

Memorandum



Date: March 24, 2026

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

Agenda Item No. 2(B)(7)
April 21, 2026

From: Daniella Levine Cava *Daniella Levine Cava*
Mayor

Subject: Feasibility Study Regarding the County's Establishment of a Mobile Pumpout Vessel Service - Directive No. 241767

Executive Summary

On December 3, 2024, the Board of County Commissioners (Board) approved Resolution No. R-1095-24, sponsored by former Commissioner Kevin Cabrera and co-sponsored by Commissioner Micky Steinberg, directing the County Mayor or County Mayor's designee to conduct a feasibility study regarding the County's establishment of a mobile pumpout vessel service. Resolution No. R-1095 requires that the study consider, at a minimum, the following factors: the fiscal impact of such a service, both to establish it and to continue operating it; the possibility of obtaining funding for, or management of, the service from the Florida Department of Environmental Protection (FDEP) pursuant to a Clean Vessel Act (CVA) grant or other grant or agreement; in the event of any partnership with FDEP, the respective roles the County and FDEP should play in such a partnership; the integration of such a service with pumpout facilities currently existing at County-owned or -operated marinas or at other public or private marinas; the eligibility criteria for users to receive pumpout services; whether the service should be provided free of charge and, if not, what the cost to users should be; whether the County should adopt proof-of-pumpout regulations under section 327.60, Florida Statutes; and whether the County should pursue designation of all or part of Biscayne Bay or any other County waters as a no-discharge zone, including whether the County should (1) urge the State of Florida to apply to the United States Environmental Protection Agency (EPA) for approval of a no-discharge zone determination for the Biscayne Bay Aquatic Preserve, and (2) further urge the EPA to grant such an application once it is received. The Department of Regulatory and Economic Resources (RER), Department of Environmental Resources Management (DERM), and Department of Parks, Recreation, and Open Spaces (PROS) have provided input regarding the establishment of a mobile pumpout vessel service for the County in this report.

Should the County offer a mobile pumpout vessel service, this may help encourage vessel pumpouts near high-traffic recreational boating areas, supplement access where pumpout service may be limited or not available at certain facilities, and open eligibility criteria to a wider range of boaters. Further in-depth analysis of regulatory requirements and fiscal impact is needed to determine the feasibility of implementing such a program at existing County-owned or operated marinas. Two options are proposed for operation of the mobile pumpout vessel service, which includes the County contracting out the service in partnership with FDEP oversight, or the County directly implementing the service. However, both options present budgetary limitations due to current lack of funding, with the CVA grant typically only covering up to 75% of the project costs, with the remaining 25% to be covered by the County. Additionally, in order to ensure adherence to the rules and regulations, avoid confusion by boaters, and implement successful enforcement, careful consideration should be made when

determining eligibility criteria, adopting proof of pumpout regulations, and designating Biscayne Bay or other County waters as a no-discharge zone.

Background

State Regulations

Boating is a popular recreational and commercial activity in Miami-Dade County for both transient and local boaters. Boaters may anchor out for extended periods of time and some boaters live on their vessels; thus, many boats have toilets and marine sanitation devices on board. Section 327.53 of the Florida Statutes prohibits the discharge of raw sewage from any vessel or floating structure in Florida waters and outlines the marine sanitation requirements for vessels located on waters of the state. These requirements are as follows:

327.53 Marine sanitation.—

- (1) Every vessel 26 feet or more in length which has an enclosed cabin with berthing facilities shall, while on the waters of the state, be equipped with a toilet. On a vessel other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (2) Every houseboat shall be equipped with at least one permanently installed toilet which shall be properly connected to a United States Coast Guard certified or labeled Type III marine sanitation device. If the toilet is simultaneously connected to both a Type III marine sanitation device and to another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the Type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator, so as to prevent resetting.
- (3) Every floating structure that has an enclosed living space with berthing facilities, or working space with public access, must be equipped with a permanently installed toilet properly connected to a Type III marine sanitation device or permanently attached via plumbing to shoreside sewage disposal. No structure shall be plumbed so as to permit the discharge of sewage into the waters of the state.
- (4)(a) Raw sewage shall not be discharged from any vessel, including houseboats, or any floating structure in Florida waters. The operator of any vessel which is plumbed so that a toilet may be flushed directly into the water or so that a holding tank may be emptied into the water shall, while the vessel is on the waters of the state, set the valve or other mechanism directing the sewage so as to prevent direct discharge and lock or otherwise secure the valve so as to prevent resetting.
- (b) All waste from Type III marine sanitation devices shall be disposed in an approved sewage pumpout facility.
- (c) All waste from portable toilets shall be disposed in an approved waste reception facility.
- (5) Every vessel owner, operator, and occupant shall comply with United States Coast Guard regulations pertaining to marine sanitation devices and with United States Environmental Protection Agency regulations pertaining to areas in which the discharge of sewage, treated or untreated, is prohibited.

(6)(a) A violation of this section is a non-criminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

Local Regulations

Marine facilities, such as marinas, often provide boaters with pumpout facilities where boaters can safely pump the sewage out of their boats for proper disposal. By implementing local regulatory oversight, Miami-Dade County currently requires a pumpout service (portable or permanent) for vessels under the [Marine Facilities Annual Operating Permit \(MOP\) program](#), in accordance with an associated Class I permit condition. A marine facility with 20 or more slips is required to have a portable pumpout cart, while a facility with 50 or more slips requires both a portable and a permanent pumpout system. Solely using slip count for pumpout service determination does not account for marinas with a low number of slips that serve large yachts or ships. Utilizing slip numbers as the basis of the requirement also does not account for the general use of the marina (i.e. public vs. private) or the type of boat typically hosted. The MOP program has made allowances for marinas with multiple dockside connections able to serve the entire site (or large majority) from not requiring a separate portable pumpout cart, since this substantially constitutes both portable and permanent pumpout service. However, in those instances there is no back up if the system is down. All Miami-Dade County operated marinas have a permanent sewage pumpout service with a designated slip for use. It has been noted that the majority of MOP permitted facilities that are required to only have a portable pumpout system (i.e. small to medium-sized condominium marinas) do not often utilize their pumpout system, due to having smaller boats without waste tanks and low use (i.e. few boats).

Currently, there are no regulatory requirements for pumpout service, for example: size of tank, capacity/flow rate of system, number of hook-ups, etc., so long as the equipment is marine rated and adequate for actual use at a particular facility. Eligibility to receive pumpout service is generally at the discretion of the individual facility. In the interest of preventing illegal dumping and encouraging proper disposal, all vessels on site should be eligible for pumpout service if needed, whether it be by portable unit, designated slip with permanent connection, dock-side connections throughout docks/slips, or a combination thereof.

Grant Programs

The FDEP administers the CVA Grant Program, which offers financial assistance to marina owners and operators for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities. This initiative aims to enhance water quality by providing recreational boaters with accessible means to dispose of sewage. Marina owners and operators in Florida are eligible to apply for CVA grants by completing the CVA Pumpout Grant Application available on the FDEP website. Additional documentation required with the application includes obtaining quotes for any equipment purchases or services exceeding \$2,500, registering as a vendor through My Florida Market Place, and gathering necessary permits and forms. Upon approval by FDEP, a grant agreement would be executed. No work can commence before the agreement is in place and any costs incurred prior to the agreement's execution would not be reimbursed. After the agreement is executed, the

project can proceed as outlined in the application. The grantee can be reimbursed by submitting documentation of expenses incurred during the project for reimbursement. The CVA grant typically covers up to 75% of the project costs, with the remaining 25% to be covered by the grantee.

There may be other funding options to offset costs associated with establishing and operating this type of service, such as the Florida Boating Improvement Program (FBIP) and the Boating Infrastructure Grant Program through the Fish and Wildlife Conservation Commission (FWCC), which provides funding through competitive grants for boating access projects and other boating-related activities benefiting motorized vessels in Florida. The Florida Inland Navigation District (FIND) may also offer funds to help offset costs through the Waterways Assistance Program (WAP) Grant authorized under Section 374.976 of the Florida Statutes and governed by Chapter 66B-2 of the Florida Administrative Code, which provides funding to local governmental agencies for eligible projects serving public boat ramps and launching facilities.

Case Studies

In order to provide further insight into the operation of such a program, RER and DERM have reviewed other local government models for implementing a mobile pump out vessel service: Monroe County, City of Marathon, and City of Miami. Monroe County's pumpout service has evolved through multiple iterations since its inception in 2004. Preliminarily, Monroe County directly implemented the service and limited the service to the Upper Keys from 2004-2009 (Attachment A). Monroe County faced challenges with the effectiveness and success of their vessel pumpout program, such as fuel costs, repairs and maintenance, dockage, sewage offloading, and weather. Additionally, the vast size of the coverage area posed a logistical issue for the program. These challenges, along with difficulty hiring and retaining staff for the program, led to Monroe County adopting a contractor-provided service in 2010, funded through a partnership between the County, CVA, and legislative allocations. Currently, FDEP oversees the contracted service, which remains funded in partnership with Monroe County, CVA, and legislative allocations (Attachments B and C).

The City of Marathon directly implements their vessel pumpout program, operating two vessels which service 226 moorings and one anchorage. They cite multiple benefits to directly implementing the program versus the contractor model, including providing education to boaters, alerting law enforcement to possible violations, and preventing at-risk vessels from becoming derelict. Similarly, the City of Miami directly operates a mobile pumpout vessel service at Dinner Key Marina and Watson Island Mooring Field, free of charge. The City of Miami's service operates two days per week (Tuesdays and Thursdays) by appointment, whereby vessel owners call the dockmasters to schedule a mobile pumpout. The City of Miami is currently planning on adding a third pumpout vessel to cover the planned Marine Stadium Mooring Field. The cities receive funding via the CVA Grant Program which covers 75% of eligible operational costs and can be applied for annually.

Recommendations

Feasibility of Integration at County Marinas, Funding and Fiscal Impact

RER, DERM, and PROS have discussed the feasibility of integrating a mobile pumpout vessel service with pumpout facilities currently existing at County-owned or operated marinas. Should the County offer a mobile pumpout vessel service, this may help encourage vessel pumpouts near high-traffic recreational boating areas, supplement access where pumpout service may be limited or not available at certain facilities, and open eligibility criteria to a wider range of boaters. As mentioned above, it was determined there are two options for implementation of a County mobile pumpout vessel service, either by contracting out the service to a local vendor or directly implementing the program. However, both options are currently unfunded.

One option is for the County to contract the service in partnership with FDEP oversight. This recommendation is in part based on a review of Monroe County's mobile pumpout vessel service program, where ultimately, Monroe County determined that contracting the service was the most sustainable approach. Further fiscal analysis can be performed similar to Monroe County's model, where there is a maximum annual funding limit included in the contract, estimated by the number of vessels anchored at pre-determined service locations and the contractor is paid a fixed price per pumpout. For example, Monroe County's annual contract maximum is \$1M, and price per pumpout ranges from \$53.50 to \$72.50 depending on the service area location. Along with applying for the CVA Pumpout Grant through FDEP, RER, DERM, and PROS could work with the Strategic Procurement Department (SPD) to solicit proposals for implementation of a mobile pumpout vessel service by a vendor in Miami-Dade County. This option could be beneficial since this type of service is outside the scope of current department operations and limitations attributable to staffing and budgetary constraints. DERM has contacted FDEP's Clean Boating Program to request further guidance on the process and the respective roles the County and FDEP would play in such a partnership if the service was contracted.

Alternatively, the County could directly implement the mobile pumpout vessel program, including the potential to integrate the service into the existing CVA Marinas program. The fiscal impact of this option would also require additional review. As previously mentioned, the County would be required to participate at 25% of cost for the program. Total program costs include purchase of a specialized pumpout vessel(s), staffing, and operating and maintenance costs. Directly implementing the program provides County staff with additional opportunities to engage and educate boaters as a core activity at County owned and operated marinas. This approach also leverages existing boater education activities including DERM's Boater Education Grant from the U.S. Environmental Protection Agency (EPA), as well as the Mayor's recently convened, Boater Safety and Biscayne Bay Education Task Force.

Eligibility Criteria and User Cost

Upon implementation of a mobile pumpout vessel service, it is recommended the County utilize eligibility criteria for users to receive pumpout services to help incentivize compliance with state and local rules and regulations. For example, eligibility could include having a valid license, registration, and being current on any marina fees owed. One recommended exception is to waive this eligibility

criteria for at-risk and derelict vessels, as it is in the County's best interest to have these vessels pumped out for the protection of public health and the marine environment. RER and DERM also recommend the pumpout service be free of charge to users, subject to the established eligibility criteria. The success of the mobile pump out vessel service relies upon it being convenient and not cost prohibitive to boaters. Therefore, should fees be charged, it is recommended that the cost be no more than \$5-\$10 per vessel. Based on this recommended fee, these revenues are expected to be nominal and it is unlikely that the program could be self-sufficient.

Proof-of-Pumpout Regulations

It is also recommended that the County adopt proof-of-pumpout regulations under section 327.60, Florida Statutes (F.S.), following the establishment of the mobile pumpout vessel service. Section 327.60 F.S. states in part: "Before a local government may adopt an ordinance to enact and enforce such regulations, the local government must ensure that there are approved sewage pumpout services, approved sewage pumpout facilities, or approved waste reception facilities available within its jurisdiction." Requiring proof-of-pumpout will encourage and facilitate use of the county's mobile pumpout vessel service, while also aiming to protect the marine environment from discharges by polluters. Proof of pumpout can be provided via receipt in paper or digital format. For example, proof of pumpout could be required for a predetermined timeframe via receipt at the request of any marine patrol officer. RER and DERM also recommend standardizing the use of eco-friendly dye tab flushing when marine law enforcement or marina staff board a vessel to check for proof-of-pumpout, to determine if the sewage holding tank is in good working condition. This practice, along with proof-of-pump out regulations, can help keep Biscayne Bay healthy and safe for recreational users and protect the ecosystem. Proper enforcement of these rules and regulations will be essential to its success. Implementing warning notices and/or fines to those who fail to provide proof of pumpout or fail dye testing, will act as a deterrent. Although, it should be noted this year the Florida Legislature enrolled bill SB 1388, the "Boater Freedom Act" signed into law by the Governor with an effective date of July 1, 2025, which hinders marine law enforcement's ability to stop or board a vessel for the sole purpose of making a marine sanitation equipment inspection. This essentially limits enforcement of proof of pumpout regulations.

Outreach and Education

Implementing a new mobile pumpout vessel service should include sufficient education and outreach to the boating community to spread awareness of the service. The FDEP CVA Grant Program, in partnership with the Florida Sea Grant (a university-based program supporting research and education serving Florida's coasts), developed an initiative for the "Pumpout Nav" mobile application. Florida boaters can now access this app for free, to locate over 250 publicly available pumpouts, portable toilet dump stations, and mobile pumpout vessels throughout the state. "Pumpout Nav" helps boaters find the amenities they need and helps marinas promote their services. Boaters can use the app to not only locate pumpout services, but also keep a log of their pumpouts, learn their holding tank capacity to avoid emergency pumpouts, and report broken pumpout stations. Upon Miami-Dade County's establishment of a mobile pumpout vessel service, it could be added to the "Pumpout Nav" mobile app to facilitate awareness and advertise use of the new service.

No-Discharge Zone Designation

Lastly, DERM recommends the County pursue designation of all of Biscayne Bay and other County waters as a no-discharge zone (NDZ). An NDZ is an area in which both treated and untreated sewage discharges from vessels are prohibited. Within NDZ boundaries, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility. In order to ensure adherence to the rules and regulations, avoid confusion by boaters, and implement successful enforcement, all of Biscayne Bay should be designated as a no-discharge zone, including jurisdictions of the Biscayne Bay Aquatic Preserves and Biscayne National Park, if possible. Therefore, it is also recommended that the County urge the State of Florida to apply to the EPA for approval of Biscayne Bay as a no-discharge zone determination and further urge the EPA to grant such an application once it is received.

