement enforceable in accordance with its terms;

(b) Neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated herein, will conflict with, or result in a breach of, any contract, license or undertaking to which the granting party or by which any of its property is bound, or constitute a default there under, or result in the creation of any lien or encumbrance upon the parcel it proposes to convey (or any part thereof), or contravene any provision of any law, administrative regulation, or judgment, order, decree, writ or injunction of any court of competent jurisdiction;

(c) No legal or administrative proceeding is pending or, to the best knowledge of the granting party, threatened against the granting party, which would or could adversely affect its right to convey the proposed parcel (or any part thereof) as contemplated in this Agreement.

There are no condemnation or eminent domain proceedings pending or, to the best knowledge of the granting party, threatened with respect to the parcel proposed for conveyance (or any part thereof) and there are no legal or administrative proceedings pending or, to the best knowledge of the granting party, threatened affecting the parcel to be conveyed (or any part thereof);

(d) The granting party has good, clear, indefeasible, insurable and marketable title to the parcel to be conveyed, subject to no mortgage (other than existing mortgages which can and shall be satisfied at or prior to Closing), construction or other lien or encumbrance other than the grantee's Permitted Exceptions.

(e) All taxes, whether Federal, State, local or otherwise, which could become a lien against or otherwise affect all or any portion of the grantee's interest therein as the transferor thereof, or the grantee's interest therein as the transferee thereof, that have become due or payable at or prior to the date hereof, have been paid, including without limitation, all real estate taxes, tangible personal property taxes, sales taxes and any and all other taxes which relate to all or any portion of the parcel to be conveyed or could otherwise affect all or any portion of the parcel to be conveyed.

(f) The transfer of the parcel as contemplated herein, will not violate any subdivision statute, ordinance, law, or code or plat presently in existence;

(g) The parcel to be conveyed is not subject to any prescriptive easement or adverse possession;

(h) No "Hazardous Substance" (as hereinafter defined) has, to the knowledge of grantor, been disposed of, buried beneath, or percolated beneath the parcel to be conveyed or any improvements thereon, nor has any toxic, explosive or Hazardous Substance ever been removed from the parcel to be conveyed and stored off site. Further, to the knowledge of the grantor, there has been no "Release" (as hereinafter defined) of a Hazardous Substance on or from the parcel to be conveyed or any improvements thereon.

(i) The parcel to be conveyed and any improvements thereon have not, to the knowledge of the grantor, been used and are not presently being used for the handling, transportation or disposal of a Hazardous Substance. Neither the grantor, nor any lessee, licensee nor other party acting at the direction of or with consent of the grantor or said lessee or

licensee, has manufactured, treated, stored or disposed of any Hazardous Substance on the parcel to be conveyed or any improvement thereon;

(j) With respect to the parcel to be conveyed, to the knowledge of the grantor, the Parcel is in material compliance with all applicable federal, state and local laws, administrative rulings, and regulations of any court, administrative agency or other governmental or quasi-governmental authority, relating to the protection of the environment (including, without limitation, laws prohibiting the creation of a public nuisance). With respect to said Parcel, the grantor has not received notification that it is a potentially responsible party under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), nor has the grantor received notification from any federal, state, or local government, agency, or regulatory body, of a violation under any federal, state, or local law regulating the disposal or discharge of any toxic, explosive or other Hazardous Substance.

(k) For purposes hereof, the term "Hazardous Substance" means any one or more of the following: (i) any substance deemed hazardous under Section 101(14) of CERCLA, (ii) any other substance deemed hazardous by the Environmental Protection Agency pursuant to Section 102(a) of CERCLA, (iii) petroleum (including, without limitation, crude oil or any fraction thereof), (iv) any substance deemed hazardous pursuant to Section 1004(5) of RCRA, (v) any solid waste identified in Section 1004(27) of RCRA or (vi) any other hazardous or toxic substance, material, compound, mixture, solution, element, pollutant, or waste regulated under any federal, state or local statute, ordinance or regulation. The term "Release" shall have the meaning given to such term in Section 101(22) of CERCLA.

