



# Flagler County Board of County Commissioners Agenda

January 30, 2018 • 1:00 p.m.

Government Services Building 2, Board Chambers, 1769 E. Moody Blvd., Bunnell, FL 32110

1. Pledge to the Flag and Moment of Silence
2. Chair Comments
3. Ratification of Emergency Order 2018-01 Waiving Rules and Protocols for Procurement of Materials and Services Related to the Installation of an Emergency Protective Berm and a Seawall.
4. Consideration of Adoption of 19 Temporary Easement and Voluntary Assessment Agreements for Seawall Construction in the Painters Hill area.
5. Consideration of Seawall Construction Bid Award for the Painters Hill area.
6. Adjournment

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
SPECIAL MEETING / ITEM # 3**

**SUBJECT:** Ratification of Emergency Order 2018-01 Waiving Rules and Protocols for Procurement of Materials and Services Related to the Installation of an Emergency Protective Berm and a Seawall

**DATE OF MEETING:** January 30, 2018

**OVERVIEW/SUMMARY:** This item is to obtain the ratification of an emergency order to modify our procurement process to expedite the County's installation/construction of the protective berm and seawall. While the County has maintained a competitive procurement approach for this work, as the deadline approaches for the completion of these projects, the County wants to exercise the ability to adapt procurement policies to accelerate the purchasing process while not compromising the best value for the public using competitive procurement. The adaptations are solely to expedite the process of a competitive procurement. These adaptations do not include pre-selecting contractors or using single source contracting when there is competition. The Chair, County Administrator, Emergency Management Chief and the County Attorney approve the order expressly granting this authority.

The County has been in a state of emergency since Hurricane Matthew in October of 2016, and through Hurricane Irma in September 2017. There have been other tidal storms and tidal events that have further damaged the County's coastline. The coast is exposed and vulnerable to further severe damage without the protective measures planned by the County. With a compromised dune system, more homes and businesses are at risk of flooding, and more public infrastructure is susceptible to damage.

The County has worked closely with affected property owners to obtain agreements for access to install the emergency protective berm and seawall. In addition, the County formed two special assessment districts at a special meeting on December 20, 2017 in order to allow property owners to repay the cost of the seawall and certain other property owners to repay the cost of the emergency berms. Because of the limited number of the assessment parcels achieved through diligent work with the stakeholders, the compactness of the districts, and that there is an ongoing emergency, the Property Appraiser and Tax Collector have waived their costs in administering the districts.

The need to procure materials and contractors to install the emergency protective berm and seawall is extremely urgent, not only because of the precarious nature of the dune system and the vulnerability of neighborhoods on the barrier island, but because of the upcoming hurricane and sea turtle nesting seasons.

Pursuant to Section 252.38(3), *Florida Statutes*, and Section 12-34 of the Flagler County Code of Ordinances, the County has the authority during states of local emergency to waive the procedures and formalities otherwise required by law pertaining to procurement and entering into contracts, among other things. The attached Emergency Order 2018-01 is based on this authority.

**FUNDING INFORMATION:** N/A

**RECOMMENDATION:** Ratification of Emergency Order 2018-01.

**ATTACHMENT:**

1. Emergency Order 2018-01

  
\_\_\_\_\_  
Craig M. Coffey, County Administrator

  
\_\_\_\_\_  
Date

**EMERGENCY ORDER 2018 – 01**

**AN EMERGENCY ORDER OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS WAIVING THE NORMAL RULES AND PROTOCOLS FOR PROCURMENT OF MATERIALS AND SERVICES RELATED TO THE INSTALLATION OF AN EMERGENCY PROTECTIVE BERM AND A SEAWALL**

**WHEREAS**, based on the recommendation of the County Administrator and the Emergency Management Chief, in preparation for the imminent impact of Hurricane Matthew, the Chair of the Board of County Commissioners of Flagler County issued a Proclamation declaring a state of local emergency, dated October 4, 2016; and

**WHEREAS**, Hurricane Matthew passed along the County's coastline on October 7, 2016, severely damaging the entire dune system of the County, flooding hundreds of homes through dune breaches and destroying public infrastructure and other public and private property along the coastline; and

