

Meeting Date: 02/10/15

Agenda Item 14

REQUESTED COMMISSION ACTION:

Consent  Ordinance  Resolution  Consideration/Discussion  Presentation

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND KEARNS CONSTRUCTION COMPANY; PROVIDING AN EFFECTIVE DATE. (Fiscal impact to City: \$257,500)

Summary of Purpose and Why:

Kearns Construction Company is proposed to be our General Contractor for purchasing scuttling and sinking the Santé Manna at a depth of 150 feet for the creation of an artificial reef approximately one half mile east of the Pompano Beach Pier.

- (1) Origin of request for this action: Pompano Beach Tourism Committee and Economic Development Council
- (2) Primary staff contact: Greg Harrison, Assistant City Manager *Greg Harrison* 954 786-4601
- (3) Expiration of contract, if applicable: \_\_\_\_\_
- (4) Fiscal impact and source of funding: Total: \$515,000 (\$257,500 Revenue from PPI, Inc. and \$257,500 from the City of Pompano Beach-General Fund Reserves) 001-9910-599-4650

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	<u>2/3/15</u>	<u>Approval</u>	<u><i>[Signature]</i></u>
Finance	<u>2/3/15</u>	<u>Approval</u>	<u><i>[Signature]</i></u>
Budget	<u>2-3-15</u>	<u>Approval</u>	<u><i>[Signature]</i></u>

*[Signature]*

City Manager

*[Signature]*

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 <sup>st</sup> Reading	1 <sup>st</sup> Reading	Results:	Results:
_____	_____	_____	_____
2 <sup>nd</sup> Reading	_____	_____	_____
_____	_____	_____	_____



**City Attorney's Communication #2015-364**  
January 20, 2015

**TO:** Greg Harrison, Assistant City Manager  
**FROM:** Fawn Powers, Assistant City Attorney  
**RE:** Resolution – Agreement To Establish An Artificial Reef

As requested, I have prepared and attached the following captioned resolution:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND KEARNS CONSTRUCTION COMPANY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

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FAWN POWERS

I:\cor\mgr\acm\2015-364f  
Attachment

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND KEARNS CONSTRUCTION COMPANY; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and Kearns Construction Company to establish an artificial reef, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Kearns Construction Company.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

FP/ds

1/20/15

l:reso/2015-152f

**Agreement**

**Between**

**THE CITY OF POMPANO BEACH**

**and**

**KEARNS CONSTRUCTION COMPANY**

**Relating to**

**The Establishment of an Artificial Reef  
By Means of Sinking at Sea  
The Vessel known as the M/V Santé Manna**

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## EXHIBITS

- 1 Description of the M/V Santé Manna
- 2 Florida Department of Environmental Protection General Permit 06-0331539-001 for Artificial Reef Construction
- 3 U.S. Army Corps of Engineers Permit No. 1989-90804(MOD-LCK)
- 4 CITY's Scope of Work for the Topside Modifications
- 5 CONTRACTOR's Scope of Work for the Topside Modifications
- 6 Items to be Salvaged from the M/V Santé Manna and Provided to the CITY

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between

**THE CITY OF POMPANO BEACH**, a Florida municipal corporation whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (the “CITY”),

and

**KEARNS CONSTRUCTION COMPANY**, a Florida for profit corporation whose principal address is 4101 Braganza Avenue, Miami, Florida 33125 (the “CONTRACTOR”)

**WHEREAS**, the parties to this Agreement have identified the container ship known as the M/V Santé Manna more particularly described in Exhibit 1 as being available for purchase and sinking as an artificial reef in a location known as the Permitted Site as referenced in Exhibits 2 and 3 (the “Project”); and

**WHEREAS**, the parties desire to enter into this Agreement setting forth their mutual understandings and obligations regarding the Project; and

**WHEREAS**, the CITY has decided that participating in the Project is in the public’s best interest.

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises set forth herein, the parties agree as follows.

**ARTICLE 1**  
**DEFINITIONS**

As used in this Agreement the following terms shall have the following meanings. Other terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement. Words used herein in the singular shall include the plural and words in the masculine/feminine/neuter gender shall include words in the masculine/feminine/neuter where the text of this Agreement requires.

1. **Agreement**: means this document.
2. **Authorized Representative**: The person(s) designated and appointed from time to time by any of the parties to represent that entity in administrative matters as opposed to policy matters.
3. **CITY**: The City of Pompano Beach, a municipal corporation of the State of Florida.