(l) The grantor has not received notice of, nor does the grantor have any knowledge of, any default or breach by the grantor of any covenant, condition, restriction, right of way, easement, or agreement affecting the Parcel; and

(m) All of the representations and other provisions contained in this Section, in other Sections in this Agreement and in any other document to be delivered by the grantor as contemplated hereby shall (i) be true, accurate and complete both as of the date hereof or the effective date of such other document, as the case may be and as of the Closing and (ii) shall survive the Closing. Further, the truth, accuracy and completeness of all of such representations

and warranties of the grantor shall, notwithstanding anything contained herein to the contrary, be a condition precedent to the grantee's obligation to close hereunder; provided, however, the grantee shall not have any obligation to investigate the truth, accuracy or completeness of said representations and warranties and, in the event same are not true, accurate or complete, but the grantee nonetheless elects to close hereunder, such shall not constitute a waiver of any of the grantee's rights and remedies as a result of a breach thereof. The grantor shall, to the extent permitted by law, indemnify and hold the grantee harmless from any and all losses, claims, damages, costs, expenses, obligations and liability arising out of or with respect to any breach or violation of any of the grantor's representations contained in this Agreement or in any other document to be delivered by the grantor. Nothing contained in this Agreement shall be construed as a waiver of either party's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on either party's potential liability under state or federal law.

**Section 11. Conditions Precedent as to FIND.** Notwithstanding anything contained herein to the contrary, this Agreement and FIND's obligations hereunder are, unless waived in whole or in part in writing by FIND (which FIND shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) FIND has obtained all federal, state and water management district permits necessary to construct a dredged material management facility on the BV-24 site;

(b) FIND has not terminated this Agreement pursuant to Section 7 or 9;

(c) All the representations and warranties hereof of the COUNTY shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies arising out of a breach or violation of any such representations or warranties of the COUNTY;

(d) The COUNTY shall have satisfied, fulfilled or performed all of its obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event FIND elects to waive this Condition Precedent, such waiver shall not constitute a waiver of FIND's rights or remedies hereunder to enforce any failure of COUNTY to fully satisfy, fulfill or perform such obligations;



(e) The COUNTY shall not have furnished any notice of termination as may be permitted hereunder; and

(f) The COUNTY shall, at its sole cost and expense, have caused the termination of any lease of the EEL Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under.

(g) Should FIND cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

**Section 12. Conditions Precedent as to the COUNTY.** Notwithstanding anything contained herein to the contrary, this Agreement and the COUNTY's obligations hereunder are, unless waived in whole or in part in writing by the COUNTY (which the COUNTY shall have the right to do), subject to and contingent upon each and all the following (hereinafter sometimes collectively referred to as "Conditions Precedent" and singularly as "Condition Precedent"):

(a) All the representations and warranties hereof of FIND shall be true, accurate and complete as of the date hereof and at all times thereafter through and including Closing; provided, however, in the event the COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of the COUNTY's rights or remedies arising out of a breach or violation of any such representations or warranties of FIND;

(b) FIND shall have satisfied, fulfilled and/or performed all of their obligations which are to be satisfied, fulfilled or performed at or prior to Closing; provided, however, in the event the COUNTY elects to waive this Condition Precedent, such waiver shall not constitute a waiver of the COUNTY's rights or remedies hereunder to enforce any failure of FIND to fully satisfy, fulfill or perform such obligations;

(c) FIND shall not have furnished any notice of termination as may be permitted hereunder;

(d) FIND shall, at its sole cost and expense, have caused the termination of any lease of the FIND Parcel (or any portion thereof) and shall have affected the removal of any tenant(s) there under; and

(e) The COUNTY has not terminated this Agreement pursuant to Section 7 or  
9

(f) Should the COUNTY cancel this Agreement due to the failure of any Condition Precedent or Conditions Precedent, all parties hereto shall, except if and to the extent provided herein to the contrary, be relieved from any and all further obligations and liability hereunder or arising here from.