**WHEREAS**, the Chair of the Board of County Commissioners has extended the state of local emergency up to the present as the County continues to deal with the aftermath of Hurricane Matthew, including by the removal of dangerous trees killed by the floodwaters, the repair of public infrastructure including roadways and dune crossovers, and obtaining temporary easements and applying for permits to install an emergency protective berm on the beach in most of unincorporated Flagler County and a seawall in Painters Hill; and

**WHEREAS**, even as the County dealt with the aftermath of Hurricane Matthew, based on the recommendation of the County Administrator and Emergency Management Chief in anticipation to the imminent impact of Hurricane Irma, the Chair of the Board of County Commissioners of Flagler County issued a Proclamation declaring a second state of local emergency, dated September 5, 2017; and

**WHEREAS**, Hurricane Irma struck Flagler County on September 11, 2017, further scarping the already badly damaged dune system of the county, flooding hundreds of homes, and nearly collapsing beachfront homes in the Painters Hill area of unincorporated Flagler County; and

**WHEREAS**, based on the recommendations of the County Administrator and the Emergency Management Chief due in large part to the critical need to repair public infrastructure along the coast and install an emergency protective berm on the beaches and a seawall in Painters Hill, the Chair of the Board of County Commissioners

extended the declared states of local emergency for Hurricanes Matthew and Irma every seven days up to and including the present, as provided by law; and

**WHEREAS**, the Board of County Commissioners ratified the proclamations declaring and extending the state of local emergency for Hurricanes Matthew and Irma at each first available opportunity; and

**WHEREAS**, a strong Nor'easter in the autumn of 2017 along with persistent offshore winds battered the dune system again, exacerbating the precarious situation of properties along the coastline particularly in Painters Hill; and

**WHEREAS**, in order to utilize economies of scale and uniformity of design and permitting, the County seeks to install a seawall in Painters Hill to protect the homes and properties from collapsing onto the beach; and

**WHEREAS**, with hurricane season beginning June 1<sup>st</sup>, the need for the seawall and emergency berm is critical and immediate as homes in Painters Hill edge closer to collapse with each passing storm and extreme tidal event, and entire neighborhoods of the Hammock lie behind a weakened dune system at risk of breach; and

**WHEREAS**, the need to expedite the procurement of materials and services for the seawall and emergency protective berm is also critical due to sea turtle nesting season beginning June 1<sup>st</sup>; and

**WHEREAS**, the County has procured engineering services on an expedited basis, has worked to procure beach sand deemed compatible and compliant with state and federal agency determinations, has expedited its attempts at securing permits to undertake necessary protective measures, and otherwise procured specialized equipment and services needed to install and construct such protective measures; and

**WHEREAS**, the County has simultaneously sought outside financial resources to undertake the work, including legislative appropriations, state agency emergency funding, reimbursement grants from federal agencies and public work authorizations to enable the protective projects, and loans and advances from available funds to finance the undertakings; and

**WHEREAS**, the County has worked with affected property owners to procure agreements for access to install emergency protective berms and seawalls, and cost-share as appropriate to enable the pursuit of the protective projects; and

**WHEREAS**, at a special meeting on December 20, 2017, in order to provide a mechanism for the repayment by the property owners of the cost of installing the seawall and emergency protective berm, the Board of County Commissioners created

the Painters Hill Seawall Special Assessment District and also the Dune Restoration Project Special Assessment District by formal Resolutions pursuant to Section 197.3632, *Florida Statutes*; and

**WHEREAS**, because the Painters Hill Seawall Special Assessment District is limited to nineteen parcels and the Dune Restoration Project Special Assessment District is limited to three property owners, and, further, because of the emergency nature of the situation, the Flagler County Property Appraiser and Tax Collector have agreed to waive fees associated with the administration of the districts; and

**WHEREAS**, the County has undertaken the foregoing activities in a determined and expedited fashion so as to have protective projects installed prior to any further potentially destructive storm events to mitigate for additional damage and loss; and

**WHEREAS**, the emergency proclamations including extensions thereof, in accordance with Section 252.38, *Florida Statutes*, authorizes political subdivisions to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community; and