4. **City Commission:** The elected governing body of the City.
5. **Completion Date:** The date when the CITY issues a Notice of Completion for the Project.
6. **Contractor:** Kearns Construction Company, a Florida for-profit corporation responsible to perform the Work for the Project.
7. **Contract Administrator:** For the CITY, its City Manager or his/her designee as provided for in writing by the City Manager. For CONTRACTOR, John Kearns or his designee as provided for in writing by John Kearns.
8. **Default:** An event under which any party to this Agreement has failed to materially perform under the obligations of this Agreement, after having been given notice of such event and an opportunity to cure. The opportunity to cure any event of default, unless otherwise prescribed in this Agreement, shall be 30 days after delivery of notice to the party (ies) alleged to be in default.
9. **Effective Date:** The date on which this Agreement is executed by both parties.
10. **Governmental Authorities:** The CITY and any other federal, state, county, municipal or other government department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.
11. **Notice of Completion:** After CONTRACTOR's completion of the Work to be performed hereunder and within three (3) business days of CITY's receipt of written documentation from the appropriate Governmental Authorities that the M/V Santé Manna has been successfully scuttled at the Permitted Site in accordance with permit requirements and all applicable laws, the Notice of Completion shall be the CITY's written notice to CONTRACTOR memorializing the CITY's satisfaction with CONTRACTOR's completion of the Work.
12. **Permitted Delays:** All delays or extensions approved by the CITY and all delays attributable to an event of Force Majeure as provided for in Articles 8 and 31 herein.
13. **Permitted Plans:** The plan(s) approved by the Governmental Authorities having jurisdiction over the Work to be performed for the Project under this Agreement, including, but not limited to the Site Plan; engineering, architectural, mechanical and structural drawings and specifications prepared by the CONTRACTOR through which all required permits for the Project are issued by the Governmental Authorities.
14. **Permitted Site:** The Atlantic Ocean sand bottom with approximate coordinates of 26° 13.775' N, Longitude 80° 03.861' S, where the M/V Santé Manna is to be scuttled in an upright position at an approximate depth of 150 feet for establishment of an artificial reef in accordance with the provisions of this Agreement.

15. **Project:** CONTRACTOR shall purchase the M/V Santé Manna and, in accordance with all regulatory requirements, subsequently clean, transport and scuttle same at a location known as the Permitted Site for the purpose of establishing an artificial reef off the coast of Pompano Beach, Florida.

16. **Project Financing:** Any financing provided for all or any portion of the Project.

17. **Regulatory Approvals:** Any or all of the following approvals required for CONTRACTOR to perform the Work required hereunder in accordance with all applicable laws and regulations (collectively, the “Regulatory Approvals”):

- a. Permits to scuttle the M/V Santé Manna.
- b. All governmental or regulatory agencies having jurisdiction

18. **Salvaged Items:** Those items listed in Exhibit 6 to this Agreement which KEARNS agrees to remove from the M/V Santé Manna, surrender any interest in and deliver to CITY, who shall be entitled to sole possession and ownership of same.

19. **Site Plan Approval:** The final, unconditional granting of the final Site Plan approval from the Governmental Authorities for the scuttling of the M/V Santa Manna at the location known as Permitted Site, including all applicable appeal periods.

20. **Topside Modifications:** The scope of work referenced in Exhibit 4 to be performed on the M/V Santa Manna by the CITY or its representatives in conjunction with CONTRACTOR’s decommissioning of the vessel.

21. **Work:** The acquisition and sinking of the M/V Santé Manna in accordance with the provisions of this Agreement, whether completed or partially completed, including all labor, materials, equipment, goods, products and services provided or to be provided by CONTRACTOR to fulfill CONTRACTOR’s obligations hereunder, including coordinating and providing the equipment and labor set forth in Exhibit 5 for the Topside Modification.

## **ARTICLE 2** **REPRESENTATIONS AND COVENANTS**

1. **Representations of the CITY.** The CITY makes the following representations to CONTRACTOR and the CITY acknowledges that CONTRACTOR has relied upon in entering into this Agreement.

a. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy, or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

b. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

c. Other than those items listed in Exhibit 6 which CONTRACTOR agrees to provide to CITY in accordance with the provisions of Article 7 hereunder, CONTRACTOR shall have salvage rights to keep or sell any of the equipment removed from the M/V Santé Manna prior to the vessel being scuttled.

2. Representations of CONTRACTOR. CONTRACTOR makes the following representations to the CITY which the CITY relies upon in entering into this Agreement.

a. The CONTRACTOR is a Florida for-profit corporation, duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

b. The execution, delivery, consummation and performance under this Agreement will not violate or cause the CONTRACTOR to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which CONTRACTOR is a party or constitute a default thereunder or cause acceleration of any obligation of CONTRACTOR thereunder.

c. By execution of this Agreement, CONTRACTOR certifies to the CITY that the officer executing this Agreement has been duly authorized by proper resolution(s) of CONTRACTOR's respective Board of Directors to enter into, execute and deliver this Agreement and all other documents, certificates, agreements, consents and receipts, and to take any and all other actions of any kind whatsoever in order to accomplish the purposes and undertakings hereunder and such action shall be, and is, binding on CONTRACTOR.

d. There are no actions, suits or proceedings pending or threatened against or affecting the CONTRACTOR or its principals, which CONTRACTOR is aware of in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental body which would have any material effect on CONTRACTOR's ability to perform its obligations under this Agreement.