In accordance with Ordinance No. 14-65, this report will be placed on the next available Board meeting agenda. If additional information is needed, please contact Loren Parra, Director, Department of Environmental Resources Management, at Loren.Parra@miamidade.gov or at 305-372-6754.

Attachments:

Attachment A – Report by Monroe County Establishing a Mobile Pumpout Vessel Service

Attachment B – Comprehensive Overview of Monroe County’s Pumpout Program

Attachment C – Contract managed by FDEP for Monroe County’s Pumpout Services

- c:
- Geri Bonzon-Keenan, County Attorney
 - Jess McCarty, First Assistant County Attorney
 - Office of the Mayor Senior Staff
 - Lourdes M. Gomez, Director, Department of Regulatory and Economic Resources
 - Loren Parra, Director, Department of Environmental Resources Management
 - Christina White, Director, Parks, Recreation, and Open Spaces Department
 - Yinka Majekodunmi, Commission Auditor
 - Basia Pruna, Director, Clerk of the Board
 - Eugene Love, Agenda Coordinator
 - Office of Policy and Budgetary Affairs

Attachment A

Overview of the Current Pumpout Vessel Program and the Efficacy of Expanding the Program

Historical Overview:

In the spring of 2004 the Marine Resources Department was invited to a meeting of the Sheriffs Department Citizens Advisory Council (Sector 7 Zone 1) to hear discussion of the need for a sewage pumpout vessel to serve anchor-outs in the Key Largo area. It was suggested that liveaboard vessels at anchorages on both the bayside and oceanside of Key Largo were pumping sewage directly into the water. Few shoreside pumpout facilities were available at the time, and the federal No Discharge Zone had been recently established.

On April 7, 2004 the Marine and Port Advisory Committee (MPAC) listened to a presentation by Sgt. Lou Caputo (representing the Citizens Advisory Council) regarding the need for a pumpout boat in Key Largo. The MPAC responded with a recommendation to the Board for the development of a pumpout program for the Key Largo area. Subsequently the Board of County Commissioners (BOCC) at its September 2004 regular meeting approved the budget for a staff position for a pumpout vessel operator. At its December 2004 meeting the BOCC approved a CVA grant contract for purchasing a pumpout vessel. And, at its August 2005 meeting the BOCC approved the purchase of a 27' pumpout vessel to be used in the Key Largo area.

A pumpout captain was hired in September of 2005 and the pumpout program began. Immediate issues with the program (logistical in nature) were faced, including: where to dock the pumpout boat, where to off-load sewage, how to effectively cover a large geographic range (30 miles on both sides of the island), how to fund maintenance and fuel costs, etc.

Arrangements were made with the state (FWC) providing dockage for the new pumpout vessel at the old Estes Fish Camp on Windley Key, seven miles south of Key Largo. While this arrangement was financially attractive, this placed the vessel well south of the southern end of its operational area. No arrangements could be approved for fueling the vessel other than using the County fuel station at the Plantation Key office. This arrangement required the pumpout vessel operator to transport (by truck) fuel cans back and forth from the fueling station to Estes Fish Camp several times a week costing staff time, in addition to the potential safety hazard created. And while the vessel was purchased with a grant, operational and maintenance costs came out of the Growth Management Budget. Arrangements were made with Mangrove Marina, located on the bayside of Key Largo, to receive the collected sewage from the pumpout vessel. In return the County agreed to pay the sewage truck costs for all the vessel sewage collected at the marina, further increasing the cost of sewage disposal.

The program functioned somewhat successfully for a year and a half. However, the logistical issues of fueling and docking in one location, while attempting to service vessels throughout a thirty mile range both bayside and oceanside, limited the effectiveness of the program. Offloading of sewage at one site on the bayside of Key Largo drastically restricted the pumpout vessel, as it had to return to Mangrove Marina continuously to offload sewage before servicing additional vessels. And as word of the pumpout vessel spread, clientele of the program began to shift from anchor-outs to liveaboards at marinas which had no pumpout facilities. Also, since the vessel was typically docked overnight on the bayside of Windley Key, liveaboards proximate

to that location began requesting pumpout service. Soon the pumpout program extended beyond the Key Largo area, well into the Village of Islamorada. And while no direction was provided by the Board to do so, the program expanded south to Robbies Marina at the north end of Lower Matecumbe, further stretching the capabilities of the program and increasing logistical issues.

In 2007 staff changes hampered the pumpout program. In February '07 the pumpout captain resigned. In March '07 that person was rehired, but resigned shortly after in July 2007. The pumpout vessel was out of service for several months while the position was vacant. During that time, Marine Resources staff evaluated the condition of the vessel, trailer, and pumpout equipment in preparation for putting the vessel back in service. The vessel had been left in poor condition- the sewage pump was seized up, trailer wheels were seized up, and the vessel was in general disarray. The Marine Resources Office began servicing the vessel, trailer and pump while waiting to fill the vacant position.

In November of 2007 a new pumpout captain was hired who spent several weeks continuing with the servicing of the boat engine and sewage pump until all systems were operating properly. The captain was then trained on the use of the vessel and equipment with the help of staff at the City of Marathon Marina. In the meantime logistical issues were once again addressed in attempt to improve on the various elements of the pumpout program (e.g. dockage, fueling, sewage offloading and costs associated with the day to day operation of the pumpout vessel). The contract for sewage offloading at Mangrove Marina was allowed to expire, and alternative provisions were explored. The following measures were taken to make the program more effective:

- 1) A sewage truck service was set up as a vendor to allow for the vessel to be pumped out at various locations throughout the operating range. Also, provisions were made to allow offloading of sewage at the Lorelei Marina in Upper Matecumbe Key.
- 2) Several marinas were set up as vendors to provide fuel throughout the operating range, eliminating the need to carry fuel from the County fuel pumps at Plantation Key
- 3) A CVA grant was established which provided for 75% of maintenance costs for the vessel.
- 4) Dockage was made available at the Pilot House Marina on the oceanside of Key Largo.

While the above measures facilitating the pumpout program have addressed some of the logistical issues, several problems remain. Sewage offloading at the Lorelei became unavailable after June '09. And due to the lack of an available County owned shoreside facility to serve the pumpout vessel, sewage offloading continues to be the bottleneck to the program. When the vessel fills with sewage, the operation stops until a sewage truck can offload the vessel. Also, due to the expanded operating range of the program the pumpout vessel must cover many miles to get to some of the clientele, often just to pumpout one or two vessels. Wear and tear on the vessel is a significant issue, as the vessel typically runs long distances in a chop with several thousand pounds of sewage on board. In 2008 the hull underwent major repairs due to heavy pounding and several collisions with objects. The engine also had to be replaced due to high hours after two years of service (typical of a commercially operated vessel). An unexpected issue needing to be addressed has been the large capacity holding tanks on houseboats being served by the program. Two or three houseboats can easily fill the pumpout boat holding tank, causing the boat to need offloading before additional vessels can be served.

Weather is also a controlling factor with the program, as windy conditions can limit the range or areas that the pumpout vessel can serve. And when the boat is out of operation due to weather (or other reasons, including operator vacation or sick leave, vessel repairs, etc) it throws the pumpout schedule out of sequence causing numerous complaints from clientele who expect their vessels to be pumped out on schedule.

Cost Analysis:

The following breakdown of costs and revenues are provided for the program startup and first (2006) and last (2008) years of continuous operation of the pumpout program (2005 and 2007 saw partial operation). This breakdown indicates the trends in expenditures, including utilization of grant funding to offset operating costs.

<i>Item</i>	<i>Startup</i>	<i>2006</i>	<i>2008</i>
Pumpout vessel purchase	\$100,495.00		
Clean vessel act reimbursement	-\$66,666.67		
Staff salary/benefits		\$47,005.66	\$50,083.15
Travel/per diem		\$400.00	
Phone		\$685.57	\$459.36
Repair and maintenance (internal)		\$409.78	\$3,340.77
Office Supplies		\$174.61	
Operating Supplies		\$1,446.11	\$925.09
Gasoline			\$6,513.06
Internal fuel		\$6,060.09	\$3,319.24
Waste haulout costs		\$7,800.00	\$5,753.00
Repairs and maintenance (other)			\$1,986.43
		Subtotal	\$63,981.82
			\$72,380.10
Pumpout fees revenues (\$5 per pumpout)		-\$1,545.00	-\$3,060.00
Clean Vessel Act Grant reimbursement			-\$11,946.28
		Subtotal	-\$1,545.00
			-\$15,006.28
		Net cost to County	-\$62,436.82
			-\$57,373.82

The data above describe the various costs associated with staffing and operating the pumpout vessel. Significant costs to the program include fuel, repairs, and sewage haulout. The acquisition of Clean Vessel Act Grant funding has helped offset the costs of repairs and sewage haulout in the last year. Fuel costs (not allowable for reimbursement under the CVA program) will continue to be an issue. Repair costs tend to be low in the year or two following the purchase of the pumpout vessel, but climb dramatically as the vessel and engine age due to expected wear and tear. Revenues received from the \$5 cost of pumpouts are nominal.

Current Program Summary:

There are a variety of issues that challenge the effectiveness and success of the County's vessel pumpout program. Fuel costs, repairs and maintenance, dockage, sewage offloading, and weather continue to be issues to be dealt with. However, the sheer size of the coverage area will continue to be the greatest logistical issue for the program.

Most pumpout programs throughout the country are developed around a single protected mooring field or anchorage, with a shoreside facility close by to dock and offload the boat. For the County's program, providing service to vessels throughout a thirty mile range (i.e. Key Largo) or a forty five mile range (i.e. Key Largo through the Village of Islamorada) is a challenging task at best. There is a high level of ineffectiveness, as the pumpout vessel runs many miles to service vessel at the far ends of the operating area. And the unanticipated expansion of the range (since the inception of the program) exacerbates an already difficult job. In addition, the shift from serving anchor-outs to serving liveaboards at marinas has caused marina owners and managers to rely on the program, minimizing any incentive to provide their own pumpout facilities.

There are approximately forty five marinas located from Key Largo to Lower Matecumbe Key, providing dockage to hundreds of liveaboard vessels. Only eleven of those marinas have pumpout facilities (some of which are not operational). Staff is currently drafting an ordinance requiring marinas to provide vessel sewage pumpout facilities (as per Comprehensive Plan Policy 202.5.1). Once marinas are equipped with pumpouts the need for a County pumpout vessel will be greatly reduced, or possibly eliminated (as even anchor-outs will be able to motor in to adjacent marinas to pumpout). An increase in cost effectiveness and practicality will be realized by shifting from a mobile oriented pumpout program to one which provides pumpouts at every marina. The above cost analysis derived from the first and last continuous years of the program indicates the costs associated with running and staffing a pumpout vessel. And the \$5 generated per pumpout, while maximizing incentive to pumpout, is budgetarily insignificant.

The annual net cost to the County for running the vessel pumpout program hovers around \$60,000 (utilizing grants as available). This cost is not prohibitive, and is within the budget anticipated for the program. The primary obstacle to the program is the large operating range and the logistical issues created by servicing such a large area, both oceanside and bayside.

Potential for Expansion to the Lower Keys:

There has been consideration for developing a mooring field and associated pumpout facilities at the anchorage in Boca Chica Harbor in attempt to address multiple boating impacts. An evaluation completed by the Marine Resources Office in 2008 concluded that there is little potential for creating a mooring field in the location, primarily due to objections by the Navy. However, existing liveaboards in the harbor could be served by a pumpout vessel in attempt to address one of the impacts created at the anchorage (i.e. vessel sewage).

The geographic layout of the harbor is conducive to a pumpout program in that all the anchored vessels are in one general location, in addition to the potential for sewage offloading at the newly developed Key West Harbor Yacht Club on Stock Island.

Staff Recommendations:

Staff has generally been able to find solutions to budgetary issues associated with the pumpout program (e.g. CVA grants, etc). Issues that cannot be resolved relate to the large operating area and the logistics involved. If the home base for the vessel were located near the center of the current operating area, it would still require a run of twenty miles or more to reach the northern and southern extents. This far of a run, and returning with a full load of sewage, consumes an enormous amount of fuel and the added weight applies great stress on the hull and engine. If the operating area were to only include the bayside and oceanside of Key Largo, as originally envisioned, the fuel and maintenance costs would be drastically reduced. More importantly logistical issues would be reduced or eliminated, as the pumpout vessel would be significantly closer to the homebase from which it operates. Recently the Village of Islamorada has indicated a desire to provide their own pumpout vessel. Coordination between the County and the Village regarding responsibilities according to jurisdiction will alleviate the issue of the current large operating area for the County.

Currently the homebase for the pumpout vessel is at the Pilot House Marina on the oceanside of Key Largo, well north of the center of the operating area. And while the use of a sewage truck provides the flexibility of offloading at various sites throughout the operating area, the operator often waits for hours to be serviced when full. A county owned facility which provides both docking and sewage offloading at a central location in Key Largo would be optimal for daily operations from the standpoints of running, docking and offloading (in conjunction with a sewage truck service as needed).

Breakdowns and routine servicing of the County pumpout vessel are to be anticipated. The vessel has been out of service on numerous occasions. A second pumpout vessel would allow the pumpout captain to provide continuous operation on such occasions. The vessel could be a smaller, more easily trailered pumpout boat that could also be used to provide service in Boca Chica Harbor, which has already been identified as a priority for boating management and in need of pumpout facilities. However a smaller boat used as a backup in the upper Keys would have more problems operating in windy conditions than the current pumpout vessel.

Finally, the lack of functioning sewage pumpout facilities at marinas has placed an unanticipated burden on the pumpout program, with at least 75% of all pumpouts being provided for liveaboards in slips rather than at anchor. If marinas were required to have pumpout facilities, the pumpout program could better focus on the serving anchor-outs at the many anchorages located throughout the upper Keys. Suitable land-based vessel sewage pumpout facilities should be required at all marinas as per Comprehensive Plan policy.