**Section 13. Closing: Escrow; Costs and other expenses.** The closing of this transaction ("Closing") shall occur and exchange of possession of the Parcels shall take place at the County Attorney's office in Viera, Florida (or at such other place as shall be mutually agreed upon) within thirty (30) days after all of the Conditions Precedent as to both parties have been satisfied or waived in writing by the parties (unless extended by other provisions hereof) or on such other date as shall be mutually agreed upon ("Closing Date"). In the event that all of the Conditions Precedent set forth in Sections 11 and 12 have not been satisfied or waived within twenty-four (24) months of the Effective Date, the party for whose benefit such Condition Precedent exists shall have the option of (i) terminating this Agreement whereupon all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from or (ii) agreeing to an additional twelve-month period to satisfy such Conditions Precedent (or to waive them). The County Manager or designee is authorized to extend the closing deadline up to twelve months on behalf of the COUNTY in the event additional time is needed for FIND to obtain the permit described in paragraph 11(a) above. In the event this Agreement is so extended, and at the end of said twelve-month period the Conditions Precedent have not been satisfied or waived in writing by the party for whose benefit such Condition Precedent exists, this Agreement shall terminate and all parties hereto shall, except if and to the extent provided herein to the contrary, be released and relieved from any and all further obligations and liability hereunder or arising here from. Time is of the essence with respect to said Closing.

The cost of performing or obtaining the surveys, any state documentary stamps which are required to be affixed to the deeds, the cost of the title insurance commitments and policies issued pursuant to this Agreement, the cost of recording the deeds, and any other normal and customary closing costs shall be paid by each respective party of the parcel to be acquired. Each party shall pay its own attorney's fees incurred in connection with the negotiation, preparation, execution, and closing of this Agreement.

As to the FIND BV-24A Site for FIND's containment basin, the COUNTY will reimburse FIND, at closing, for half of the quoted costs associated with deliverables for the re-design of the FIND BV-24A Site, after the exchange, charged by FIND's engineer, not to exceed a reimbursement of \$88,823.38. The costs for deliverables from FIND's engineer will include:

- Site boundary and topographic survey with legal description
- Environmental Documentation Report
- Phase I and Phase II (if necessary) Environmental Site Assessment Report
- Preliminary permit-level drawings
- Site Management Plan
- Engineering narrative

**Section 14. Closing Obligations.**

(a) At Closing, the COUNTY shall:

(i) deliver to FIND a county deed in the form prescribed in Section 125.411, Florida Statutes in form and substance satisfactory to FIND and its counsel, conveying the EEL Parcel to FIND subject only to the FIND Permitted Exceptions; the COUNTY shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to FIND a grant of easement in form and substance satisfactory to Find and its counsel, granting the Access and Pipeline Easement;

(iii) deliver to FIND possession of the EEL Parcel;

(iv) deliver to FIND a Non-Foreign Affidavit (i.e., Foreign Investment In Real Property Act ("FIRPTA") Affidavit) in form and substance satisfactory to FIND and its counsel;

(v) deliver or cause to be delivered to FIND and the Title Insurance Company such documents as may be required by the Title Insurance Company or FIND or its counsel to release the EEL Parcel from any security interests created at any time at or prior to Closing and otherwise to insure marketable title to the EEL subject only to the FIND Permitted Exceptions as herein provided, and, to the extent that any of such documents are not available to the Title Insurance Company and the parties hereto at Closing, cause the Title Insurance Company to deliver copies thereof to FIND forthwith after Closing, and deliver to FIND and the Title Insurance Company any and all executed affidavits and other documents necessary to delete all standard exceptions which can be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(vi) deliver to FIND an affidavit executed by the COUNTY and dated the Closing Date stating that there: (1) exists no condemnation of or similar proceeding with respect to the EEL Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the EEL Parcel (or any part thereof), the COUNTY or this Agreement; and (3) the representations set forth in Section 4 hereof remain true and correct as of the date of Closing;

(vii) deliver to FIND or such other party designated by FIND or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by the COUNTY at Closing as elsewhere provided in this Agreement;

(viii) deliver to FIND or such other party designated by FIND such other instruments, documents and matters as FIND may reasonably require.

(ix) reimbursement of costs associated with the redesign of the BV-24A Site, described above in Section 13.