e. The CONTRACTOR represents that, subject to obtaining financing from the CITY as provided herein, CONTRACTOR has the ability, skill and resources to complete its responsibilities as required by this Agreement.

f. CONTRACTOR acknowledges this Agreement has been entered into to provide for establishment of an artificial reef at the location known as the Permitted Site.

g. In light of the substantial financing and other public resources committed by CITY for the Project, CONTRACTOR understands that CITY, in entering into this Agreement, is accepting and relying on the CONTRACTOR for the faithful performance of all undertakings and covenants contained in this Agreement, including obtaining clear and

marketable title to the M/V Santé Manna and providing an Asbestos Inspection Report that documents there is no asbestos in the vessel.

h. CONTRACTOR further acknowledges that its failure to faithfully perform any of the provisions of this Agreement constitutes default on its part, and CONTRACTOR fully agrees to the remedies for default as set forth in Article 14 herein.

i. CONTRACTOR represents and warrants that it has and will continue to maintain, all licenses, permits and approvals applicable to the Work contemplated herein and that CONTRACTOR will, at all times, conduct all Work under this Agreement in a reputable manner.

j. CONTRACTOR represents and warrants that CONTRACTOR is familiar with, and shall comply, with all federal, state and local laws and ordinances, codes and regulations applicable to the Work contemplated herein.

k. CONTRACTOR represents and warrants that it shall provide a drug-free workplace.

l. CONTRACTOR represents and warrants that all Work provided hereunder shall be performed by skilled and competent personnel to the highest professional standards in the field.

**ARTICLE 3**  
**PROJECT DESCRIPTION**

1. The Project. CONTRACTOR shall acquire the container ship known as the M/V Santé Manna and subsequently scuttle same in accordance with all applicable local, county, state and federal requirements, laws and regulations, in a location known as the Permitted Site for the purpose of establishing an artificial reef off the coast of Pompano Beach, Florida. CONTRACTOR agrees to complete the Project according to the Project Schedule, but in no event shall Project completion extend beyond January 1, 2016, even taking into account Permitted Delays.

2. Project Funding. CITY agrees to pay CONTRACTOR Two Hundred Fifty Seven Thousand Five Hundred Dollars (\$257,500.00) within five (5) business days of CONTRACTOR obtaining the CITY's written approval that all the requirements set forth in a – c below have been satisfied:

a. CONTRACTOR shall have secured written approval from the CITY's Risk Manager that CONTRACTOR has provided proof of the insurance coverage and performance bond required under Article 5 herein;

b. CONTRACTOR shall have secured written approval from the CITY's legal counsel that CONTRACTOR has provided proof that CONTRACTOR can provide clear

and marketable title to the M/V Santé Manna as required in Paragraph 2.g. of Article 2 herein; and

c. CONTRACTOR shall have secured written approval from the CITY's Building Official that CONTRACTOR has provided an Asbestos Inspection Report that reveals there is no asbestos in the M/V Santé Manna as required in Paragraph 2.g. of Article 2 herein.

Within five (5) business days of issuance of the CITY's Notice of Completion, CONTRACTOR shall receive payment of Two Hundred Fifty Seven Thousand Five Hundred Dollars (\$257,500.00) from the CITY as payment for completion of the Project. CONTRACTOR shall be solely responsible to obtain any additional financing necessary to complete the Project should CONTRACTOR's costs exceed the \$515,000.00 being committed by the CITY.

**ARTICLE 4**  
**TERM**

The term of this Agreement shall commence the date this Agreement is executed by all parties and end when CITY provides CONTRACTOR the Notice of Completion for the Project in accordance with Article 11 herein. During this period, the CONTRACTOR shall be bound by, and must comply with, the terms and conditions imposed by this Agreement.

**ARTICLE 5**  
**INSURANCE AND PERFORMANCE BOND**

Throughout the term of this Agreement, CONTRACTOR and all subcontractors hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements. Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

CONTRACTOR is responsible to deliver to the CITY's Risk Manager for his timely review and written approval/disapproval, (i) Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage and (ii) a performance bond in the amount of Five Hundred Fifteen Thousand Dollars (\$515,000.00) to ensure CONTRACTOR's faithful performance of its obligations hereunder. This bond shall be in substantial conformity with the requirements set forth in Chapter 255.05, F.S., and written by a surety company acceptable to CITY.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to

review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

1. Worker's Compensation: CONTRACTOR and all subcontractors shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes. CONTRACTOR shall provide this coverage on a primary basis. CONTRACTOR and all subcontractors agree to maintain Federal Act endorsement for U.S. Longshoremen's & Harbor Workers Act (WC 00 01 06 A) and The Jones Act (WC 00 02 01 A) when the Work required hereunder is on or contiguous to navigable U.S. waterways and ways adjoining, or vessels.

2. Employer's Liability: CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the amount of One Hundred Thousand Dollars (\$100,000.00) which shall name the CITY as an additional insured.