Synopsis of Recommendations

- 1- Concentrate the operating area for the County pumpout program in the upper Keys to Key Largo
- 2- Provide a County facility for dockage and sewage disposal for the pumpout vessel in a central location on the bayside of Key Largo
- 3- Consider the purchase of a second pumpout vessel, both as a backup and to potentially serve the anchorage at Boca Chica Harbor.
- 4- Require all marinas facilities to have suitable vessel pumpout facilities in accordance with Comprehensive Plan Policy 202.5.1

Monroe County's Mobile Vessel Pumpout Program in the Florida Keys: 10 Years of Lessons Learned

Presented by:

Brittany Burtner, Senior Administrator

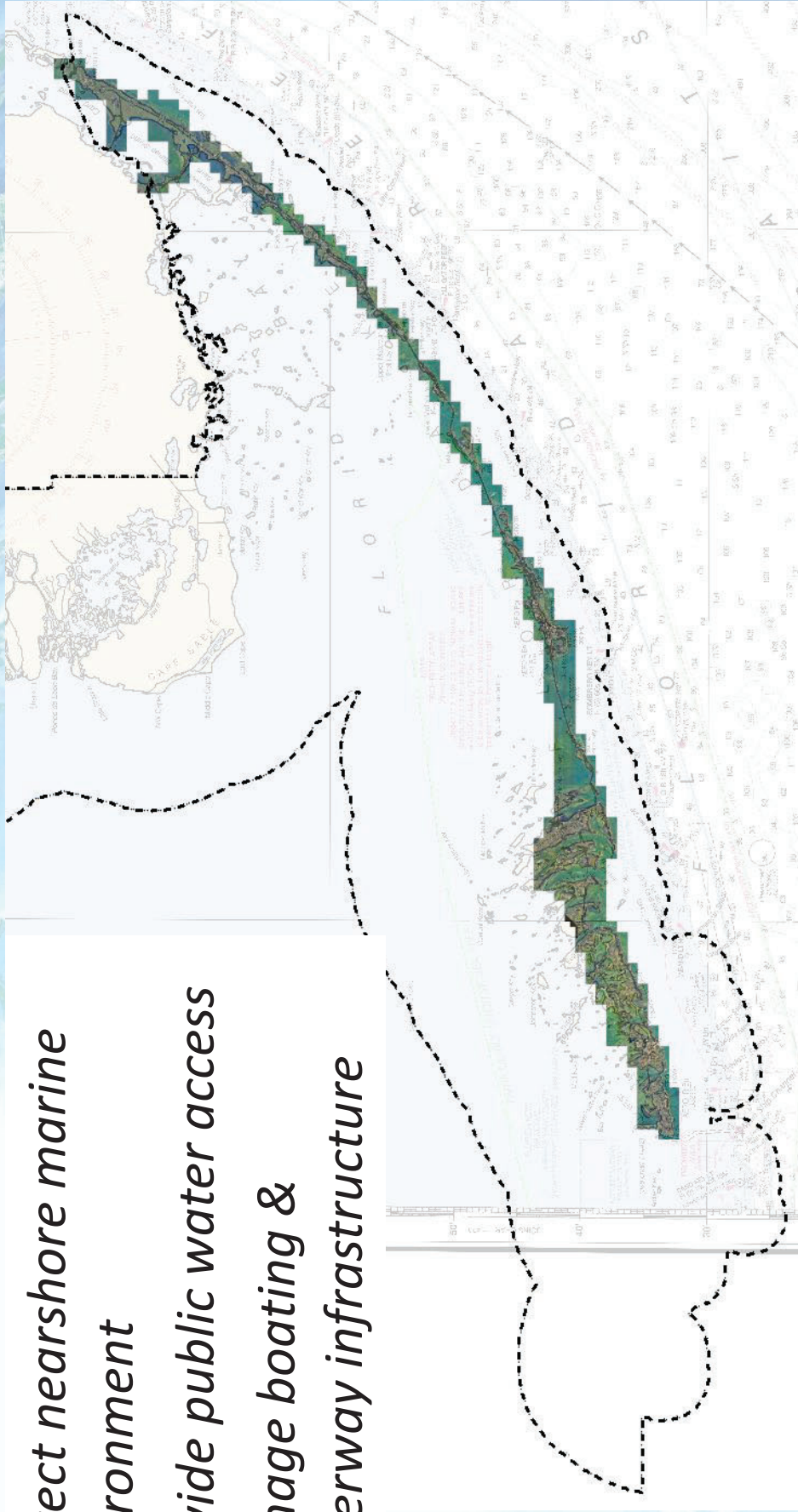
Monroe County

Office of Marine Resources



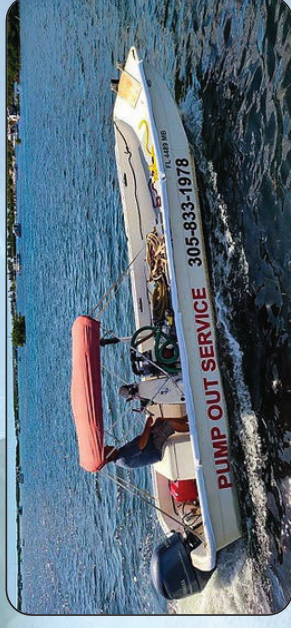
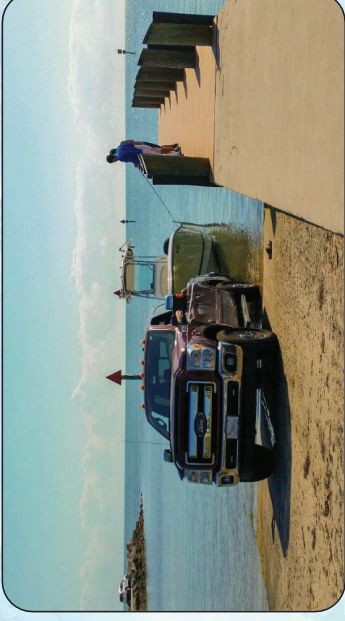
Mission

- *Protect nearshore marine environment*
- *Provide public water access*
- *Manage boating & waterway infrastructure*

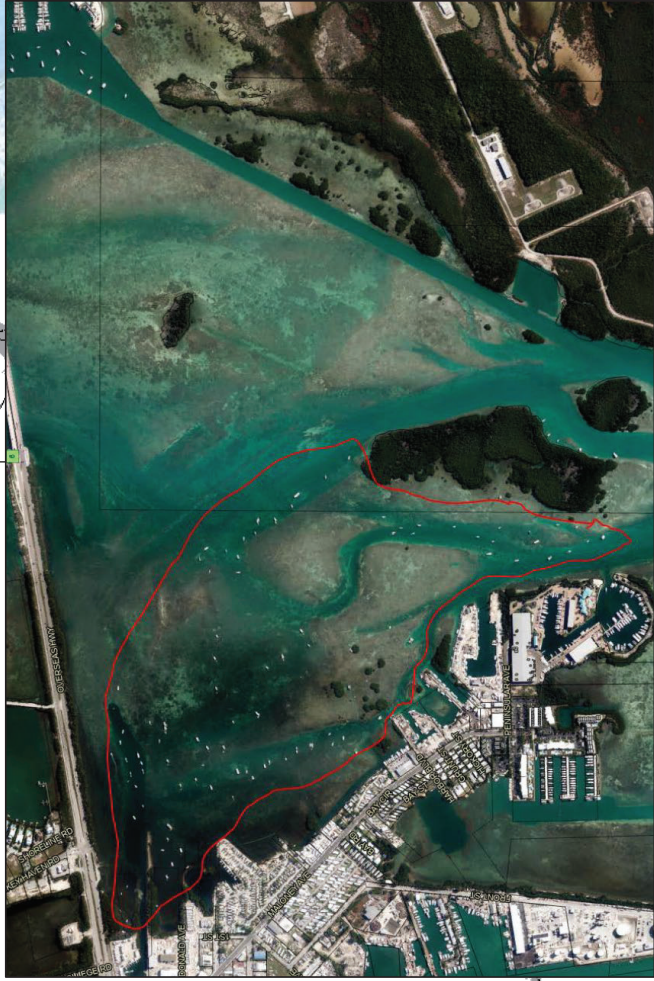


Services & Funding

- **Services**
 - Waterway markers
 - Boating restricted areas
 - Derelict vessel removal
 - **Vessel sewage pumpout**
 - Anchoring & mooring-related initiatives
 - Boat ramp repairs
- **Funding**
 - Recreational vessel registration fees
 - Grant programs
 - Legislative allocations



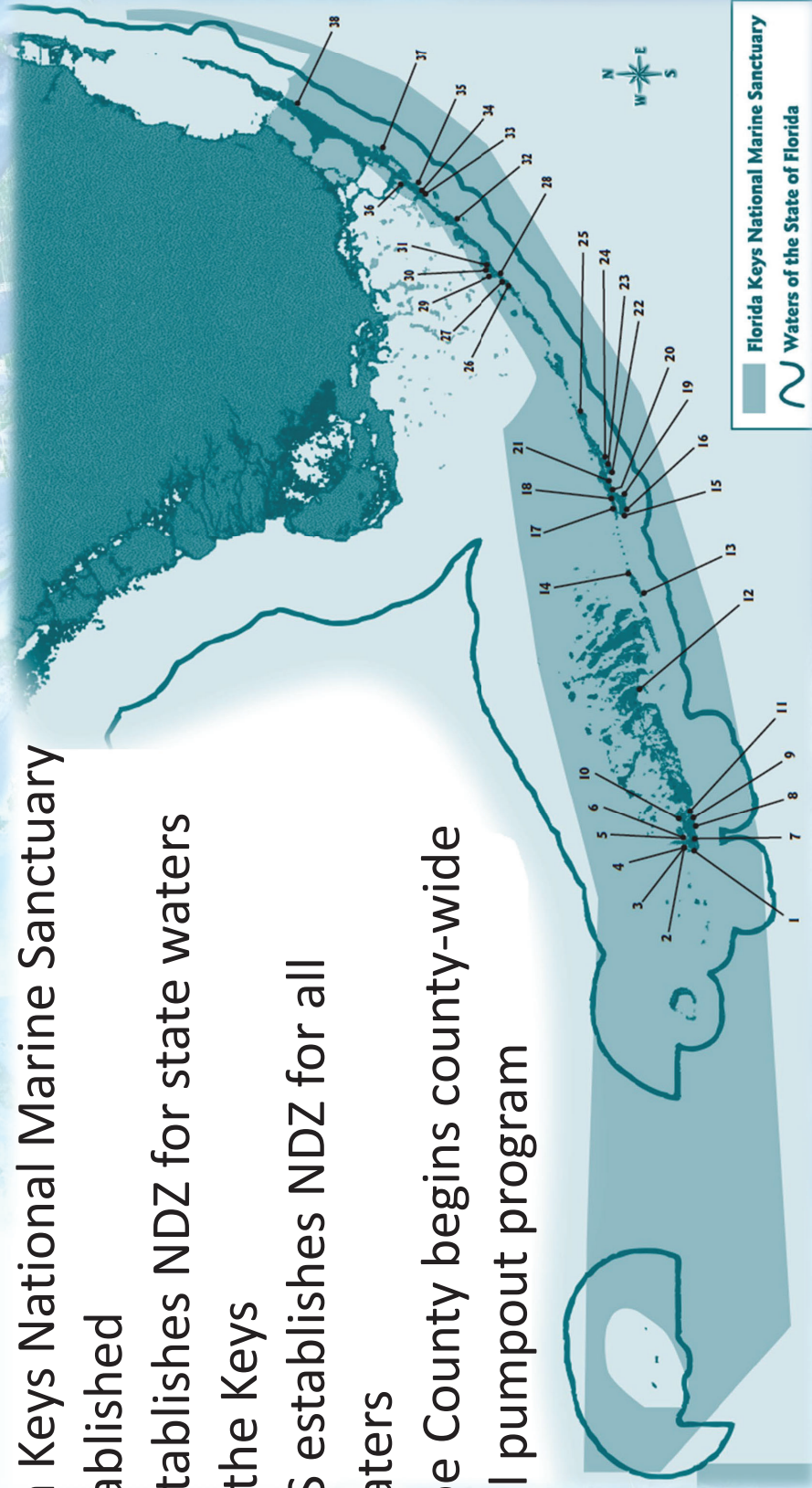
Liveaboard Vessels



No Discharge Zone

- 1990: Florida Keys National Marine Sanctuary (FKNMS) established
- 2002: EPA establishes NDZ for state waters surrounding the Keys
- 2010: FKNMS establishes NDZ for all Sanctuary waters
- 2013: Monroe County begins county-wide mobile vessel pumpout program

MDC017



Proof of Pumpout

- 2017: Monroe County enacts Proof of Pumpout (PoP) ordinance
 - Applies to vessels anchored or moored for 10 consecutive days
 - Must show PoP within last 30 days
 - Easier for law enforcement and the boater
 - Result = almost 100% compliance with NDZ
- 2022: State of Florida enacts PoP legislation for Monroe County waters
 - Must keep pumpout records for 1 year

MDC018

AUG
PUMPOUT
2020

SEPT
PUMPOUT
2020

OCT
PUMPOUT
2020

NOV
PUMPOUT
2020

DEC
PUMPOUT
2020

JAN
PUMPOUT
2021

FEB
PUMPOUT
2021

Vessel Sewage Penalties					
Section		Noncriminal Offense			
		1st	2nd	3rd 4th+	
Local					
26-104	Vessels anchored or moored in Monroe County waters for 10+ consecutive days must provide proof of pumpout (if subject to F.S. 327.53)	\$50	\$100	\$250	\$250
State					
327.53(1)	Vessels 26' or more w/ berthing area without a permanently attached USCG approved marine sanitation device	\$50	\$250	\$500	\$1,000
327.53(4)(a)	Y-valve not properly secured or discharging into water	\$250	\$250	\$250	\$250
327.53(4)(b)	Waste from Type III marine sanitation device not disposed in approved sewage pumpout facility	\$250	\$250	\$250	\$250
327.53(2)	Houseboat without permanent toilet and Type III marine sanitation device	\$50	\$250	\$500	\$1,000
327.53(7)	Removal from state waters at owner's expense if not corrected in 30 days	via County court order			
Federal					
33 USC § 1322	All MSD violations	\$500			
15 CFR 159.5	Failure to equip a newly manufactured vessel for sale with installed toilet	\$2,500			
16 USC § 32	Unsecured marine sanitation device in FKNMS	\$400	\$800 in special protected area		
16 USC § 32	Discharge of raw or primary treated sewage in FKNMS (with de minimus impact)	\$800	\$1600 in special protected area		

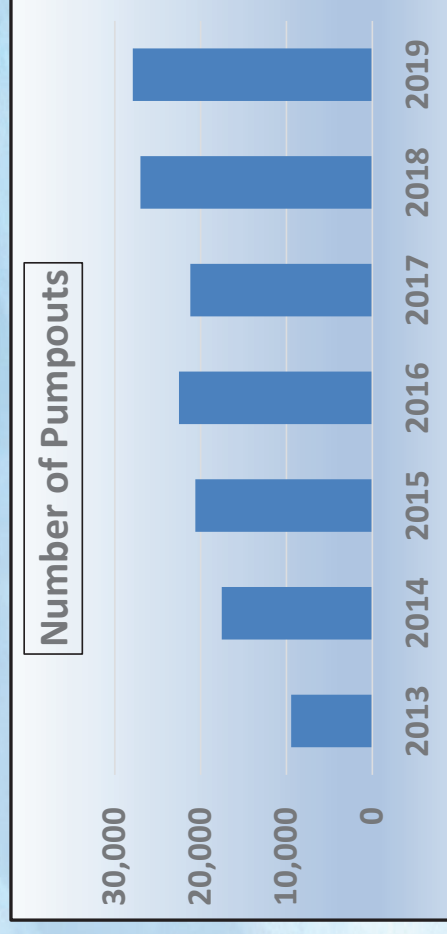
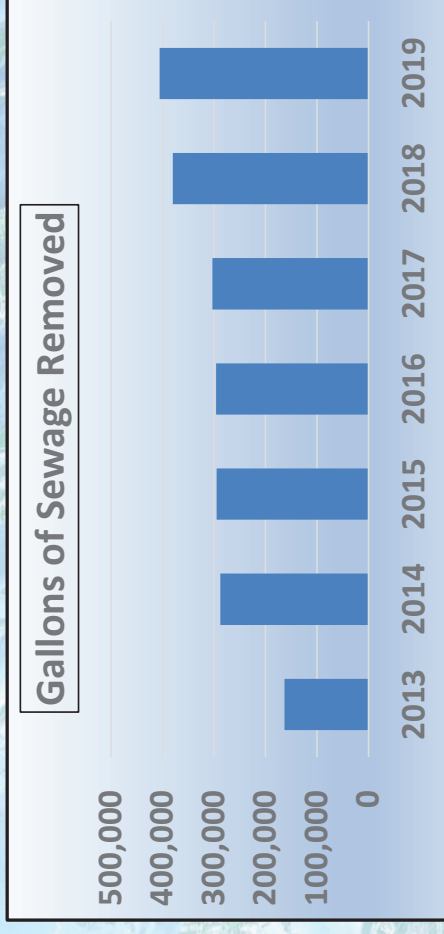
Mobile Pumpout Service