**WHEREAS**, through Section 252.38(3)(a)5., *Florida Statutes*, the Legislature has authorized the County to waive the procedures and formalities otherwise required by law, during declared states of local emergency, pertaining to entering into contracts, incurring obligations, rental of equipment, and acquisition of supplies and materials, among other things; and

**WHEREAS**, the County has invoked these powers in its declared states of local emergency and continued them in its extensions of the emergency; and

**WHEREAS**, the Proclamations declaring and extending the local state of emergency authorize the County to issue any necessary orders to protect human life and property in accordance with Chapter 252, *Florida Statutes*, and Section 12-34, *Flagler County Code of Ordinances*; and

**WHEREAS**, such orders when filed with the Clerk of Court have the force of law, and all existing laws, ordinances, and rules which are in conflict are suspended to the extent of such conflict pursuant to Section 252.46(2), *Florida Statutes*.

**NOW THEREFORE**, it is hereby ordered:

**Section 1.** This Emergency Order suspends the effect of any rule, policy, or regulation that would in any way prevent, hinder, or delay the County's urgent need to install a seawall in Painters Hill. This Emergency Order likewise suspends the effect of any rule, policy, or regulation that would in any way prevent, hinder, or delay the

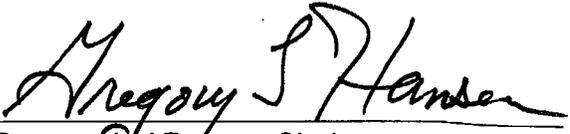
County's urgent need to install an emergency protective berm in unincorporated Flagler County or within municipalities requesting such assistance. The County Administrator, or his designee, is authorized to expedite the procurement of contractors and materials necessary to install the seawall and emergency protective berm. The County Administrator, or his designee, may, to the degree necessary under the exigent circumstances, waive the normal protocols involved in soliciting contractors and purchasing materials in relation to the installation of the seawall and emergency protective berm including, but not limited to, the Flagler County Purchasing Policy and Chapter 287, *Florida Statutes*.

**Section 2.** The County Administrator, or his designee, may waive all statutes and rules affecting budgeting to the extent necessary to cope with the emergency.

**Section 3.** This Emergency Order will take effect upon filing the Clerk of Courts of Flagler County in accordance with Section 252.46(2), *Florida Statutes*.

ORDERED this 24<sup>th</sup> day of January 2018.

**Flagler County Board of County Commissioners**

  
Gregory U. Hansen, Chair

**Concurrence:**

  
Craig Coffey, County Administrator

  
Jonathan Lord, Emergency Management Chief

**Approved As To Form:**

  
Al Hadeed, County Attorney

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
SPECIAL MEETING / AGENDA ITEM # 4**

**SUBJECT:** Consideration of Temporary Easement and Voluntary Assessment Agreement for the Emergency Seawall Project.

**DATE OF MEETING:** January 30, 2018

**OVERVIEW/SUMMARY:** Staff is seeking approval of Temporary Easement and Voluntary Assessment Agreements for the Emergency Seawall Construction Project. Nineteen coastal properties located in the area of Painters Hill suffered extensive erosion as the direct results of Hurricane Matthew, Hurricane Irma, and several Nor'easters, leaving their properties extremely vulnerable to waves, tidal action, and catastrophic structural loss. Constructing a seawall on these properties serves a paramount public purpose in avoiding further erosion and loss of property, preventing contamination of the beach from collapsing debris and structures, and in averting a hazardous condition on public beaches. Due to the ensuing hurricane and sea turtle nesting seasons, the need to install the seawalls is time sensitive.

In order to install the emergency seawalls, the County must enter onto the private properties, thus requiring Temporary Construction Easements with the property owners. The seawalls will be constructed on properties located in two sections, a north and south section, which will be separated by two properties with existing seawalls. Pursuant to the agreements, the County's obligation is limited to installing the emergency seawalls in accordance with the design and the requirements of Department of Environmental Protection permitting. Once installed, each owner will own the emergency seawall, and the County will have no ownership interest in the property or responsibility to maintain the seawall.