3. General Liability Insurance: CONTRACTOR and all subcontractors shall, at their own expense, provide, pay for, and continuously maintain, comprehensive and all inclusive public liability and property damage insurance for the benefit of CITY, with a policy limit of not less than \$1,000,000 per person/\$1,000,000 per occurrence, combined single limits, which coverage shall include property damage and personal injuries, including death, and shall name the CITY as an additional insured.

4. Business Auto Insurance: CONTRACTOR and all subcontractors shall provide, carry, pay for and continuously maintain business automobile coverage for owned, non-owned and hired vehicles with a policy limit of not less than \$1,000,000 per person/\$1,000,000 per occurrence which shall name the CITY as an additional insured.

5. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- a. Certificates of Insurance evidencing the required coverage;
- b. Names and addresses of companies providing coverage;
- c. Effective and expiration dates of policies; and
- d. A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

6. Collection of Insurance: In the event of a claim for destruction or damage hereunder, all funds payable from insurance policies shall be deposited as a trust fund in a commercial national bank selected by the CITY and located in Pompano Beach, Florida. Said funds shall be used for the purposes of reconstruction or repair according to the following priority: first, for all or any portion of the M/V Santé Manna and second, for personal property so damaged or destroyed.

Such reconstruction and repair work shall be done by CONTRACTOR in strict conformity with all applicable laws and regulations of all Governmental Authorities having jurisdiction. In the event the cost of reconstruction or repair exceeds the amount of funds available from the proceeds of such insurance policy, then such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair and CONTRACTOR shall be responsible for the remaining funds. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived for such insurance policies, the surplus shall be payable to CONTRACTOR.

7. Insurance Cancellation or Modification: Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

8. Waiver of Subrogation: CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

## **ARTICLE 6** **CONTRACT ADMINISTRATOR**

1. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

2. For the purposes of the day-to-day conduct during the term of the Project, the CONTRACTOR's Contract Administrator is John Kearns or his written designee as provided for in writing by John Kearns.

3. For the purposes of the day-to-day conduct during the term of the Project, the CITY's Contract Administrator is its City Manager or his designee as provided for in writing by the City Manager.

## **ARTICLE 7** **CONTRACTOR'S OBLIGATION TO ACQUIRE AND SCUTTLE** **THE M/V SANTÉ MANNA**

CONTRACTOR covenants and agrees to commence and complete the Project in a professional and workmanlike manner and in accordance with this Agreement and the provisions set forth below.

1. Notwithstanding any other provision or term of this Agreement, CONTRACTOR shall commence and complete the Project in compliance with all relevant federal, state and local laws; rules; regulations and ordinances. CONTRACTOR agrees that the failure of this Agreement to address a particular permit, condition, fee, term or restriction, shall not relieve CONTRACTOR of the necessity of complying with the law governing said permitting requirements, conditions, fees, terms or restrictions.

2. CONTRACTOR shall provide turnkey services that include purchasing, taking title to, and accepting liability for the container ship known as the M/V Santé Manna; paying dockage expenses from the time of purchase until Project completion; and decommissioning, towing and scuttling the M/V Santé Manna at the "Permitted Site."

3. CONTRACTOR shall be responsible for maintaining possession and transporting the M/V Santé Manna once it is purchased until the time the vessel is deployed onto the ocean floor at the "Permitted Site" for establishment of an artificial reef.

4. CONTRACTOR shall comply with all regulatory requirements and also be responsible to timely secure the permit that allows the Project to go forward.

5. CONTRACTOR shall expeditiously clean the M/V Santé Manna of all potential pollutants, including hydrocarbons, asbestos, liquids and general debris. CONTRACTOR shall also remove hatches, doors, and other ancillary items that may impede or obstruct divers from entering the vessel as required by U.S. Coast Guard and Broward County.

6. CONTRACTOR agrees to remove the Salvaged Items listed in Exhibit 6 from the M/V Santé Manna, surrender any interest in and deliver to CITY, who shall be entitled to sole possession or ownership of same

7. CONTRACTOR shall expeditiously schedule and obtain the necessary inspections and approvals from the U.S. Coast Guard and the Florida Department of Environmental Protection prior to transporting the vessel for scuttling at the Permitted Site.

8. CONTRACTOR shall cut access holes in the M/V Santé Manna prior to scuttling. All steel superstructures currently attached to said vessel shall remain.

9. To ensure that the Santé Manna does not drift during deployment and remains in place once anchored at the Permitted Site, CONTRACTOR agrees to provide sufficient steel anchors and a minimum of two chains of suitable size and length.

10. CONTRACTOR shall be responsible to tow the M/V Santé Manna to the Permitted Site or other appropriate facility as directed by its Contract Administrator.

11. CONTRACTOR understands and agrees that after the M/V Santé Manna has been scuttled on the Permitted Site and is resting on the ocean bottom, CONTRACTOR shall forever abandon any claims of interest in the artificial reef established by the M/V Santé Manna.