(b) At Closing, FIND shall:

(i) deliver to the COUNTY a Florida form of special warranty deed in form and substance satisfactory to the COUNTY and its counsel, conveying the FIND Parcel to the COUNTY subject only to the COUNTY Permitted Exceptions; FIND shall not reserve any oil, gas, or mineral rights in the deed;

(ii) deliver to the COUNTY possession of the FIND Parcel;

(iii) deliver to the COUNTY a Non-Foreign Affidavit (i.e., FIRPTA Affidavit) in form and substance satisfactory to the COUNTY and its counsel;

(iv) deliver to the COUNTY and the Title Insurance Company any and all executed affidavits and other documents necessary to delete all standard exceptions which can be deleted upon the delivery of such affidavits and documents in the Owner's Policy without specific reference in the Owner's Policy to any matter contemplated by said standard exceptions;

(v) deliver to the COUNTY an affidavit executed by FIND and dated the Closing Date stating that: (1) there exists no condemnation of or similar proceeding with respect to the FIND Parcel or any part thereof (or any threat of condemnation); (2) there exists no pending or threatened litigation involving the FIND Parcel (or any part thereof), FIND or this Agreement; and (3) the warranties and representations set forth in Paragraph 4 hereof remain true and correct as of the date of Closing;

(vi) deliver to the COUNTY or such other party designated by the COUNTY or otherwise provided for herein all other instruments, documents and other matters required to be delivered or furnished by FIND at Closing as elsewhere provided in this Agreement; and

(vii) deliver to the COUNTY or such other party designated by the COUNTY such other instruments, documents and matters as the COUNTY may reasonably require.

**Section 15. Brokers.** Each party hereto represents unto to the other that there are no real estate brokers, mortgage brokers, sales persons, finders or any like party involved with respect to the transactions contemplated hereby and that no brokerage fees, finders' fees, broker's commissions or the like are and/or shall be due as a result of their respective executions of this

Agreement or which will be due as a result of the Closing or any other matters contemplated hereby by virtue of their respective acts, inactions, conduct or otherwise. Each party hereto hereby agrees to indemnify and hold the other harmless from all losses, claims, damages, costs, expenses and liability arising out of any breach of such indemnifying party's representations and warranties as set forth above in this Section including, but not limited to, costs and attorneys' fees through all trial and appellate levels and post judgment proceedings and regardless of whether or not any action may be instituted.

**Section 16. Condemnation.** In the event of the commencement of any condemnation or eminent domain proceedings for any public or quasi-public purpose at any time prior to the Closing, resulting or which could result in the taking of all or any part of the Parcels, any party shall have the option of canceling this Agreement, in which event this Agreement shall be null, void and have no further force or effect and all parties hereto shall be released and relieved from any and all further liability and obligations hereunder. In the event that the parties agree not to cancel this Agreement and choose to close the transaction contemplated hereby, the transferor of the property thus affected shall assign to the transferee thereof any and all condemnation or eminent domain proceeds and the transferor's rights to receive same. Each party agrees not to enter into any settlement of any condemnation proceedings or eminent domain proceedings involving any of the properties comprising the Parcels without the prior written consent of the other parties.

**Section 17. Default.** In the event of a default by any party under this Agreement, the non-defaulting party shall have available to it all rights and remedies under the laws of the State of Florida including, but not limited to, the right to specifically enforce this Agreement or to obtain damages as a result of such default.

**Section 18. Notices.** Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

**If to COUNTY:** Brevard County  
Mike Knight, EEL Program Manager  
91 East Drive  
Melbourne, Florida 32904

**With copy to:** Office of the Brevard County Attorney  
Attn: Alex Esseesse, Assistant County Attorney  
2725 Judge Fran Jamieson Way, Bldg. C  
Viera, Florida 32940

**If to FIND:** Florida Inland Navigation District  
1314 Marcinski Road  
Jupiter, Florida 33477  
Attention: Executive Director

**With a copy to:** Peter L. Breton, Esq.  
The Law Office of Peter L. Breton, PLLC.  
2650 NE 52<sup>nd</sup> Street  
Lighthouse Point, FL 33064

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

**Section 19. Effective Date and Term of Agreement.** The effective date of this Agreement shall be the date of last signature below ("Effective Date"). The term of the Agreement shall be twenty-four (24) months of the Effective Date, unless extended or amended in accordance with this Agreement.