- Keyside service established in 2013
- Partnership with Florida Department of Environmental protection Clean Vessel Act (DEP CVA) program
- Goals
 - Educate boaters about responsible waste disposal
 - Assist boaters with compliance with NDZ
 - Protect water quality, marine life and ecosystems
 - Avoid illegal discharge of sewage



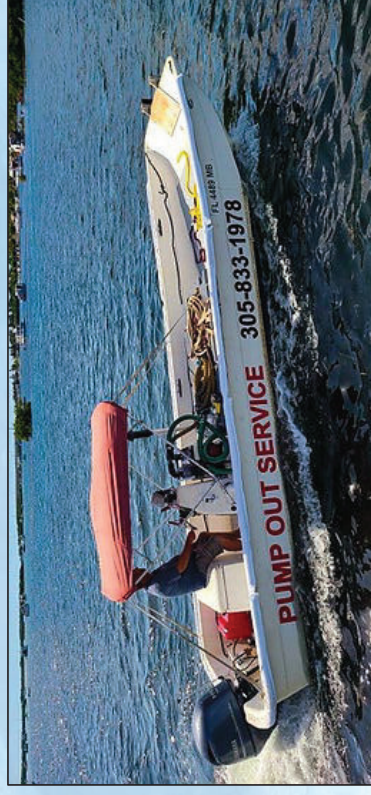
Program Establishment & Expansion

- **2013 – June 2020**
 - Keys-wide service provided by contractor
 - Largest mobile pumpout service in Florida
 - Priority = anchored vessels; vessels in marinas served also
 - 2 million gallons sewage collected
 - 4,000 boaters registered
 - Early 2020:
 - 2,200 pumps / month
 - 700+ weekly customers



Challenges Faced

- **July 2020 – Suspension of service**
- **Aug 2020 – November 2021 Temporary Local Services**
 - Key West/ Stock Island: Interlocal Agreement with City of Key West
 - City provided 2 pumpout boats & staff
 - County provided 2 temp employees
 - Served 70% of all anchored liveaboards in the Keys
 - Upper Keys: new private contractor
 - Served 21% of all anchored liveaboards
 - Provided private fee-based service to shoreside vessels
 - City of Marathon
 - Most vessels dockside or served by City's pumpout boat



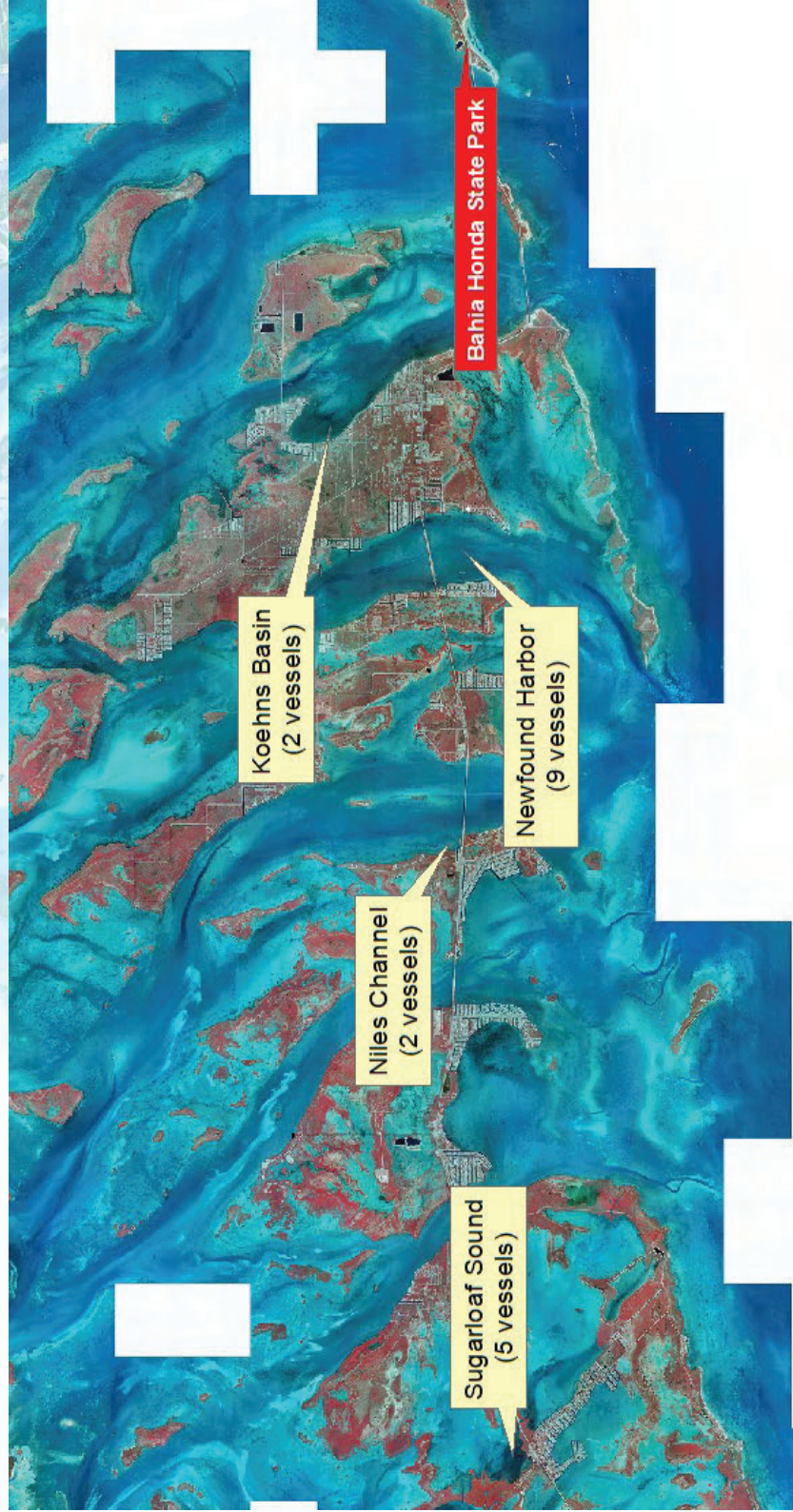
Current Service: DEP Partnership



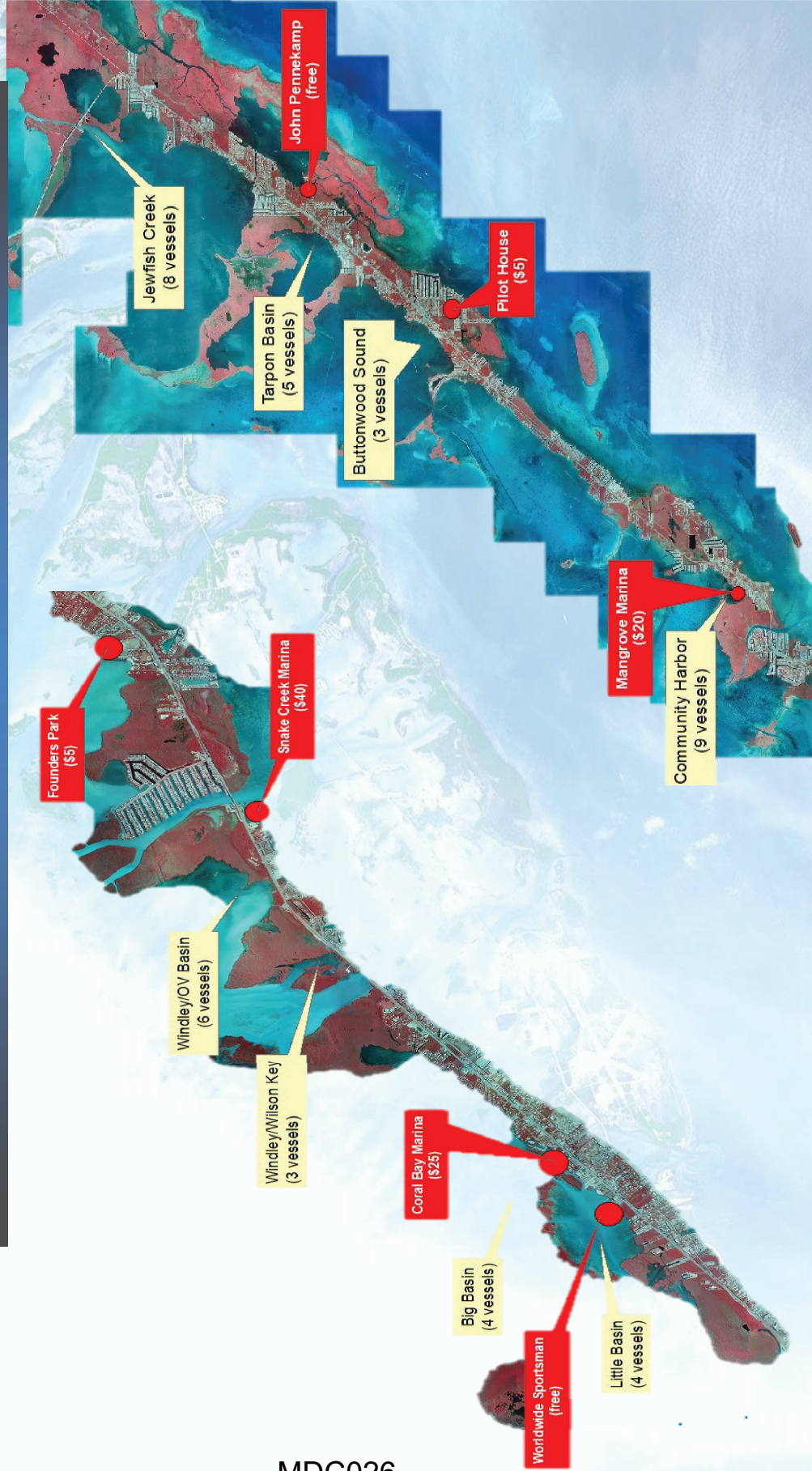
Current Service: DEP Partnership



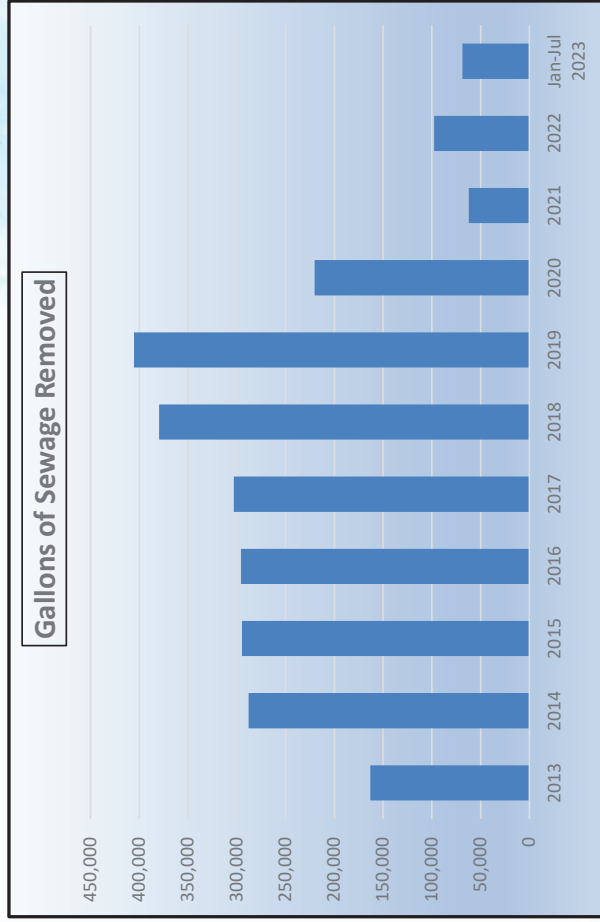
Current Service: DEP Partnership



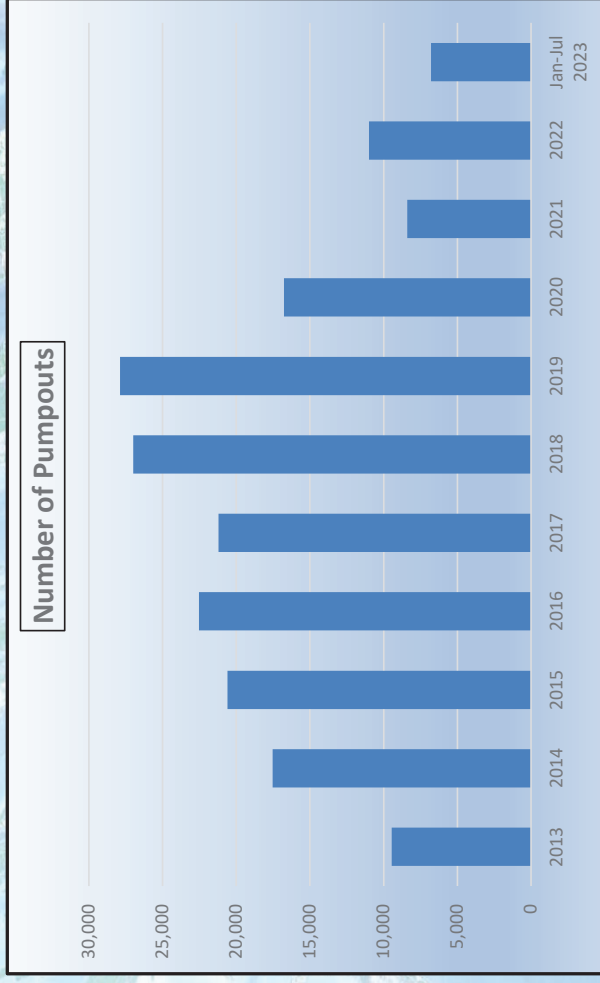
Current Service: DEP Partnership



Program Achievements 2013-2023



2,578,353 million total gallons of sewage diverted from Florida Keys waters!



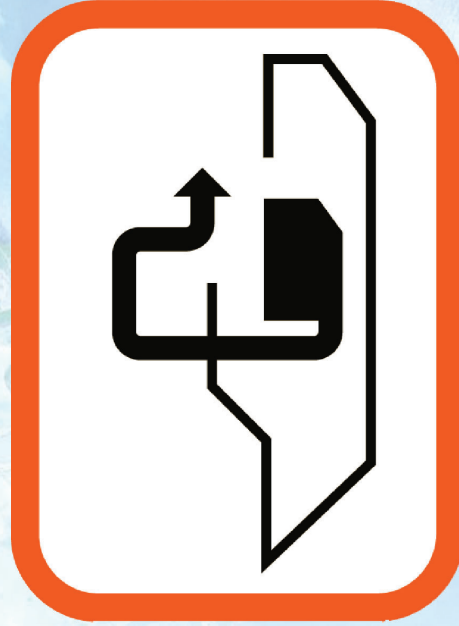
189,152 vessel pumpouts!

Lessons Learned



MDC028

Be adaptable!
Partnerships are everything!





Questions?

Attachment C

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD CONTRACT
CONTRACT NO. ES008**

This Contract is entered into between the Florida Department of Environmental Protection (Department) and On the Hook Marine Services LLC, 6840 Front Street, Key West, Florida 33040 (Contractor), a Limited Liability Company.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Work.

The Contractor shall provide Mobile Vessel Pumpout Services, as described more fully in Attachment 3, Scope of Work, which was procured under DEP Solicitation No. 2022006.

2. Duration.

- a. Term. The Contract shall begin on the date of execution and continue until June 30, 2022, unless otherwise terminated.
- b. Renewals. This Contract may be renewed for up to three (3) renewal years.