12. If the weather does not permit safe deployment on the scheduled deployment date, deployment shall be a date thereafter as approved by Broward County as weather permits for safe deployment. CONTRACTOR shall retain responsibility of the M/V Santa Manna until the weather permits safe deployment.

13. CONTRACTOR shall complete deployment of the M/V Santé Manna on the Permitted Site within one hundred twenty (120) days of purchasing it unless delayed by weather or Permitted Delays as defined in Article 1.

14. CONTRACTOR agrees to assume all risks involved in undertaking the Work described herein.

15. CONTRACTOR shall ensure that all of its employees, contractors and subcontractors hereunder shall comply with all applicable legal requirements governing conduct, safety, security and regulatory approvals in the performance of Work hereunder.

16. CONTRACTOR understands that while it is decommissioning the M/V Santé Manna, CITY desires to undertake certain Topside Modifications to the vessel as set forth in Exhibit 4 and CONTRACTOR agrees to coordinate and provide the equipment, staging area and labor set forth in Exhibit 5 to accomplish same.

**ARTICLE 8**  
**CONTINUOUS PERFORMANCE OF WORK; PERMITTED DELAYS**

1. Once the CITY has provided CONTRACTOR the \$257,500.00 to purchase the M/V Santé Manna, CONTRACTOR shall diligently perform the Work required hereunder until Project completion as evidenced by the CITY's Notice of Completion, except only for Permitted Delays as defined in Article 1. Unless caused by Permitted Delays, Work and the services required to be performed hereunder shall not be considered to be carried through diligently if said activities cease for a period of thirty (30) days or more.

2. Permitted Delays in completing the Project shall not constitute a material Default by the CONTRACTOR provided that CONTRACTOR resumes and continues the Work to be provided hereunder within five (5) business days following the time when such Permitted Delay is no longer present. Within five (5) business days after the beginning of such Permitted Delay, CONTRACTOR shall provide the other parties written notice of the delay and the reason therefore and requested a written extension for the period of the Permitted Delay.

**ARTICLE 9**  
**CARE AND MAINTENANCE DURING THE PROJECT TERM**

1. During the term of the Project, CONTRACTOR covenants and agrees to safely perform the Work required hereunder and to protect against damage to persons and property by reason of said activities.

2. In the case of damage or loss to the M/V Santé Manna, CONTRACTOR shall, as soon as possible after the occurrence of such loss or damage, repair or rebuild the vessel so that it is of the same general character and at least equal in value of such loss or damage. See Article 5 of this Agreement as to insurance requirements and the use of insurance funds.

3. Permitted Delays excepted, such repairs shall be begun within sixty (60) calendar days after such occurrence or, if rebuilding is required, such rebuilding shall be begun within 120 calendar days after such occurrence and in either case shall be completed in a reasonable time provided insurance funds are available, but in no event shall commencement of repairs or rebuilding be delayed beyond 180 days from the date of occurrence. The CONTRACTOR shall pay for all such repairing and rebuilding so that M/V Santé Manna shall be free and clear of all liens of mechanics and materialmen and similar liens arising out of such repair, rebuilding or reconstruction.

### **ARTICLE 10** **PROJECT SCHEDULE**

1. Except for Permitted Delays as defined in Article 1 herein, CONTRACTOR shall complete the Project in accordance with the following schedule:

a. CONTRACTOR shall purchase/take title to the M/V Santé Manna by January 16, 2015; and

b. CONTRACTOR shall receive all final regulatory approvals from Governmental Authorities, including the CITY's Notice of Completion, on the scuttled M/V Santé Manna by June 1, 2015.

2. Subject to extension(s) for Permitted Delays, CONTRACTOR's failure to complete the Project in accordance with the time frames set forth herein shall constitute material default in accordance with the provisions of this Agreement.

### **ARTICLE 11** **NOTICE OF COMPLETION**

Within five (5) business days after CONTRACTOR's satisfactory completion of the Project as evidenced by issuance of all requisite final regulatory approvals of the scuttled M/V Santé Manna, the CITY shall promptly furnish CONTRACTOR with a Notice of Completion.

### **ARTICLE 12** **OTHER DUTIES OF THE CONTRACTOR**

1. Access to Work. CONTRACTOR agrees that representatives of the CITY and all applicable regulatory agencies shall and will have access to the Work whenever it is in preparation or progress and that the CONTRACTOR will provide proper facilities for such access and inspection.

2. Anti-Kickback Act. CONTRACTOR shall comply with regulations of the Secretary of Labor of the United States of America made pursuant to the Anti-Kickback Act of June 13, 1934, 40 U.S.C. 276(c) and any amendments or modifications thereto. CONTRACTOR shall ensure appropriate provisions are inserted in its subcontracts to insure CONTRACTOR's subcontractors are in compliance with the aforementioned Anti-Kickback Act; subject, however, to any reasonable limitations, variations, tolerances and exemptions from the requirements of said Anti-Kickback Act as the Secretary of Labor may specifically provide.