The Temporary Construction and Voluntary Assessment Agreements allow the owners to repay the County for the cost of the seawall construction through a special assessment levied over a fifteen-year period. To allow for the assessment, the Board of County Commissioners created the Painters Hill Seawall Special Assessment District at a special meeting on December 20, 2017. Because of the relatively small size of the district and the emergency situation, the Property Appraiser and Tax Collector have waived a 2% fee for administering the district. The County will levy the assessment for the first time in March 2018.

County staff originally intended to bring these Temporary Construction Easements before the Board at the Special Meeting on December 20, 2017, for which the Vice Chair presided. As a result, the signature page of the agreements list the Vice Chair as the signatory for the County.

**FUNDING INFORMATION:** NA

**DEPT./CONTACT/PHONE #:** Administration, Craig Coffey (386) 313-4001

**RECOMMENDATION:** Request the Board approve the Temporary Easement and Voluntary Assessment Agreements for the Emergency Seawall Construction Project and authorize the Vice-Chair to execute the agreements.

**ATTACHMENTS:**

1. Temporary Easement and Voluntary Assessment Agreement Template
2. Maps showing location of properties receiving Seawalls

  
\_\_\_\_\_  
Craig M. Coffey, County Administrator

26 JAN 2018  
\_\_\_\_\_  
Date

**TEMPORARY EASEMENT AND VOLUNTARY  
ASSESSMENT AGREEMENT**

This Temporary Easement and Voluntary Assessment Agreement (hereafter, the "Agreement") is entered into by and between the Flagler County Board of County Commissioners, a political subdivision of the State of Florida, whose address is 1769 East Moody Blvd., Bldg. 2, Bunnell, FL 32110 (hereafter, the "County") and \_\_\_\_\_, the owner of certain real property (hereafter, the "Owner") located at \_\_\_\_\_ Oceanshore Boulevard SR A1A, whose parcel identification number is \_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_ (hereafter, the "Property"). The County and Owner are hereafter collectively, the "Parties."

***WITNESSETH:***

**Whereas**, in October 2016 Hurricane Matthew struck coastal Flagler County, resulting in the eroding of the dunes along the beach, destroying portions of State Road A1A, and causing significant damage to public and private properties; and

**Whereas**, the Owner's Property is located within an area of the County where the beaches were significantly impacted by Hurricane Matthew and which is most at-risk for future catastrophic loss; and

**Whereas**, the Property suffered extensive damage and erosion as a direct result of Hurricane Matthew leaving it extremely vulnerable to waves and tidal action; and

**Whereas**, the damaged dune system of the entire coast line of the County, including the precarious situation of the Owner's Property and that of Owner's neighbors, is the primary reason the County continues to declare a State of Local Emergency to this date; and

**Whereas**, due to the variable and unpredictable nature of the ocean and the storms it brings, coupled with the pending hurricane and sea turtle nesting seasons, the need to protect the Property and County beaches is extremely urgent; and

**Whereas**, the Parties desire to construct a seawall on the Property to mitigate against further loss of land and structures on the Property as well as on the County's beaches (the "Seawall"); and

**Whereas**, constructing the Seawall serves a paramount public purpose in avoiding further erosion and loss of property, in preventing contamination of the beach from collapsing debris and structures, and in averting a hazardous condition on public beaches; and

**Whereas**, because the beaches of the County are a primary attraction for tourists and residents and a prime generator of economic activity, the stabilization of the dunes and beaches as a result of the installation of the Seawall will have a direct, beneficial impact on the local economy; and

**Whereas**, the public will additionally realize the benefit of higher property values and a stronger tax base with the protection of the Seawall; and

**Whereas**, the Parties desire to jointly work together in providing for the financing and the design, construction and inspection of the Seawall pursuant to the terms of this Agreement.

**NOW THEREFORE**, for the mutual covenants herein granted, the parties agree as follows:

1. FINDINGS. The above recitals are true and correct and are incorporated as if set out fully herein.

2. PURPOSE. The Parties are entering into this Agreement to set forth each party's rights and obligations related to the financing, design, construction, and inspection of the Seawall.