3. Contract Managers.

Department's Contract Manager

Name: Brenda Leonard
or successor

Address: 2600 Blair Stone Road, MS-235
Tallahassee, Florida 32399-3000

Phone: 850-245-2847

Email: Brenda.Leonard@dep.state.fl.us

Contractor's Contract Manager

Name: Kimberly Stamps
or successor

Address: 930 Truman Avenue #75
Key West, Florida 33040

Phone: 850-225-6292

Email: onthhookms@gmail.com

- Remainder of page intentionally left blank -

4. Attachments and Exhibits.

The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:


<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions for Competitively Procured Contracts
<input checked="" type="checkbox"/> Attachment 2: Special Terms and Conditions
<input checked="" type="checkbox"/> Attachment 3: Scope of Work
<input checked="" type="checkbox"/> Attachment 4: Public Records Requirements
<input checked="" type="checkbox"/> Attachment 5: Price Sheet
<input type="checkbox"/> Attachment 6: Technology Standards
<input type="checkbox"/> Attachment 7: Contractor's Proposal (RFPs Only)
<input type="checkbox"/> Attachment 8: Contractor's BAFO (ITNs Only)
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: General Contract Conditions – PUR 1000
<input checked="" type="checkbox"/> Exhibit B: Subcontractor Utilization Report Form
<input type="checkbox"/> Exhibit C: Contractor Affidavit/Release of Claims Form
<input type="checkbox"/> Exhibit D: Quality Assurance Requirements for Contracts
<input type="checkbox"/> Exhibit E: Advance Payment Terms and Interest Earned Memo
<input checked="" type="checkbox"/> Additional Exhibits (if necessary): Exhibit F: Pumpout Service Area Map Exhibit G: Sample Daily Pumpout Log Exhibit H: Mobile Vessel Pumpout Service Sample Registration Form Exhibit I: Service Records and Maps

5. Compensation.

- a. As consideration for the services rendered by Contractor under the terms of this Contract, the Department shall pay the Contractor on a fixed unit rate basis up to a maximum of \$1,000,000.00 for the completion of services as specified in the Scope of Work.
- b. The Department shall not reimburse the Contractor for any costs incurred in the performance of this Contract.

IN WITNESS WHEREOF, this Contract shall be effective on the date indicated above or the last date signed below, whichever is later.

ON THE HOOK MARINE SERVICES LLC

By: 

 (Authorized Signature)

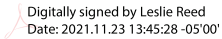
November 16, 2021

 Date Signed

Christopher Webster

 Print Name and Title of Person Signing

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: **Leslie Reed** 

 Secretary or Designee

 Date Signed

 Print Name and Title of Person Signing

FEID No. F85-2427234

Additional signatures attached on separate page.

Contract No. ES008
 Rev. 9/25/2020

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Terms and Conditions for Competitively Procured Contracts**

ATTACHMENT 1

1. Entire Agreement.

This Contract, including any Attachments and Exhibits referred to herein and/or attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Contractor's forms or invoices shall be null and void.

2. Contract Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Contract, the order of precedence for interpretation of the Contract is as follows:
 - i. Standard Contract
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Contract
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Contract
- b. All approvals, written or verbal, and other written communication between the parties, including all notices, shall be obtained by or sent to the parties' Contract Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Contract Manager is designated by either party after execution of this Contract, notice of the name and contact information of the new Contract Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Contract Manager does not require a formal amendment or change order to the Contract.
- d. This Contract may be amended only by a written agreement between both parties. Amendments shall be based on availability of funding. A change order may be used when there is
 - (1) a change in the subcontractor or approval of subcontractors;
 - (2) changes in deliverables due dates that do not change the overall Contract term or increase in the deliverable price or Contract amount; or
 - (3) changes in the price of an individual deliverable in cost reimbursement Contract when the overall Contract amount does not change.All other changes shall be done through a formal amendment.
- e. There is no minimum amount of work guaranteed as a result of this Contract. Any and all work assigned will be at the sole discretion of the Florida Department of Environmental Protection ("Department").
- f. The Department reserves the right to suspend or terminate any portion of this Contract or any other contract with the Department, if the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution. The suspension may last until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.
- g. All days in this Contract are calendar days unless otherwise specified.

3. Contract Duration.

- a. Term. The term of the Contract shall begin and end on the dates indicated in the Standard Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Any renewals provided under the Contract must meet the requirements of Section 287.058(1)(g), Florida Statute (F.S.), which is incorporated herein by reference. If the Standard Contract indicates renewals are available, the Contract may be renewed for those timeframe(s). All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

4. Deliverables.

The Contractor agrees to render the services or otherwise provide deliverables as set forth in Attachment 3, Scope of Work and as otherwise set forth in this Contract. The services and/or deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Contract. Deliverables may be comprised of activities that must be completed prior to the Department making payment on that deliverable.

5. Performance Measures.

The Contractor warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Scope of Work; (3) Any and all such equipment, products or materials necessary to perform these services, or requirements shall be supplied by the Contractor; (4) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (5) the services shall not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (6) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes for work done at the Department or other location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Department's Contract Manager before payment. If the Department's Contract Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Scope of Work, as incomplete, inadequate, or unacceptable due, in whole or in part, to the Contractor's lack of satisfactory performance under the terms of this Contract. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Scope of Work will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to the Department in accordance with the Contract requirements. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department. The Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable timeframe. The Contractor's efforts to correct the rejected deliverables will be at the Contractor's sole expense. The Contractor's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Scope of Work and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Contractor has failed to perform/comply with provisions of this Contract. None of the financial consequences for nonperformance in this Contract, as more fully described in the Scope of Work, shall be considered penalties.
- b. Corrective Action Plan. If the Contractor fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, the Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department. The Department request that the Contractor specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Contractor shall submit a CAP within ten (10) calendar days of the date of the written request from the Department. The CAP shall be sent to the Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the proposed CAP has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above may result in the Department's termination of this Contract for cause as authorized in this Contract.
 - ii. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate this Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall preclude the Department from subsequently asserting any deficiencies in performance. The Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department's Contract Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Contract as specified by the Department may result in termination of the Contract.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Contract, the pricing per deliverable, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance with Section 215.422, F.S. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written acceptance of each interim deliverable or the final deliverable specified in the Scope of Work. Invoices and the appropriate documentation shall be submitted via email to the Department's Contract Manager. Contractor's failure to submit invoices within this timeframe may result in forfeiture of retainage suspension or termination of remaining work, or the Contractor's forfeiture of any unpaid balance for such deliverables.
- b. Vendor Rights. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing Problems in obtaining timely payment(s) from state agencies. The vendor Ombudsman may be reached at (850) 413-5516.
- c. Taxes. The Department is exempted from payment of State sales and use taxes and Federal excise taxes. The Contractor, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.
- d. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Scope of Work shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Contractor shall only invoice the Department for deliverables that are completed in accordance with the Scope of Work.
- e. Multiple Payment Request. Contractor's submitted invoice shall represent a full account of the work done during each invoice period, and include all fees and costs claimed for work done during that period. Department's payment of an invoice shall constitute full payment and a final settlement of all of Contractor's claims for services provided during the invoice period. No subsequently asserted claims or invoices for services performed during a previously invoiced period will be payable by the Department.
- f. Interim Payments. Interim payments may be made by the Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by the Department's Contract Manager.
- g. Final Payment Request. A final payment request should be submitted to the Department no later than sixty (60) calendar days following the completion date of the Contract to ensure the availability of funds for payment. However, all work performed pursuant to the Scope of Work must be performed on or before the completion date of the Contract.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Contract shall be calculated on the prevailing rate used by the State Board of Administration. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. To obtain the applicable interest rate, please refer to: <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.
- j. Limitation on Payment. Contractor shall not be compensated for services performed prior to execution of this Contract, for services performed following its expiration, termination, or suspension, nor for services that exceed the funding amount specified herein or in any amendment to this Contract. It is the Contractor's responsibility to know when the authorized compensation amount of the Contract will be reached. Contractor shall not perform, nor be compensated for, any services beyond the services described in the Scope of Work.

9. Documentation Required for Cost Reimbursement Contracts.

If Cost Reimbursement is authorized in the Standard Contract, the following conditions apply. To be eligible for reimbursement, costs and supporting documentation must be in compliance with laws, rules, and regulations governing agreements for services, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:

<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.

Invoices for cost reimbursement shall be supported by an itemized listing of expenditures by category (salary, travel expenses, etc.). Supporting documentation must indicate that the item was paid and indicate the date of service.

10. Preferred Pricing Clause.

If this Contract incorporates the PUR 1000, section 4.(b), and it is applicable, or other preferred pricing clause, the Contractor must submit an affidavit, at least annually, attesting that Contract is in compliance with the preferred-pricing clause.

11. Retainage.

The following provisions apply if the Department withholds retainage under this Contract:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Contract up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Contractor, pending satisfactory completion of work and approval of all deliverables.
- b. The Department reserves the right to withhold payment of retainage for Contractor's failure to respond to or correct identified deficiencies within the timeframe stipulated in the Scope of Work. The Department shall provide written notification to Contractor of identified deficiencies and the Department's intent to withhold retainage. Contractor's failure to rectify the identified deficiency within the timeframe stated in the Department's notice will result in forfeiture of retainage by Contractor.
- c. If Contractor fails to perform the requested work, or fails to perform the work in a satisfactory manner, Contractor shall forfeit its right to payment for the work and the retainage called for under the entire Scope of Work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed.
- d. No retainage shall be released or paid for incomplete work while this Contract is suspended.
- e. Except as otherwise provided above, Contractor shall be paid the retainage associated with the work, provided Contractor has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Contract.

12. Insurance.

- a. Proof of Insurance. Upon execution of this Contract, the Contractor shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Contract. Upon receipt of written request from the Department, the Contractor shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.
- c. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Contractor cannot get adequate coverage, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- d. Insurance Requirements for Sub-Contractors. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, the Department may, in its sole discretion, terminate the Contract in whole or in part by giving thirty (30) days written notice to the Contractor. The Department shall notify the Contractor of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Contract is to be terminated. The Contractor must submit all invoices for work to be paid under this Contract within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Contract if any of the events of default described in the Events of Default provision below occur or in the event that the Contractor fails to fulfill any of its other obligations under this Contract. If, after termination, it is determined that the Contractor was not in default, or

that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under this Contract.

- c. Contractor Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, unless otherwise directed by the Department, the Contractor shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, the Contractor shall continue work on any portion of the Contract not terminated. If the Contract is terminated before performance is completed, the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If the Department has paid for any services prior to the expiration, cancellation, or termination of the Contract, the Contractor shall continue to provide the Department with those services for which it has already been paid or, at Department's discretion, Contractor shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Contract. If services provided under the Contract are being transitioned to another provider(s), the Contractor shall assist in the smooth transition of Contract services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Scope of Work. The Contractor shall not perform any services after Contract expiration or termination, except as necessary to complete the transition or continued portion of the Contract, if any.

14. Step-in Rights.

If the Contractor is in material breach of its obligation to perform any of the services under the Contract and fails to remedy such breach within ten (10) days after written notice of the breach from the Department, the Department, at its sole discretion, shall have the right to "step-in" (i.e. perform the work itself) or hire another contractor to perform these services. Contractor shall be liable to the Department for any fees or expenses that the Department may incur in exercising its step-in rights or securing a substitute provider to assume completion of those services.

15. Notice of Default.

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, any of the events of default, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Contractor fail to perform within the time provided, the Contractor will be found in default, and the Department may terminate the Contract effective as of the date of receipt of the default notice.

16. Events of Default Subject to the Notice of Default Provision.

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, shall constitute events of default.

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering the performance of the Contract;
- c. Failure to honor any term of the Contract;
- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by a state or other licensing authority;
- e. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Contract;
- f. Failure to comply with a preferred-pricing clause required by this Contract, if any, at the Department's discretion;
- g. Failure to maintain the insurance required by this Contract;
- h. One or more of the following circumstances, uncorrected for more than 30 calendar days unless, within the specified 30-day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by the Contractor of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property; and/or

- iv. An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

i. **Events of Default that Result in Immediate Termination.**

- a. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Contractor in this Contract or in its response to the solicitation;
- b. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act; and
- c. Department's good faith belief that failure to comply with the Employment Eligibility Verification requirements of this Contract has occurred.

17. Indemnification.

- a. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Department;
 - ii. the Contractor's breach of this Contract or the negligent acts or omissions of the Contractor.
- b. The Contractor's obligations under the preceding paragraph with respect to any legal action are contingent upon the Department giving the Contractor (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense; and (3) assistance in defending the action at Contractor's sole expense.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Contractors that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Contract.
- d. No provision in this Contract shall require the Department to hold harmless or indemnify the Contractor, insure or assume liability for the Contractor's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

18. Limitation of Liability.

The Department's liability for any claim arising from this Contract is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Contract. Such liability is further limited to a cap of \$100,000.

Unless otherwise specifically enumerated in the Contract, purchase order, or task order, Department shall not be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. Department shall not be liable for lost profits, lost revenue, or lost institutional operating savings. The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The Department may set off any liability or other obligation of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

19. Remedies.

All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Department may, in addition to other remedies available to it at law or in equity and upon notice to the Contractor, retain such monies from amounts due Contractor

as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. Nothing in this Contract shall be construed to make the Contractor liable for force majeure events.

20. Ownership of Documents.

All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract.

21. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. The Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.
- b. Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:
 - i. Convicted Vendors. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Contractor shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or the antitrust violator vendor list during the life of the Contract. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

22. Employee Eligibility.

Effective January 1, 2021, Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to Section 448.095, F.S. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work. The subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ,

contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the Contract. If the Department has a good faith belief that a subcontractor knowingly violated §448.095(1), F.S. and notifies the Contractor of such, but the Contractor otherwise complied with this statute, the Contractor shall immediately terminate the contract with the subcontractor.

23. Compliance with Federal, State and Local Laws.

- a. The Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Contractor shall include this provision in all subcontracts issued as a result of this Contract.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.
- c. This Contract shall be governed by and construed in accordance with the laws of the State.
- d. Any dispute concerning performance of the Contract shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Contract will be in the courts, and venue will be in a court of competent jurisdiction, in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

24. Scrutinized Companies.

- a. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.
- b. If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Contractor agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between the Contractor and the State, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Contractor shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following the completion date or termination of the Contract. In the event that any work is subcontracted, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of the Department's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of: (1) three years after the expiration of the Contract; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. This Contract is subject to a post performance audit by the Department's or State's Inspector General. The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing regarding the Contract. The Contractor will

comply with this duty and ensure that its Subcontracts issued under this Contract, if any, impose this requirement, in writing, on its sub-Contractors.

- b. **Physical Access and Inspection.** Department personnel shall be given access to and may observe and inspect work being performed under this Contract, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Contractor shall provide access to any location or facility on which Contractor is performing work, or storing or staging equipment, materials or documents;
 - ii. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Contract; and,
 - iii. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Contract.
- c. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, the Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Contract pursuant to State and Federal guidelines (including cost allocation guidelines). The Department may also request a cost allocation plan in support of Contractor's multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Contractor must provide the additional proof within thirty (30) calendar days of such request.

28. Conflict of Interest.

The Contractor covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Contractor is an independent contractor and is not an employee or agent of the Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Contractor's employee, subcontractor, or agent. Shall cause, includes technical or training qualifications, quality of work, change in security clearance, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Contractor shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Contract embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- f. The Contractor shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

31. Improvements to Real Property.

If any state funds are provided under this Contract for the purchase of or improvements to real property, the Contractor shall grant to the state a security interest in the property equal to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements, unless otherwise provided by law.

32. Guarantee of Parent Company.

In the event the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Contractor.

33. Headings.

The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.