### **ARTICLE 13** **EVALUATION AND MONITORING REPORTS**

CONTRACTOR understands and agrees the CITY will carry out periodic monitoring and evaluation activities as it deems necessary and that continuation of this Agreement is dependent upon satisfactory evaluation conclusions. Such evaluation will be based on the terms of this Agreement and comparisons of planned versus actual progress relating to Project scheduling and budgets.

Upon request by the CITY, CONTRACTOR shall provide, in a format reasonably acceptable to both parties, information, data and reports to be used in monitoring CONTRACTOR's performance in carrying out the Project, including proof of the licenses, permits and all other formal regulatory approvals CONTRACTOR is required to obtain in order to legally conduct its obligations hereunder.

### **ARTICLE 14** **DEFAULT AND REMEDIES TO CURE DEFAULT**

1. Default by CONTRACTOR. The following shall constitute an Event of Default under the Agreement:

a. Failure of CONTRACTOR to meet the Project schedule provided for in Article 10 herein, subject to any amendments executed by the parties which extended the timelines and such default continues for a period of thirty (30) days after written notice from the CITY;

b. Failure of CONTRACTOR to comply with the material terms, conditions or covenants of this Agreement that CONTRACTOR is required to observe or perform and such default continues for a period of thirty (30) days after written notice from the CITY;

c. This Agreement, the Property or any part of the M/V Santé Manna is taken upon execution or by other process of law directed against CONTRACTOR, or are taken upon or subjected to any attachment by any creditor of CONTRACTOR or claimant against CONTRACTOR, and such attachment is not discharged within ninety (90) days after its levy;

d. CONTRACTOR shall be unable to pay the CONTRACTOR's debts as the same shall mature;

e. CONTRACTOR shall file a voluntary petition in bankruptcy or voluntary petition seeking reorganization or to effect a plan or an arrangement with or for the benefit of CONTRACTOR's creditors;

f. CONTRACTOR shall apply for or consent to the appointment of a receiver, trustee or conservator for any portion of the CONTRACTOR's property or such appointment shall be made without CONTRACTOR's consent and shall not be removed within ninety (90) days;

g. Prior to completing the Project, CONTRACTOR abandons or vacates any portion of the Project for a period of more than thirty (30) consecutive days;

h. Failure of CONTRACTOR to perform any other material covenants, agreements, undertakings or terms of this Agreement, or if the representations set forth herein are materially untrue or incorrect, then such breach shall be deemed a material default; and

i. If the CONTRACTOR fails to perform any of the following activities related to the Project required to be undertaken by the CONTRACTOR ("Project Activities"): (i) failure to purchase/take title to the M/V Santé Manna by January 16, 2015; or (ii) after purchase of the M/V Santé Manna, failure to timely and continuously pursue the Work required hereunder except for Permitted Delays; then the CITY shall have the right to give CONTRACTOR written notice of such failure.

2. Default by CITY. Failure of the CITY to comply with the material terms, conditions or covenants of this Agreement that either is required to observe or perform shall constitute an Event of Default under this Agreement.

3. Remedies in the Event of Default.

a. General. If the CONTRACTOR fails to cure an Event of Default within the time provided therefore, the CITY shall have the right to terminate this Agreement and/or may institute such proceedings as may be necessary or desirable in their opinion to cure and remedy said default or breach, including, but not limited to, proceedings to compel CONTRACTOR's specific performance, damages for breach of contract and forfeiture of CONTRACTOR's interest in the M/V Santé Manna.

b. Informal Dispute Resolution Process. The parties desire to minimize the adverse effect and cost of disputes in recognition of the complexities involved in implementing this Agreement. As to disputes between the CITY and the CONTRACTOR, the parties agree that in the first instance, their respective Contract Administrators shall endeavor to resolve every dispute amicably and to also define the nature and extent of any disagreement to the extent possible. All parties shall be entitled to have representatives present at any such meeting or conference.

If the parties' Contract Administrators are unable to reach an agreement within five (5) business days after the dispute arises, they agree to promptly enlist the assistance of the

City Manager of the City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 or his/her respective designee(s). Upon the City Manager's receipt and review of said written appeal or demand, the City Manager may request additional information relating to the dispute from any or all parties which shall be timely provided. The City Manager shall provide his decision regarding resolution of the dispute(s) within five (5) business days of receiving said written appeal or additional-requested information.

4. Termination by CONTRACTOR Prior to Conveyance. If the CITY does not timely tender the monies due and owing CONTRACTOR under this Agreement and such failure is not cured within thirty (30) days after CONTRACTOR provides a written demand to their Contract Administrator(s), CONTRACTOR may terminate this Agreement or avail itself of any remedy allowable at law or in equity.

If the CONTRACTOR fails to timely provide the CITY with evidence satisfactory to the CITY that CONTRACTOR has sufficient equity capital to complete the Project in accordance with the time and in the manner set forth herein, then this Agreement shall automatically without further notice and without further extension of time to cure, become null and void and of no further force and effect, in which event the parties shall thenceforth be relieved of all further obligations and liabilities one to the other.