**Section 20. Waiver.** No waiver of any rights or remedies hereunder by any party hereto shall be effective unless same shall be in writing executed by the party to be charged and any such waiver shall not be deemed to be a continuing or future waiver but shall be limited to the specific instance for which same was given.

**Section 21. Governing Law, Venue and Attorneys' Fees.** This Agreement and all matters related hereto shall be governed by the laws of the State of Florida and venue for any action or proceeding between the parties arising hereunder and/or in regard hereto shall be exclusively in Brevard County, Florida. In the event of any action or proceeding between the parties with respect to this Agreement or any document or instrument delivered in connection herewith, each party shall be responsible for its own attorney's fees and litigation costs.

**Section 22. Successors.** This Agreement shall be binding upon and inure to the benefit of all successors to and permitted assigns of the parties hereto.

**Section 23. Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original, and all such counterparts shall for all purposes constitute a single instrument. A facsimile signature shall be as effective as an original.

**Section 24. Pronouns, Singular and Plural.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter and the singular shall be deemed to refer to the plural and vice versa, all as the context of usage shall require.

**Section 25. Section Captions.** Section and Exhibit titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

**Section 26. Amendments and Modifications.** This Agreement may only be amended upon written agreement by and between authorized personnel of each party. The County Manager, or designee, shall be authorized to execute any necessary amendments or modifications to this Agreement on behalf of the COUNTY.

**Section 27. Weekends and Holidays.** In the event any date for performance hereunder shall occur or any period hereunder shall expire on a Saturday, Sunday or legal holiday celebrated in the State of Florida, then the date for such performance or date of expiry shall be automatically extended until the next business day thereafter which is not a Saturday, Sunday or legal holiday celebrated in the State of Florida.



**Section 28. Survival.** All representations, warranties, covenants and other provisions of this Agreement shall survive Closing except to the extent provided herein to the contrary, if at all.

**Section 29. No Presumption as to Drafting.** The parties hereto acknowledge that they have extensively negotiated the terms and provisions hereof. Accordingly, the parties hereto intend and agree that this Agreement shall be construed without regard to any presumption, principle or other rule regarding construction of any or all terms and provisions against the party causing this Agreement to be drafted. Further, both parties hereto hereby waive, to the maximum extent permitted by law, all such aforesaid presumptions, principles and rules.

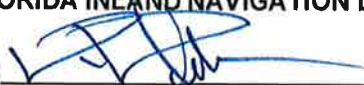
**Section 30. Public Records.** The parties hereto understand that this Agreement is subject to Chapter 119, Florida Statutes, also known as Florida's Public Records Law.

**Section 31. Entire Agreement.** This Agreement and all Exhibits and other attachments hereto, if any, embody the entire agreement and understanding of the parties hereto. This Agreement may not be changed, altered or modified except by an instrument in writing, signed by the party against whom the enforcement of any change, alteration or modification is sought.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed, the day and year of the last signature below.

**FLORIDA INLAND NAVIGATION DISTRICT**

By:  \_\_\_\_\_  
Don Donaldson, Chairman

**BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA**

Attest:

\_\_\_\_\_  
Scott Ellis, Clerk

By: \_\_\_\_\_  
Bryan Lober, Chair

As Approved by the Board on \_\_\_\_\_

Reviewed for form and legal content for the Board of County Commissioners of Brevard County, Florida:

\_\_\_\_\_  
Alex Esseesse  
Assistant County Attorney

EXHIBIT "A"