3. SEAWALL PROJECT.

a. County's Responsibilities. The County agrees to:

- i. Obtain all local, state, and federal permits for the Seawall and be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Owner for any loss incurred in connection therewith.
- ii. Construct/Complete the Seawall in accordance with any permit(s).
- iii. Certify in writing that the County completed the installation of the Seawall in accordance with the plans and specifications as designed by the County's Engineer of Record.
- iv. County's liability shall be limited to installing the Seawall according to the design and specifications of the County's Engineer of Record. County shall not be liable for any negligent design or any negligent maintenance by Owner subsequent to the transfer of ownership of the Seawall to the Owner.

- v. Levy a voluntary non-ad valorem special assessment on the Property, pursuant to section 197.3632, Florida Statutes, to finance the construction and inspection of the Seawall.
- vi. Apportion the cost of the Seawall among the benefitted properties on a linear foot basis or another methodology as determined by the County, which is fair and reasonable.

b. Owner's Responsibilities. The Owner agrees to:

- i. Grant to County, including but not limited to its employees, agents or entities who are acting under a contract with the County, the right to enter upon the Property and perform such functions and activities as provided herein.
- ii. Upon completion, to accept ownership of the Seawall and to be solely responsible for the cost of repairing, maintaining or replacing any future facilities placed upon the Easement Property.
- iii. Be responsible for maintaining the Seawall upon transfer of ownership of the Seawall to the Owner in the condition required by the permit(s) issued by the regulatory agencies.
- iv. Make all repairs to the Seawall in accordance with any permits and/or applicable laws, rules, regulations and ordinances of the appropriate federal, state, and local governments.
- v. Be responsible for obtaining any additional permits or other applicable regulatory authorizations necessary to affect those repairs required to maintain the Seawall.
- vi. To voluntarily accept the imposition of a non-ad valorem special assessment pursuant to section 197.3632, Florida Statutes, to finance the final design, construction, and inspection of the Seawall on the Property.

4. GRANT OF TEMPORARY EASEMENT. The Owner hereby grants, and the County accepts, a temporary, non-exclusive easement for the benefit of the County, its employees, agents, successors and assigns (including those parties that have entered into a contract with the County to provide the Project contained herein), over, under, upon and across the Property of the Owner (or a lesser portion of the Property as necessary to install the Project) on land situated in Flagler County, Florida and being further described as set forth in Exhibit A attached hereto (the "Easement Property"), for the purpose of designing, constructing and inspecting the Seawall.

5. **TERMS AND CONDITIONS OF TEMPORARY EASEMENT.** The temporary easement being granted by the Owner is for the installation of a Seawall, including its survey, design, permitting, construction, and inspection. Accordingly, the temporary easement granted to the County by the Owners pursuant to this Agreement shall be released, vacated, and automatically terminated without further action by the parties upon the consequential occurrence of the following events:

- a. Completion of construction of the Seawall as evidenced by the delivery of as-built drawings from the County to the Owner.
- b. Delivery by the County to the Owner of a Certificate of Completion. The Certificate of Completion shall:
  - i. Certify that the Seawall has been completed in accordance with the design and specifications by the Engineer of Record;
  - ii. Include final approval of the construction by FDEP; and
  - iii. Indicate that the Temporary Easement is terminated, released, and vacated.

Upon the occurrence of both (a) and (b) above, undivided fee simple ownership of the Seawall shall be vested in the Owner thereby negating any easement granted to the County, and the County shall have no further property interest whatsoever in the Seawall or the Property.

6. **SEAWALL CONSTRUCTION.** The construction of the Seawall shall be in accordance with the design plans/ specifications attached hereto as Exhibit B and in accordance with any terms and conditions of the FDEP permit issued for construction on the property based on the attached plans and specifications. The Owner understands and approves the proposed design plans/specifications and hereby authorizes the County to construct the Seawall per these plans, specifications, and permits.

Seawall construction costs shall include but shall not be limited to: all costs related to the Seawall including but not limited to final design and permit costs, seawall caps, anchoring, pilings, and the proportionate share of any seawall returns for termination or stability shared among all other participating owners. Additionally, seawall construction costs will include any backfill, sand in front of the seawall and planting on the backfill or sand, surveying for construction, "as built" surveys, construction inspection, and management, any financial procurement and finance costs, and engineer certifications, plus all labor and all other costs associated with the Seawall construction.