5. Termination by CITY Prior to Project Completion. Except as may be specifically provided herein, this Agreement and any rights of CONTRACTOR arising therefrom shall be terminated at the CITY's option in which case the CITY shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement provided that any delay by the CITY in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or limit them in any way.

The intent of this provision is the CITY shall not be constrained to exercise such remedy at a time when it may still hope to otherwise resolve the problems created by the default or risk being deprived of or limited in the exercise of the remedies provided in this Article because of concepts of waiver, laches, or otherwise. Further, nor shall any waiver in fact made by the CITY with respect to any specific default by CONTRACTOR under this Agreement be considered as a waiver of the their rights with respect to any other defaults by CONTRACTOR under this Agreement or with respect to the particular default.

6. Permitted Delay in Performance for Causes Beyond Control of Party. CONTRACTOR shall not be considered in breach of its obligations with respect to commencing and completing the Project in the event of Permitted Delays due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, strikes; walkouts; acts of God; failure or inability to secure materials or labor by reason of priority or similar regulation or enemy action; civil disturbance; fire or other casualty.

In the event of the occurrence of any such Permitted Delay, the intent and purpose of this provision is that the time(s) for performance of CONTRACTOR's obligations with respect to Project completion shall be extended for the period of the Permitted Delay as determined by the

CITY provided that the party seeking the benefit of these provisions shall, within five (5) days after the beginning of any such enforced delay, have first notified the other parties in writing of the cause or causes thereof and requested an extension for the period of the enforced delay.

7. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party(ies).

No waiver made by any party with respect to the performance, manner, time, or any obligation of any party or any condition under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition beyond those expressly waived in writing or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party(ies).

**ARTICLE 15**  
**NOTICES AND DEMANDS**

1. A notice, demand, or other communication under the Agreement by either party to the other shall be given or delivered sufficiently if it is in writing and delivered personally, sent via facsimile, e-mail, or dispatched by registered or certified mail, postage prepaid to the representatives named below or, with respect to either party, is addressed or delivered personally at such other address as that party, from time to time may designate in writing and forward to the other as provided herein.

**CONTRACTOR's Representative:** John Kearns, CFO  
4101 Braganza Avenue  
Coconut Grove, Florida 33170  
305- 461 0310 Phone  
305- 461 1892 Fax  
jkearns@kearnsconstruction.com

**CITY Representative:** Dennis Beach, City Manager  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060  
954-786-4601 Phone  
954-786-4504 Fax  
Dennis.Beach@copbfl.com

2. Any such notice shall be deemed to have been given as of the time of actual delivery or, in the case of mailing, when the same should have been received in due course.

**ARTICLE 16**

## **CONTRACTOR'S INDEMNIFICATION OF THE CITY**

1. The CONTRACTOR shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses including attorney's fees or liabilities of every kind in connection with or arising directly out of the Project except for any occurrence arising out of or resulting from intentional torts or gross negligence of the CITY, its officers, agents and employees.

2. The CONTRACTOR will indemnify and save the CITY and their respective agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work.

3. Without limiting the foregoing, any and all such claims, suits, causes of action, etc., relating to personal injury; death; damage to property; defects; actual or alleged infringement of any patent, trademark, copyright, or other tangible or intangible personal or real property right; any actual or alleged violation of any applicable statute, ordinance, administrative order, rule, regulation or decree of any court, are included in the indemnity.

4. The CONTRACTOR further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at CONTRACTOR's sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any causes of action the CONTRACTOR has or may have for breaches or defaults by the CITY under this Agreement.

## **ARTICLE 17** **NON-ASSIGNABILITY AND SUBCONTRACTING**

1. This Agreement is not assignable and CONTRACTOR agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

2. Any attempt by CONTRACTOR to assign or transfer any of its rights or obligations under this Agreement without first obtaining the written approval of the CITY shall result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without CITY's written consent executed with the same formality as this Agreement.

3. In addition, this Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of CONTRACTOR's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement as provided for in Article 14 herein.

4. Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and the CONTRACTOR.

**ARTICLE 18**  
**ACCOUNTING AND RECORD KEEPING PROCEDURES**

1. CITY shall have the right to inspect the Project, as well as the right to audit the books, records and accounts of CONTRACTOR that are related to the Project. CONTRACTOR shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to the Project.

2. CONTRACTOR shall be required to record, preserve and make available, at reasonable times for examination by CITY, complete and accurate records for all activities and revenues generated under this Agreement, including all financial records, supporting documentation, statistical records, federal/state tax returns; and any other documents attendant to CONTRACTOR's provision of goods and services under this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five years after termination of this Agreement.

However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY's disallowance and recovery of any such payment.