34. Interpretation of Contract.

- a. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.
- b. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used. If the Contract is competitively procured, the Contractor further acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Response, to review the terms and conditions of this Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein.

35. Modifications Required by Law.

Department reserves the right to revise this Contract to include additional language required by Federal agency(ies) or other sources awarding funding to the Department in support of this Contract, if applicable, and to include changes required by Florida law or Administrative Code rule changes.

36. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Contract.

37. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of the Contractor, its agents, servants, and employees. The Contractor shall not disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

38. MFMP Transaction Fee

- a. The State through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace (MFMP), a statewide e-procurement system. Pursuant to Section 287.057(22)(c), F.S., all payments shall be assessed a Transaction Fee which the Contractor shall pay the State unless exempt pursuant to Rule 60A-1.031, Florida Administrative Code (F.A.C.).
- b. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031, F.A.C. By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
- c. Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) is/are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected, returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of this Contract.
- d. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS THAT ARE DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

39. Compensation Report.

If this Contract is a sole-source, public-private agreement or if the Contractor, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Contractor shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation

for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Contractor must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Contractor.

40. Execution in Counterparts.

This Contract, any amendments, and/or change orders related to the Contract, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature.

41. Warranty of Authority to Sign.

Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Insurance.

Required Coverage. At all times during the Contract the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida. Additional insurance requirements for this Contract may be required elsewhere in this Contract, however the minimum insurance requirements applicable to this Contract are:

a. Commercial General Liability Insurance.

The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Contract.

d. Other Insurance.

None.

2. Payment and Performance Bonds.

There are no bonds required under this Contract.

3. Liquidated Damages.

There are no liquidated damages under this Contract.

4. Retainage.

No retainage is required under this Contract.

5. MFMP Transaction Fee.

Pursuant to Rule 60A-1.031, Florida Administrative Code, the Contractor is required to pay the MFMP Transaction Fees for payments made pursuant to this Contract.

6. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Contract.

7. Subcontracting.

- a. Contractor shall not subcontract any work under this Contract without the prior written consent of the Department's Contract Manager. Department reserves the right to reject any proposed subcontractor based upon the Department's prior experience with subcontractor, subcontractor's reputation, or the Department's lack of

adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.

- b. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.
- c. If subcontractors are used, the Contractor shall complete and submit Exhibit B, Subcontractor Utilization Report Form (Subcontractor Report) with each invoice. Failure to provide Subcontractor Report with an invoice shall result in a delay in processing the invoice for payment.
- d. Contractor shall pay all subcontractors and vendors under this Contract within seven (7) working days from the date of receipt of payment from the Department, excluding the final payment. If the Contractor receives less than full payment from the Department for the services or goods of the subcontractors or vendors, the Contractor shall pay subcontractors and vendors in at least the same proportion as that paid by the Department. Penalties for non-compliance and provisions for legal assistance for subcontractors are included in Subsection 287.0585(1), F.S.
- e. Contractor shall submit lien waivers or other documentation of payment from each subcontractor or supplier with each invoice where subcontractors or suppliers performed during the previous invoice period.

8. Personnel Changes.

The Contractor may remove its personnel assigned to perform under this Contract and substitute other qualified personnel. Any removals or replacements by Contractor shall be at no additional cost to the Department.

9. Intellectual Property.

- a. The Contractor's intellectual property rights that preexist this Contract will remain with the Contractor. Intellectual property rights to all property created or otherwise developed by Contractor specifically for the Department will be owned by the State through the Department.
- b. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish or release to others, such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.
- c. This ownership interest and the rights conferred under this section will continue after the expiration or termination of the Contract.
- d. Notwithstanding the foregoing language, the Contractor's workpapers prepared or developed under this Contract are the exclusive property of the Contractor, but Contractor shall permit Department access and review of workpapers upon Department's request.

10. Additional Terms.

None.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Scope of Work**

ATTACHMENT 3

1. Scope of Work

The Contractor shall provide mobile vessel sewage pumpout services to anchored-out vessels in five (5) service areas throughout waters of the Florida Keys within Monroe County, Florida as outlined in Exhibit F, Pumpout Service Area Map. This pumpout service is being provided by the Florida Department of Environmental Protection to vessel owners to reduce or eliminate the adverse environmental impacts associated with the illegal discharge of sewage into the waters of the Florida Keys, which under federal law prohibits discharging sewage into waters within the Florida Keys National Marine Sanctuary (the “Florida Keys No-Discharge Zone”), and in conformity with Monroe County Board of County Commissioners (BOCC) Proof of Pumpout Ordinance as authorized by Section 327.60(4), Florida Statutes, (“mobile pumpout service”, “mobile pumpout service operations”, or “Service”/“service”).

The Service should include a sufficient number of suitably equipped pumpout vessels, vessel operators, and management and management support staff to pumpout anchored vessels located throughout the waters of the Florida Keys within Monroe County and provide required documentation of pumpouts via daily logs and required reports.

A detailed waste offloading/disposal plan shall be used that includes detailed information on anticipated offloading locations, operational details, and disposal methods.

2. Definitions

In this Contract, the following terms shall be defined as set forth below:

No Discharge Zone (NDZ) – The United States Environmental Protection Agency in 2002 established a No Discharge Zone (“NDZ”) for state waters surrounding the Florida Keys. In 2010 the NDZ was expanded to encompass all waters within the Florida Keys National Marine Sanctuary.

Clean Vessel Act (CVA) - In 1992, the Clean Vessel Act was signed into law to reduce water pollution by prohibiting vessels from discharging raw sewage into fresh water or coastal saltwater. The act established a federal grant program, administered by the U.S. Fish and Wildlife Service, to fund sewage disposal facilities.

GPS Monitoring Device - an electronic monitoring device on a vessel that shows the location of the pumpout vessel and/or trucks working. Using software, it tracks the location, gallons pumped, run-time, and logs the activity.

3. Contractor Responsibilities

a. Deliverables. The Contractor shall provide the following deliverables:

1. Mobile Vessel Pumpout Service

The Contractor shall provide the Service which shall provide a suitable number of marine pumpout vessels and service hours/days to provide approximately 500 pumpouts per month for the pumpout service area outlined in Exhibit F, Pumpout Service Area Map.

The Service shall be provided at no charge to all anchored vessels located within the boundaries of the Pumpout Service Area Map (Exhibit F), in the waters of Monroe County within the Florida Keys, up to a maximum of one pumpout per week to each individual vessel served.

Vessel waste shall be offloaded and disposed of properly. Refer to Exhibit I, Service Records and Maps, for disposal locations.

The Contractor shall perform the service in a reasonable manner, ensuring that 1) sufficient pumpouts are being provided to vessel owners and 2) pumpouts are being performed only as necessary to ensure cost reasonableness (e.g. weekly pumpouts shall not be performed for a vessel that only needs bi-weekly or monthly service).

2. Service Areas

The Contractor shall provide services in the geographic regions as outlined in Exhibit F, Pumpout Service Area Map. The five (5) service areas are: Key West, Stock Island, Lower Keys, Islamorada, and Key Largo. Each Service Area contains multiple anchorage areas.

3. Staffing

The Contractor shall, at its own expense, provide all office and field personnel and staff required or reasonably necessary to perform and complete all duties and obligations required under this contract. All personnel and staff engaged in performing activities, duties, or services pursuant to this contract or in the performance of activities associated with this contract shall be professionally competent, and fully qualified, authorized, and permitted under all federal, State, and local laws, ordinances, rules, and regulations, to perform such activities, duties, or services. The Contractor's personnel shall not be considered "employees" of or be understood or deemed to have any individual legal relationship or privity with, contractual or otherwise, with the Department.

The primary duties of office personnel shall include, but shall not be limited to:

- Coordinating pumpout schedules;
- Registering customers for service;
- Obtaining registrants' contact information and location for pumpout service; and
- Acting as an accessible and responsive point of contact for the Florida Fish and Wildlife Conservation Commission (FWC) concerning "Proof of Pumpout" of vessels located in Monroe County waters.

The primary duties of field personnel shall include, but shall not be limited to:

- Operating a pumpout vessel(s) on a weekly schedule within their designated service areas;
- Maintenance of an adequate supply of identification decals, monthly endorsement stickers, and orange pumpout flags; and
- Continuous regular maintenance of written daily pumpout log to ensure they are filled out entirely in a concise, readable format for review.

4. Registration of Customers

Vessel owners are required to register for pumpout service with the Contractor, which shall assist in streamlining the service through a) utilization of 'identification decals' indicating participation in the Service and b) orange flags to be flown when in need of a pumpout. All such decals and flags shall be provided by the Contractor at no cost to the Department.

Registration forms for participation in the service shall be made available online through a website hosted by the Contractor, which the Contractor shall continuously maintain and ensure is available and accessible to the public at all times. A sample registration form is provided by the Department for the Contractor's use as Exhibit H. The Contractor shall submit to the Department all registration information as provided on the sample registration form (Exhibit H) for each customer registered for service. Upon online registration, the Department shall be provided an auto-generated copy of the completed form via email by the Contractor. Registration forms shall also be made available directly from the Contractor's field personnel in each area of service. Additionally, the Contractor may also provide registration forms at various marine facilities throughout Monroe County. The Contractor

shall be responsible for creating and entering the registration information into a registration log for submittal to the Department. Registration to participate in the service shall be free for participants. Each participant must submit his or her registration information to the Contractor, which shall be entered into the service schedule by the Contractor. Upon the first service by the Contractor's pumpout vessel to the serviced vessel, field personnel shall a) provide an orange pumpout flag to the vessel owner/operator explaining the requirements for displaying the flag to receive service and b) affix the identification decal to the bow of the serviced vessel, adjacent to the location of its state vessel registration decal or waste pumpout location.

An identification decal may not be provided to a vessel owner or affixed to a vessel unless it has been serviced by the Contractor's pumpout vessel, and service shall not be provided to any vessel (which does not have sewage to be pumped) simply for the purpose of acquiring an identification decal. Service may also be denied if the vessel to be pumped is not properly equipped, as determined by the Contractor, to provide for a safe, secure pumpout (for example, improper deck fittings, sewage lines, etc.) which may reasonably result in a sewage leak or other breakdown, danger, or malfunction.

After the first service by the Contractor, a vessel owner/operator wishing to receive subsequent pumpout services shall display (i.e. hoist) the orange pumpout flag when service is requested in order to receive pumpout service. The Contractor shall not pumpout a vessel that does not display the orange pumpout flag even if the vessel is registered for routine service. The Contractor shall be responsible for lowering the pumpout flag at the completion of the service so the vessel owner can confirm that service was received. The vessel owner/operator shall be required to hoist the flag again to receive subsequent pumpout service.

The Contractor shall ensure that a service schedule for each service area is continuously available for access by the public on the Contractor's website. The registration forms provided on said website shall contain:

- The anchored location of the vessel (latitude/longitude and anchorage name);
- The registration (or documentation) number and state of registration;
- Whether the vessel owner/operator is a Monroe County resident;
- The size and type of the vessel;
- The capacity of the holding tank(s) and waste outlet location(s);
- The name of the vessel;
- Contact information for the vessel owner and/or operator including phone, email and mailing address;
- A point of contact listed for the vessel;
- Anticipated service need (e.g... only once, weekly, biweekly or monthly); and
- Vessel use category (e.g. year-round local liveaboard vs. transient cruiser).

The registration form must be signed by the vessel owner and/or its operator and must expressly authorize the Contractor to pumpout the participating vessel and to board the participating vessel to facilitate performance of a pumpout, if necessary.

For each new month of Service, the vessel owner/operator shall be provided a monthly endorsement sticker to be adhered to the identification decal as an acceptable proof of pumpout for compliance with Monroe County's Proof of Pumpout Ordinance.

5. Public Education

The Contractor shall continuously maintain a website in support of the pumpout service. In addition, the Contractor shall develop and provide registration packets in support of the pumpout service. In partnership with Monroe County, the Contractor shall also provide public education materials and

other instructional materials to the boating community. All educational materials shall primarily focus upon the importance of clean water to the environment and public health of the Florida Keys and its residents and visitors, and the pollution impacts of sewage discharge into the environment. The Contractor shall also ensure that these materials are available on its website and provide the following link to the Monroe County website: <http://www.monroecounty-fl.gov/pumpout>. The Contractor may further distribute these materials to facilities such as marinas, boating-related businesses, public facilities, and other locations where they may be reasonably accessed by the boating public. In addition, FWC officers and staff may also distribute these materials.

6. Coordination with the Department, Monroe County staff and FWC

The Contractor shall, at any and all times requested by the Department, Monroe County or FWC, identify to the requestor any occupied vessels that are not participating in the service or that are not requesting pumpouts.

7. Monitoring Devices

The Contractor shall install appropriate GPS monitoring devices on all pumpout vessels (and pumpout trucks, as applicable) for remote tracking of activities. The monitoring device shall track the location of each pumpout vessel, pumpout vessel activity, locations of pumpout customers and duration of pumping time. Such equipment of monitoring device(s) shall at all times comply with Florida Statute 934.425. An associated data software service shall be subscribed to for use of the monitoring device, and for logging pumpout vessel activity through the term of this Contract. These devices shall be kept maintained and operable for the term of this contract. The Contractor shall make the monitoring data accessible for review by the Department and Monroe County by submitting access information (i.e. log-in credentials) for the monitoring device data account.

8. Daily Pumpout Logs

The Contractor shall complete and submit a daily pumpout log for each day of service per pumpout vessel and must be signed by the Pumpout Captain. A sample daily pumpout log is provided by the Department for the Contractor's use as Exhibit G. The log shall include the service area/anchorage area, date of service, vessel location, vessel registration number, vessel name, in/out of state registration, estimated gallons pumped per vessel, and offloading location. The following items shall be totaled at the bottom of each pumpout log:

- The total number of pumps;
- The total number of in-state and out-of-state vessels served;
- The total estimated volume of sewage pumped; and
- The total number of offloaded gallons indicated by the flow meter data as specified below.

The number of gallons pumped per vessel must be rounded to the nearest whole number and be based on the average rate of flow of the pumpout vessel's pump. If a vessel requests service but no sewage is pumped, this service shall not be included in the total number of pumps and will not be compensated for payment unless beyond the control of the Contractor. All service calls and pumpouts shall be recorded with any applicable notes on the daily pumpout log, exhibit G.

9. Flow Meters

The Contractor shall install appropriate flow meters on all pumpout vessels to record actual gallons of sewage offloaded from the pumpout vessel holding tank to the offloading facility. The meter shall be installed on the discharge side of the pumpout vessel holding tank for accurate readings. The readings from these flow meters shall be recorded on the daily pumpout log for accurate reporting purposes. The flow meter reading shall be recorded on the daily pumpout log at the completion of each offloading event with a total number of gallons offloaded noted for each vessel per day of service. Saltwater flushing or any material other than sewage shall not be included in the total number of offloaded gallons reported on the daily pumpout log. Flow meters shall be kept maintained and operable for the term of this contract.

10. Quarterly Pumpout Report

The Contractor shall submit a signed quarterly pumpout report containing each service area as well as a summary of all service areas provided under this Contract.

- Monthly and Quarterly total number of pumpouts performed;
- Monthly and Quarterly total number of in-state vessels and out-of-state vessels pumped out;
- Monthly and Quarterly total estimated volume of sewage (in gallons) pumped out;
- Monthly and Quarterly total number of gallons offloaded;
- Monthly and Quarterly total number of individual vessels pumped out;
- Monthly and Quarterly total number of vessels pumped out (for the entire service area and broken down by vessel location);
- Methods and location of waste disposal utilized;
- Gallons of fuel used in performance of this Contract;
- Any education and outreach activities provided or performed in connection with this Contract; and
- The service schedule for each service area.