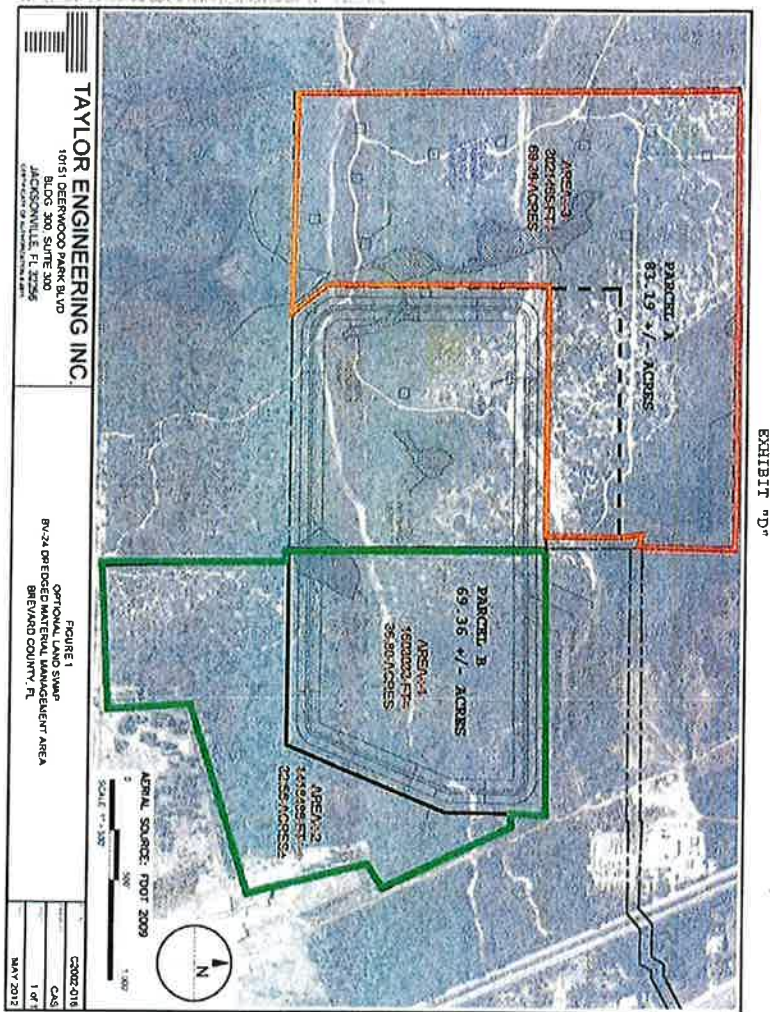
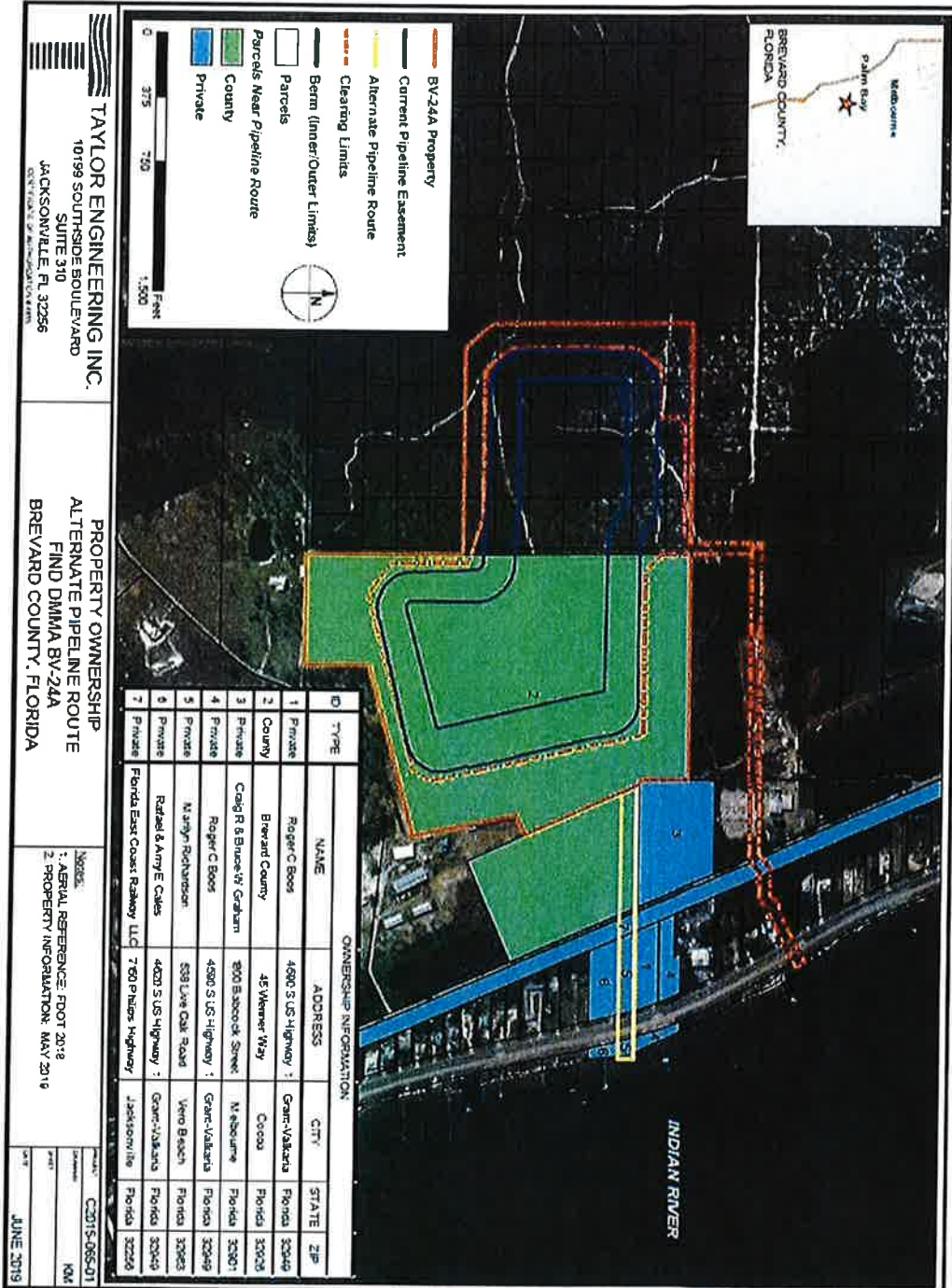