7. **HARMONIOUS USE BY OWNER.** The Owner reserves unto himself the right and privilege to use the Easement Property for any purpose consistent with and subservient to the County's use or enjoyment thereof, including the right to use portions of the

Easement Property for access to Owner's property adjacent to the Easement Property, so long as such access otherwise complies with any postings of the County's contractor and applicable governmental regulations.

8. **VOLUNTARY ASSESSMENT.** The Owner agrees to participate in the financing of the Seawall Project to the extent of their pro-rata share. The Owner hereby consents to the County levying a non-ad valorem special assessment on the Property and to use the uniform method of collecting non-ad valorem special assessments for the collection of the assessment against the Property. The non-ad valorem assessment shall be for the cost of providing final design, all construction and inspection of the Seawall on Owner's Property (the "Assessment") as described in Paragraph 6.

- a. Acknowledgments by Owner. The Owner acknowledges that construction of the Seawall will provide a special benefit to the Property and that payment of the Assessment on the tax bill provides an additional special benefit by allowing the Owner the ability to finance the Seawall over a term of up to fifteen (15) years and have the Assessment remain with the Property in the event of sale of the Property. The Owner acknowledges that all terms of this Agreement are fair and reasonable in relation to the special benefits thus described. The Owner acknowledges and agrees that the cost of the Seawall is equal to or less than the benefits to be received by the Owner.
- b. Enabling Ordinance and Resolution. The Parties agree to approve, support, and keep in effect such resolutions and ordinances necessary to approve the Assessment.
- c. Assessment Amount. The total project cost is expected to be approximately \$800 to \$1,250 per lineal foot along the ocean. (\$1,250 shall be the maximum assessment per linear foot of ocean property frontage.) There are approximately 19 participants in the Voluntary Assessment Program, the exact number of which is not known as of this time. The Seawall project costs will be paid with annual assessments over a fifteen (15) year period and will be established based on the cost in Paragraph 6.
- d. Payment of Assessment/Default. The Owner hereby freely and willingly agrees to pay the Assessment pursuant to the terms of this Agreement and acknowledges that the failure to pay the Assessment will cause a tax certificate to be issued against the Property, which may result in a loss of title in accordance with Section 197.3632, Fla. Stat.

9. **TERM.** The term of this Agreement shall commence when the last party hereto executes this Agreement and shall terminate upon full satisfaction of all Assessment payments by Owner.

10. **VOLUNTARY ASSESSMENT DISTRICT, CONSENT, AND TIMING OF ASSESSMENTS.** Each owner entering into this Agreement will be included as part of the voluntary assessment seawall district and will be obligated to pay the cost of constructing the Seawall through an annual special assessment. The district will be created by the County prior to December of 2017 and the annual assessment will be on the FY 2018/19 tax bills that will be sent out in October 2018. The district will be established for 15 years and will include a maximum annual assessment that will be established as part of the district. The amount owed shall be established per lot and may be paid off at any time. This Agreement shall serve as prima face evidence of the Owner's concurrence with the voluntary assessment seawall district.

11. **POWER OF ATTORNEY FOR INSTALLATION OF SEAWALL.** By signature herein, the Owner hereby grants the County the power of attorney to enter into permits, contracts, financing and other legal documents necessary to carry out the construction of the Seawall. The Owner warrants that it is empowered to bind the Property to the terms of this Agreement and it is acting on behalf of any individual or entity that has an interest in the Property and will hold the County harmless from any other individual or entity that claims an interest in the Property in the performance of this Agreement.

12. **PUBLIC RECORDS.** The Owner acknowledges and agrees that this Agreement and any other documentation connected herewith, including correspondence and emails with the County, are public records by law subject to public inspection pursuant to Chapter 119, Florida Statutes.

13. **FURTHER DOCUMENTATION.** The Owner agrees that at any time following a request by the County, the Owner shall execute and deliver to the County such further documents and instruments in form and substance reasonably necessary to confirm and/or effectuate the obligations of the Owner hereunder and to consummate the design and construction of the Seawall as contemplated herein.