- b. Invoicing. At the end of each month, the Contractor shall submit to the Department's Contract Manager a signed invoice on company letterhead, along with documentation of services(s) received. Consulting, lobbying, travel, and lodging are specifically excluded from payments. Payments shall be made only for Services provided (i.e., individual pumpouts) and there are no reimbursable items. Contractor's final invoice must be received within sixty (60) days after the termination or expiration of this Contract. The Contractor shall provide monthly invoicing documentation, as described above. Invoicing shall be made within fifteen (15) calendar days of the end of each month.

The Contractor shall not charge any fees to anchored-out vessels for the services rendered under this Contract including, but not limited to, service fees and registration fees. In addition, pumpout vessel operators shall not accept any tips for providing this service.

- c. Completion Criteria and Date. The Contractor shall complete all Services prior to the expiration of the Contract. Any pending invoices must be submitted in accordance with Section 3(b) - Invoicing above.

4. Department's Responsibilities

The Department's Contract Manager will be responsible for reviewing deliverables to determine if they conform to the Scope of Work and accepting or rejecting deliverables for payment of invoices, as appropriate. Upon approval of deliverables, the Department shall pay the Contractor for the deliverables submitted on monthly invoices. The monthly invoices shall be based on the per unit rate listed in the Price Sheet. Payment will be based on the number of pumpouts performed at the cost per pumpout as indicated on the Price Sheet.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

ATTACHMENT 4

1. Public Records Access Requirements.

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a “contractor” as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- e. Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department’s custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118

Email: Public.Services@FloridaDEP.gov

**Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399**

State of Florida
Department of Environmental Protection
Price Sheet
On the Hook Marine Services LLC
Attachment 5

The Contractor's fixed price per pumpout is an all-inclusive rate to provide the services as specified in the Scope of Work. The Contractor will be paid for services actually rendered.

INITIAL CONTRACT TERM	
Service Area	Fixed Price (Per pumpout)
Key West	\$ 52.00
Stock Island	\$ 52.00
Lower Keys	\$ 70.00
Islamorada	\$ 52.00
Key Largo	\$ 52.00

RENEWAL CONTRACT TERM	
Service Area	Fixed Price (Per pumpout)
Key West	\$ 53.50
Stock Island	\$ 53.50
Lower Keys	\$ 72.50
Islamorada	\$ 53.50
Key Largo	\$ 53.50

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
General Contract Conditions – PUR 1000**

EXHIBIT A

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

1. **Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
 - (a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
 - (b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
 - (c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
 - (d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).
2. **Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.
3. **Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
4. **Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
 - (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
 - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
 - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
 - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
 - (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor’s control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. **Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
6. **Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
7. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
8. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
9. **Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
10. **Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
11. **Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
12. **Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
13. **Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
14. **Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the

Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage

to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

- 20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

- 21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.
- 22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- 23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

- 24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.
- 25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.
- 26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.
- 27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. **Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.
29. **Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.
30. **Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.
31. **Dispute Resolution.** Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. **Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.
33. **Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.
34. **Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.
35. **Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance

coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

- 36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- 37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.
- 38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.
- 39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.
- 40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.
- 41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.
- 42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.
- 43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

- 44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.
- 46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subcontractor Utilization Report Form
EXHIBIT B**

DIRECTIONS:

Contractors working for the Department **must complete and submit this attachment with each invoice submitted for payment.** If more rows are needed, duplicate this form as needed. Questions regarding use of this form should be directed to the Procurement Section, Florida Department of Environmental Protection, 3800 Commonwealth Boulevard, MS# 93, Tallahassee, Florida 32399-3000, Phone (850) 245-2361.

DEP Contract No.: _____ Invoice Number: _____
 Task Assignment No. (if applicable): _____
 Invoice Service Period: _____
 Business Name & Address: _____

 Business Phone Number: _____

LIST NAMES AND ADDRESSES OF SUBCONTRACTORS UTILIZED THIS INVOICE PERIOD		LIST AMOUNT PAID TO EACH SUBCONTRACTOR THIS INVOICE PERIOD		INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																								
				BUSINESS CLASSIFICATION			CERTIFIED MBE			NON-CERTIFIED MBE			NON-PROFIT ORG.															
				NON-MINORITY	SMALL BUSINESS (STATE)	SMALL BUSINESS (FEDERAL)	GOVERNMENTAL AGENCY	NON-PROFIT ORGANIZATION	P.R.I.D.E.	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED VETERAN	AFRICAN AMERICAN	HISPANIC	ASIAN/HAWAIIAN	NATIVE AMERICAN	AMERICAN WOMAN	SERVICE-DISABLED VETERAN	BOARD IS 51% OR MORE MINORITY	51% OR MORE MINORITY OFFICERS	51% OR MORE MINORITY COMMUNITY SERVED	OTHER NON-PROFIT			

SUBCONTRACTOR UTILIZATION REPORT FORM CERTIFICATION: I certify that the information provided in the table above is accurate as of the last day of the payment period identified on this form.

Contractor's Contract Manager Signature

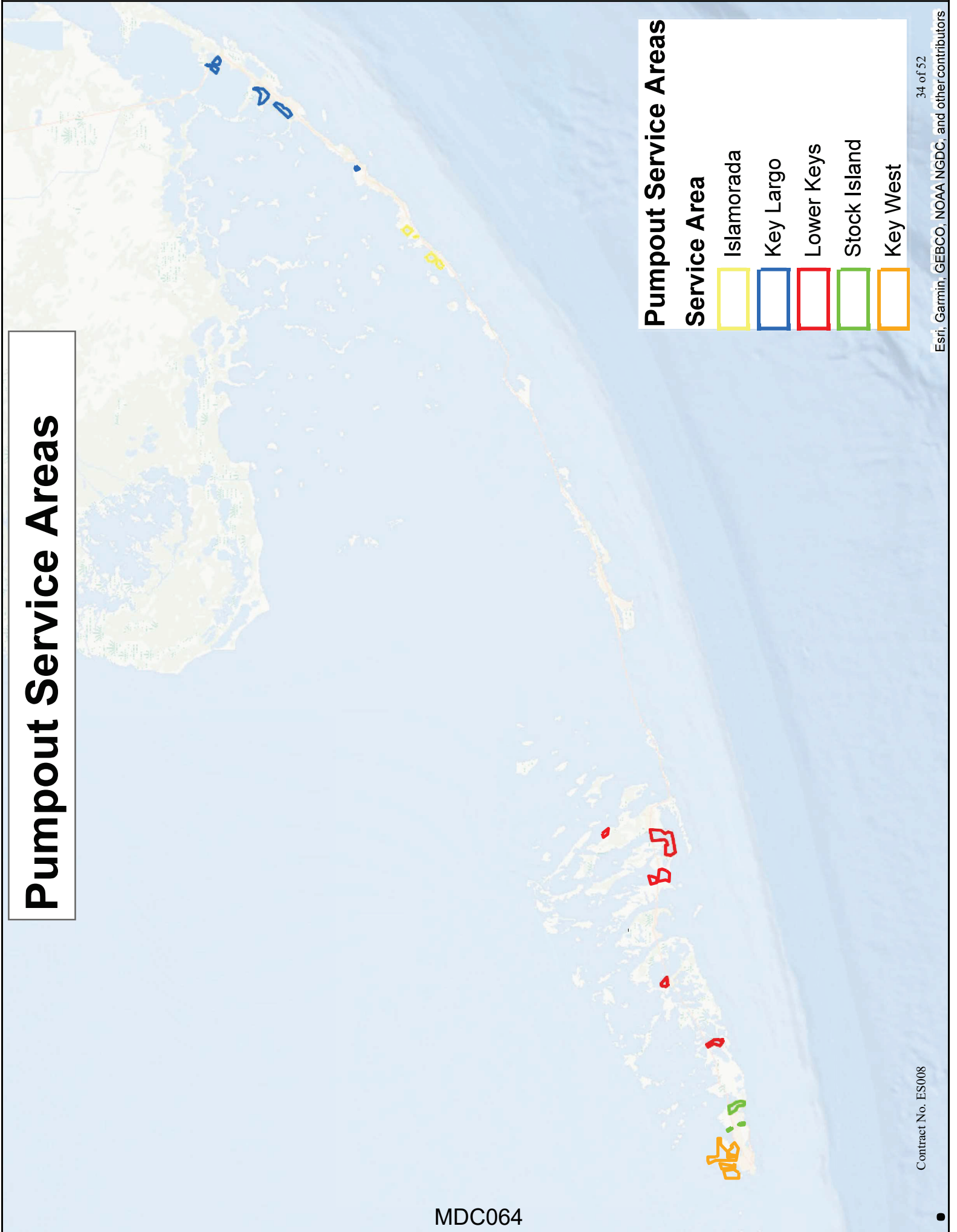
Date

**State of Florida
Department of Environmental Protection
Pumpout Service Area Map**

Exhibit F

- Remainder of page intentionally left blank -

Pumpout Service Areas

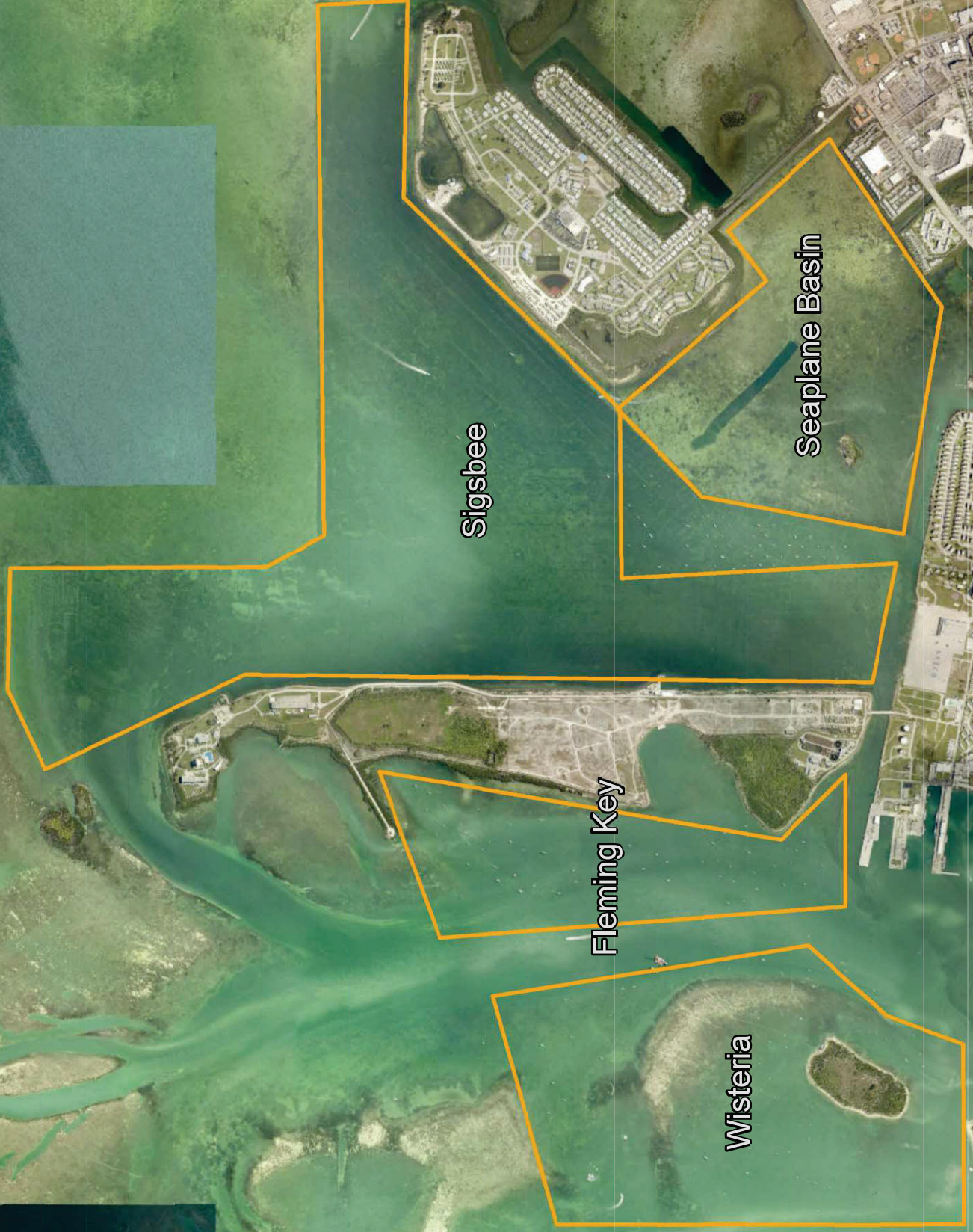


Pumpout Service Areas

Service Area

- Islamorada
- Key Largo
- Lower Keys
- Stock Island
- Key West

Key West Pumpout Service Area



MDC065

Sources: Esri, GEBCO, NOAA, National Geographic, Garmin, HERE, Geonames.org, and other contributors. Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Contract No. FS008

Stock Island Pumpout Service Area

Cow Key North

Boca Chica Basin

Cow Key South

MDC066

Lower Keys Pumpout Service Area

Upper Sugarloaf Sound

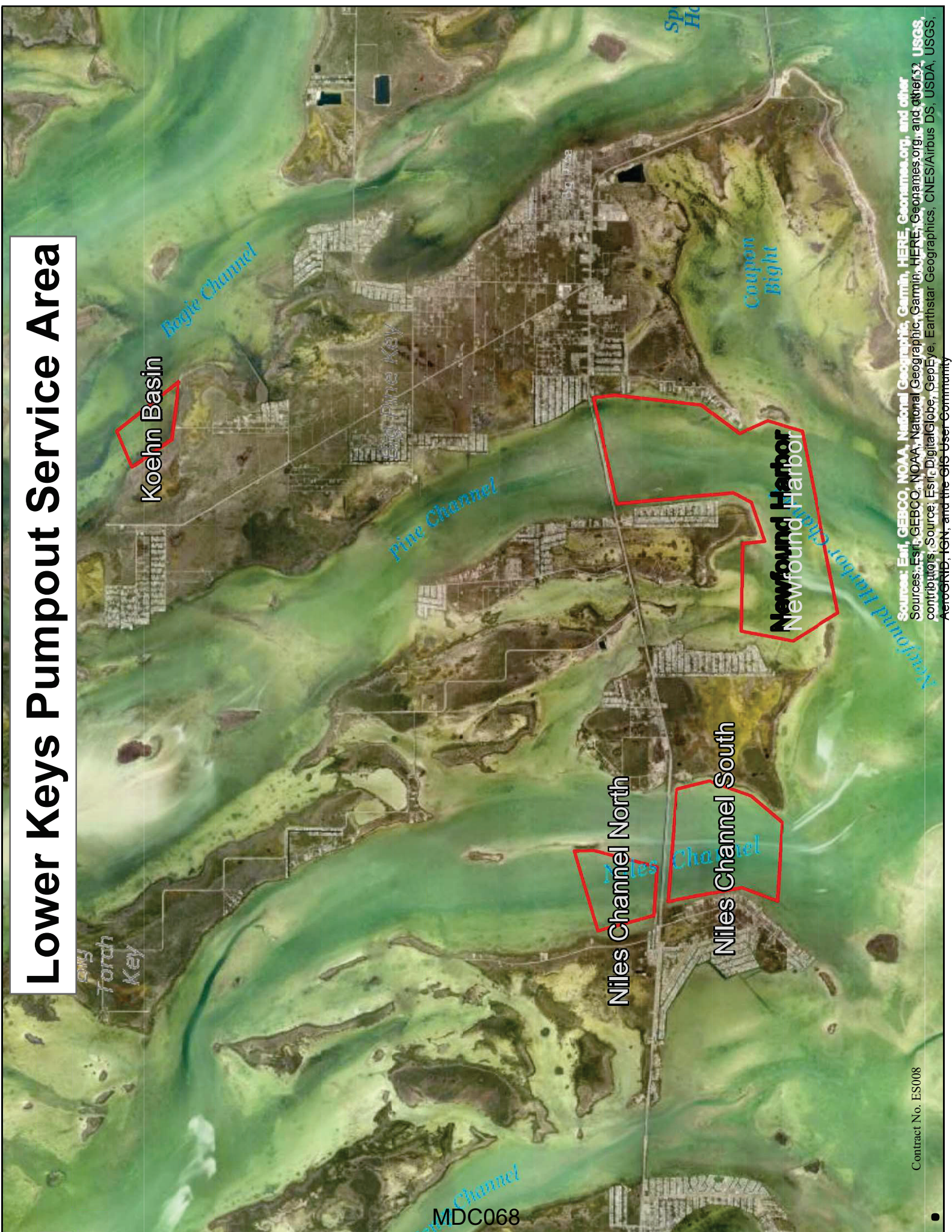
Similar Sound

MDC067

Contract No. ES008

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Lower Keys Pumpout Service Area