EXHIBIT B

ACCESS AND PIPELINE EASEMENT LOCATION



## EXHIBIT C

### Pipeline Monitoring and Incident Management Plan

FIND, to the extent (if any) permitted by Section 768.28, Florida Statutes, shall indemnify and hold the COUNTY harmless, from and against any liability for personal injuries, death or property damage due to or arising out of FIND's use of the Access and Pipeline Easement. FIND shall require any of FIND's contractors performing work in or utilizing the Access and Pipeline Easement to indemnify and hold the COUNTY harmless from and against any liability for personal injuries, death or property damage due to or arising out of the use of the Access and Pipeline Easement by such contractor or its employees, agents or subcontractors.

The Contractor's equipment will include a pressure monitoring system for the dredge/pump/pipeline operations. The system senses significant pressure drops and increases; the dredge operator continuously monitors this pressure gauge and the operator will immediately shut down the pumping system when any anomalies in the pressure monitoring system arise. Prior to any construction, the Contractor will be required to mark or fence the entire length of the pipeline easement corridor. The Contractor will ensure that the entire pipeline is devoid of any leaks before commencing dredging operations. The Contractor will maintain regular radio communication between the dredge and the disposal areas. The pipeline will be inspected for leaks at least twice daily by the Contractor. To verify Contractor inspection performance and reporting, FIND's engineer or their representative will periodically walk the entire length of the pipeline corridor. The Contractor will have a readily available emergency contact list for use in the event of any leak, or as necessary for other accident, malfunction, or permit compliance issue.

Any leaks in the pipeline, which include, but are not limited to, small discharges of material from joints in the pipe to complete pipe rupture, will result in shutdown of pumping and cessation of dredging operations. The Contractor will immediately report such spills to FIND's Engineer, the COUNTY, and regulatory compliance staff as required by the project permits. A survey will be conducted to estimate the spatial extent of the spill, the volume spilled, and the environmental impacts. The Contractor, FIND, and the appropriate regulatory agencies will coordinate on all necessary actions to quantify the impacts, define the necessary remediation

activities, and resume project activities. In any case, repair of the pipeline is a prerequisite to the resumption of dredging and/or further pumping. All spilled or misplaced materials must be recovered by the Contractor and disposed of at an offsite approved area. Any damage to private or public property resulting from the Contractor's operations shall be repaired by the Contractor at its expense. The Contractor will be required to carry commercial general liability insurance with appropriate limits.