14. **GOVERNING LAW AND VENUE.** The exclusive jurisdiction and venue for any action to interpret and/or enforce the terms of this Agreement shall be in the Seventh Judicial Circuit in and for Flagler County, Flagler. In the event of a dispute, this Agreement shall be interpreted under Florida Law except its conflict of laws provisions.

15. **JOINT AUTHORSHIP.** This Agreement was developed in public workshops and numerous meetings with property owners and shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

16. **SEVERABILITY.** All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that, if any part, term or provision

of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

17. **WAIVER.** Failure of the Parties to insist upon strict performance of any of the covenants, terms, provisions or conditions of this Agreement, or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, condition or right of election, but the same shall remain in full force and effect.

18. **NOTICE.** The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the County and the Owner. All notices required and/or made pursuant to this Agreement to be given to the County and the Owner shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, to the following addresses of record:

<b>Owner:</b>	<b>County:</b>
Name: _____	Flagler County
Address: _____ _____ _____	ATTN: Craig Coffey, County Administrator 1769 East Moody Blvd., Bldg. 2 Bunnell, FL 32110
Phone: _____	Phone: 386.313.4001
Email: _____	Email: ccoffey@flaglercounty.org

19. **ENTIRE AGREEMENT.** This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings; written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or affect whatsoever on this Agreement.

20. **BINDING ON SUCCESSORS.** This Agreement shall be binding not only upon the Parties but also upon their respective heirs, legal representatives, assigns and other successors in interest.

21. **COVENANTS RUNNING WITH THE LAND.** All of the covenants, terms, agreements and restrictions set forth in this Agreement are intended to be, and are construed as, covenants running with the land, and shall be binding upon, and inure to the benefit of the County and Owner, and their respective successors in interest, devisees, grantees, heirs, personal representatives and assigns.

22. **REPRESENTATIONS AND WARRANTIES.** Owner is authorized to enter into this Agreement and has secured any approvals necessary to enter into this Agreement. By





**Witness**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Owner**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Witness**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ Day of \_\_\_\_\_, 2017, by \_\_\_\_\_, who is personally known to me or who has produced a driver's license as identification.

SEAL:

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

EXHIBIT A  
EASEMENT PROPERTY DESCRIPTION

EXHIBIT B  
SEAWALL/BEACH PROFILE



**SEAWALL SECTIONS**

**NORTH**

EXISTING SEAWALL 1

EXISTING SEAWALL 2

**SOUTH**



**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
CONSENT / AGENDA ITEM # 5**

**SUBJECT:** Consideration of Bid Award and Construction Contract to Custom Built Marine Construction, Inc. for Construction of Seawall in Painters Hill for Bid #18 – 006B.

**DATE OF MEETING:** January 30, 2018

**OVERVIEW/SUMMARY:** An Invitation to Bid (ITB) was advertised in the *Flagler News Tribune* as well as publicly broadcast on [www.publicpurchase.com](http://www.publicpurchase.com). ITB 18-006B requested bids from qualified firms furnishing all labor, materials, equipment and supervision for the construction of Painters Hill Seawall and other associated improvements.

This document asked contractors to bid on seawall construction and corresponding as-builts. The County initially received two (2) responses, as summarized on the attached original bid tabulation sheet (Attachment 1). After the responses were reviewed for conformity as outlined in the bid documents and using a supplemental addendum, the contractors were asked to resubmit their bids according to the clarified bid specifications, with the results summarized on the attached revised bid tabulation sheet (Attachment 2). Additional costs the County will incur are CEI (Construction Engineering Inspection) services and additional backfill which are in the overall budget.

At the December 20, 2017 special meeting, the Board created the Painters Hill Seawall Special Assessment District, which will allow the affected property owners to repay the County the cost of installing the seawall over a 15-year period. Because of the relatively small size of the district and due to the emergency situation, the Property Appraiser and Tax Collector have waived a 2% fee for administering the district. The seawall will run for twenty-one (21) consecutive lots, two (2) of which have existing seawalls and will not be assessed. Each of the property owners have signed a Temporary Easement and Voluntary Assessment Agreement, which allows the County access onto their properties to install the seawall. Once the seawall is completed, the property owners will own their respective portions and be responsible for the upkeep and maintenance. The County's responsibility is limited to installing the seawall in accordance with the design and the associated Florida Department of Environmental Protection permit. Per the assessment agreements, the assessments are capped at \$1,250 per lineal front foot for construction.