Koehn Basin

Niles Channel North

Niles Channel South

Newfound Harbor

Regie Channel

Pine Channel

Niles Channel

Coupon Bight

Newfound Harbor Channel

MDC068

Contract No. ES008
Sources: Esri, GEBCO, NOAA, National Geographic, Garmin, HERE, Geonames.org, and other contributors; Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Islamorada Pumpout Service Area



OV Basin

Wilson Key

Big Basin

Little Basin

MDC069

Contract No. ES008

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Key Largo Pumpout Service Area

Community Harbor

MDC070

Key Largo Pumpout Service Area

Tarpon Basin

Buttonwood Sound

MDC071

Contract No. ES008

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Key Largo Pumpout Service Area

Jewfish Creek North

Jewfish Creek South

Lake Surprise

MDC072

Contract No. ES008

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

State of Florida
 Department of Environmental Protection
 Sample Daily Pumpout Log
 Exhibit G

DAILY PUMPOUT LOG DATE _____ PAGE ___ OF ___

CAPTAIN _____ MATE(S) _____ CAPTAIN'S SIGNATURE _____

TIME IN _____ TIME OUT _____ TOTAL HOURS _____

	LOCATION	VESSEL REG #	VESSEL NAME	IN/OUT OF STATE VESSEL	GALLONS PUMPED	NOTES
1				IN / OUT		
2				IN / OUT		
3				IN / OUT		
4				IN / OUT		
5				IN / OUT		
6				IN / OUT		
7				IN / OUT		
8				IN / OUT		
9				IN / OUT		
10				IN / OUT		
11				IN / OUT		
12				IN / OUT		
13				IN / OUT		
14				IN / OUT		
15				IN / OUT		
16				IN / OUT		
17				IN / OUT		
18				IN / OUT		
19				IN / OUT		
20				IN / OUT		
21				IN / OUT		
22				IN / OUT		
23				IN / OUT		
24				IN / OUT		
25				IN / OUT		

TOTAL: PUMPS* _____ IN-STATE _____ OUT-OF-STATE _____ GALLONS OFFLOADED _____**

OFFLOADING LOCATION: _____

*Pumpouts with zero gallons (i.e. where no sewage was collected) shall not be included in Total Pumps.

**Gallons Offloaded shall be based on flow meter data during offloading, not estimated collected gallons per vessel.

**State of Florida
Department of Environmental Protection
Mobile Vessel Pumpout Service
Sample Registration Form**

Exhibit H

Remainder of page intentionally left blank

Mobile Vessel Pumpout Service SAMPLE REGISTRATION FORM

Registration Information:

Please complete the following required information to request temporary mobile vessel pumpout services provided by the **Contractor** on behalf of the Department of Environmental Protection. Services are anticipated to be provided from _____ through _____. Services will be available to anchored vessels in the following anchorages: Little Basin, Big Basin, Windley/Wilson Key, Windley/OV Basin, Community Harbor, Buttonwood Sound, Tarpon Basin and Jewfish Creek, Sugarloaf Sound, Niles Channel, Newfound Harbor, Koehn Basin, Wisteria, Fleming Key, Cow Key (North), Cow Key (South), Boca Chica Basin..

Registered Vessels Information:

Once an application is received, your vessel will be registered for service. Upon first service, a monthly endorsement sticker will be placed on the vessel and you will be provided an orange pumpout flag to be flown when service is requested. This flag shall be flown from a visible location aboard the vessel. Service will be provided only when the pumpout flag is properly displayed. For each new month of service thereafter, a new endorsement sticker will be placed on the vessel. This sticker shall serve as documentation for compliance with the Monroe County Proof of Pumpout Ordinance 015-2017.

A weekly service schedule will be made available at Contractor's link . Every effort will be made to provide your vessel with a routine, weekly pumpout service if requested. However, weather, safety or other scheduling considerations cannot guarantee that you will be provided service on a routine schedule. Shoreside pumpout stations are also available throughout Monroe County. A list of available shoreside facilities can be found at *TBD*.

For more info, please contact _____ or _____ .

First Name		Last Name:	
Mailing Address, City, State, Zip			
Email Address (optional)		Phone	
Contact Name (if different from above)		Contact Phone (if different from above)	
Are you a Monroe County Resident?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Vessel Registration Number (or USCG Documentation Number)	
		Registration:	<input type="checkbox"/> In-State <input type="checkbox"/> Out-of-State
Vessel Type:	<input type="checkbox"/> Sail <input type="checkbox"/> Power	Vessel Length:	Vessel Make/Model:
Vessel Name: (If none, enter "No Name")			

State of Florida
Department of Environmental Protection
Service Records and Maps
Exhibit I

Primary Anchorages in the Florida Keys
with Number and Location of Anchored Vessels receiving Mobile Vessel Pumpout Service
6-16-2020

Overview

The Monroe County Mobile Vessel Pumpout Service is provided to vessel owners throughout the Florida Keys as a means of reducing or eliminating the adverse environmental impacts associated with the illegal discharge of sewage into the federally designated No-Discharge Zone. The Service’s first priority is providing service to anchored-out vessels.

This report provides information on the number and locations of anchored-out vessels that currently receive pumpout service by Monroe County’s Contractor. In addition, nearby shoreside pumpout facilities (including current cost per pumpout-subject to change without notice) are provided on the following maps for reference.

This report is based on best available data from pumpout logs for the month of June 2019. This period is considered “off-season” for vessels at anchor. Therefore, these numbers are conservative and anticipated to be higher during the winter months when activity is greater.

Region (Service Area)	Primary Anchorages	Number of Anchored Vessels Serviced	Proximity to Nearest Shoreside Pumpout Facility (in miles)*
Lower Keys (Key West to Stock Island)	Wisteria	42	2
	Fleming Key	55	1
	Cow Key (North)	10	<1
	Cow Key (South)	12	2
	Boca Chica Basin	20	4
	SUBTOTAL	139	
Lower Keys (Sugarloaf to Big Pine Key)	Sugarloaf Sound	5	22
	Niles Channel	2	14
	Newfound Harbor	9	14
	Koehn Basin	2	8
	SUBTOTAL	18	
Middle Keys	N/A	N/A	N/A
Upper Keys	Little Basin	4	<1
	Big Basin	4	<1
	Windley (Wilson Key)	3	4
	Windley (OV Basin)	6	3
	Community Harbor	9	<1
	Buttonwood Sound	3	10
	Tarpon Basin	5	5
Jewfish Creek	8	6	
	SUBTOTAL	42	
	GRAND TOTAL	199	

*dependent on vessel draft and mast height restrictions. Nearest facility may not be appropriate for all vessels.

Lower Keys Region

Wisteria and Fleming Key Anchorages

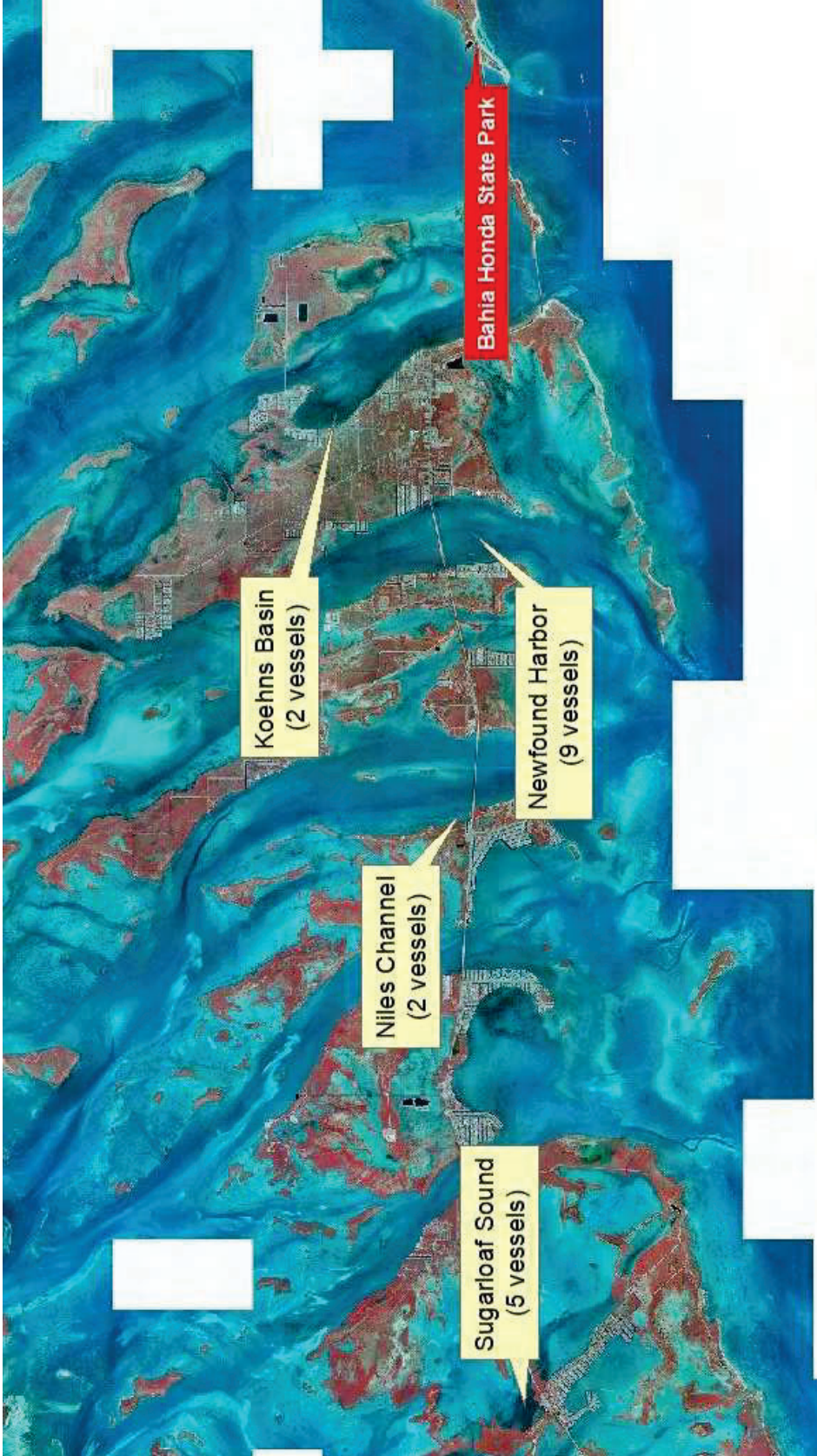


Cow Key Channel and Boca Chica Basin Anchorages



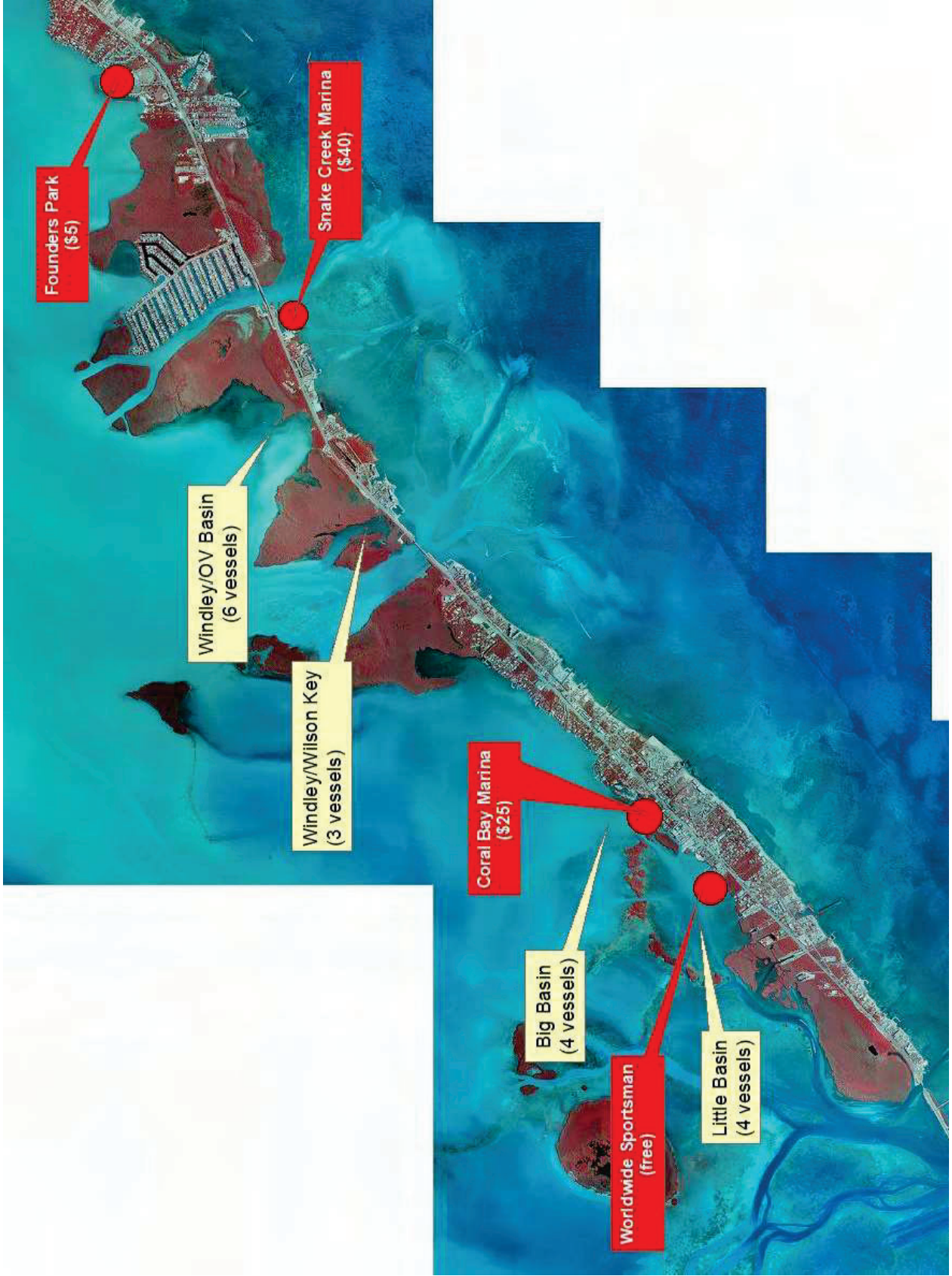
MDC079

Sugarloaf to Big Pine Key Anchorages



Upper Keys Region

Islamorada Area Anchorages



Tavernier and Key Largo Anchorages