The seawall will serve a paramount public purpose in protecting homes in Painters Hill, as well as the beach itself from collapsing structures. The need to install the seawall is one of the reasons the County has remained in a declared state of local emergency since the Hurricane Matthew event in October 2016. The state of local emergency authorizes the County to waive, to the extent necessary under the circumstances, the rules and protocols for procurement and contracting that would otherwise be required. Additionally, the County issued Emergency Order 2018-01 on January 24, 2018, explicitly authorizing County staff to expedite procurement of materials and services relative to the seawall particularly in light of the impending hurricane and sea turtle nesting seasons.

**FUNDING INFORMATION:** Funding will be provided through a bank note securing the special assessments. The bank note and special assessments will come to the board at a future meeting for approval expected to be no later than March 2018. The ½ Cent Discretionary Sales Tax Funds will be used to appropriate this project from reserves until the special assessment fund is created and loan proceeds are deposited. Any expenditures from made from the ½ Cent Discretionary Sales Tax Fund will be repaid from the loan proceeds when received.

**DEPT./CONTACT/PHONE #:** Engineering, Faith Alkhatib, 313-4006

**RECOMMENDATIONS:** Request the Board approve Bid Award 18-006B to Custom Built Marine Construction, Inc. for the Painters Hill Seawall Project; authorize the Chair to execute a contract as approved as to form by the County Attorney and approved by the County Administrator; authorize County Administrator to execute a budget transfer from reserves; and authorize the County Administrator to execute any change orders or other project related documents up to \$1,550,000 for the project.

**ATTACHMENTS:**

1. Original Bid Tabulation
2. Revised Bid Tabulation



\_\_\_\_\_  
Craig M. Coffey, County Administrator



\_\_\_\_\_  
Date

ATTACHMENT 1



**FLAGLER COUNTY, FLORIDA  
BID TABULATION SHEET**

ALL BIDS ACCEPTED BY FLAGLER COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS MAY BE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. RESPONSES FROM THE BIDDERS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BIDS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

**BID NUMBER:** 18-006B  
**BID TITLE:** Flagler Seawall At Painters Hill  
**OPENING DATE/TIME:** Wednesday, December 6, 2017, 3:00PM

	<b>Response 1</b>	<b>Response 2</b>
	S.E. Cline Construction, Inc. 18 Utility Dr Palm Coast, FL 32137	Custom Built Marine Construction, Inc 1450 Bell Ave, STE 400 Fort Pierce, FL 34982
<b>Base Bid Total</b>	\$ 1,130,008.80	\$ 1,101,600.00
<b>Alternate Bid Total</b>	\$ 528,388.05	\$ 529,250.00
<b>Total - Base and Alternate Bid</b>	\$ 1,658,396.85	\$ 1,630,850.00

Opened and tabulated by: Irene M Lopez, Procurement Analyst  
Kris Collora, Purchasing Manager



## FLAGLER COUNTY, FLORIDA BID TABULATION SHEET

ALL BIDS ACCEPTED BY FLAGLER COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS MAY BE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. RESPONSES FROM THE BIDDERS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BIDS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

**BID NUMBER:** 18-006B  
**BID TITLE:** Flagler Seawall At Painters Hill  
**OPENING DATE/TIME:** Monday, January 22, 2018, 12:00PM

	Response 1	Response 2
	S.E. Cline Construction, Inc. 18 Utility Dr Palm Coast, FL 32137	Custom Built Marine Construction, Inc 1450 Bell Ave, STE 400 Fort Pierce, FL 34982
<b>SUBTOTAL ITEM A- SEAWALL</b>	\$ 1,555,149.63	\$ 1,285,250.00
<b>SUBTOTAL ITEM B- AS-BUILTS</b>	\$ 26,000.00	\$ 20,000.00
<b>GRAND TOTAL (ITEMS A THROUGH B)</b>	\$ 1,581,149.63	\$ 1,305,250.00

Opened and tabulated by: Irene M Lopez, Procurement Analyst  
Kris Collora, Purchasing Manager