**ARTICLE 19**  
**NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY**  
**AND AMERICANS WITH DISABILITIES ACT**

1. While acting pursuant to this Agreement, CONTRACTOR shall not discriminate against any worker, employee, patron or member of the public on the basis of race, creed, religion, age, sex, familial status, disability or country of national origin.

2. CONTRACTOR shall not unlawfully discriminate against any person in its activities attendant to the Project and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA), including Titles I and II regarding nondiscrimination on the basis of disability and all applicable regulations, guidelines, and standards. CONTRACTOR shall also comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability.

3. CONTRACTOR's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

**ARTICLE 20**  
**PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, CONTRACTOR certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 21**  
**NO CONTINGENT FEE**

1. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

2. In the event of CONTRACTOR's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 22**  
**WAIVER AND MODIFICATION**

1. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

2. Either party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

**ARTICLE 23**  
**ABSENCE OF CONFLICTS OF INTEREST**

1. CONTRACTOR represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. CONTRACTOR further represents no person having any interest shall be employed or engaged by it for said performance.

2. CONTRACTOR shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CONTRACTOR's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CONTRACTOR intends to undertake and shall request the CITY opinion as to whether such association, interest or circumstance would, in their opinion, constitute a conflict of interest if entered into by CONTRACTOR.

**ARTICLE 24**  
**NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 25**  
**SEVERABILITY**

The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.

**ARTICLE 26**  
**JURISDICTION, VENUE AND WAIVER OF TRIAL**

1. This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR submit to the jurisdiction of Florida courts and federal courts located in Florida. In the event of a dispute as to the interpretation or application of or an alleged breach of this Agreement, the parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida, and that such dispute shall be heard by a judge, not a jury.

2. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 27**  
**BINDING EFFECT**

Upon execution of this Agreement, a copy of this Agreement shall be recorded among the Public Records of Broward County, Florida. This Agreement shall be binding upon and

enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

**ARTICLE 28**  
**ATTORNEY'S FEES**

In the event of any litigation involving the terms and conditions of this Agreement or otherwise relating to the transaction encompassed herein, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels.

**ARTICLE 29**  
**NO THIRD PARTY BENEFICIARIES**

CONTRACTOR and the CITY acknowledge and agree that this Agreement and other contracts and agreements pertaining to the Project will not create any obligation on the part of CONTRACTOR or the CITY to third parties. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder.

**ARTICLE 30**  
**APPROVALS**

Whenever CITY approval is required for any action under this Agreement, either by the City Commission or its Contract Administrator, said approvals shall not be unreasonably withheld.

**ARTICLE 31**  
**FORCE MAJEURE**

1. No party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

2. If any party is unable to perform or delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

3. In order to be entitled to the benefit of this provision, within five (5) days after the beginning of any such delay, a party claiming an event of force majeure shall have given the other party(ies) written notice of the cause(s) thereof, requested an extension for the period and also diligently proceeded to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 32**  
**INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor under this Agreement and the Work performed by CONTRACTOR pursuant to this Agreement shall not be subject to the supervision of the CITY. All persons engaged in any Work performed hereunder shall, at all times, and in all places, be subject to CONTRACTOR's sole direction, supervision and control. In performance of its obligations hereunder, neither CONTRACTOR nor its agents shall act as officers, employees or agent of the CITY. This Agreement shall not constitute or make the parties a partnership or joint venture.

**ARTICLE 33**  
**CO-OWNERSHIP OF DOCUMENTS AND**  
**CITY'S EXCLUSIVE MARKETING RIGHTS**

CITY and CONTRACTOR shall co-own all reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled or completed for the Project and, at any time upon reasonable request by CITY, CONTRACTOR agrees to make available/re-produce same, at CONTRACTOR's sole cost. Notwithstanding co-ownership of Project documentation, CITY retains the exclusive right to distribute Project documentation and promote/market the Project, including all film and production rights.

**ARTICLE 34**  
**SURVIVAL OF OBLIGATIONS**

All covenants, agreements, representation and warranties made herein, or otherwise made in writing by any party hereto, including, but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

**ARTICLE 35**  
**ENTIRE AGREEMENT AND INTERPRETATION**

1. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and all parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, all parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

2. This Agreement shall be interpreted as drafted by all parties hereto equally and each party has had the opportunity to be represented by counsel of their choice.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, all parties and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

**"CONTRACTOR":**

Witnesses:

**KEARNS CONSTRUCTION COMPANY, a Florida corporation**

*[Signature]*  
Allyson Feanny  
Print Name

By: *[Signature]*  
JOHN KEARNS, CFO

*[Signature]*  
Elizabeth Suarez  
Print Name

*[Signature]*  
Elizabeth Suarez  
Print Name

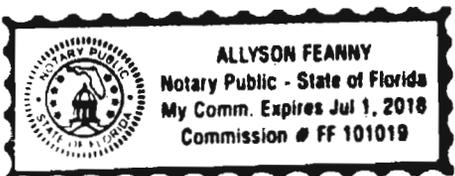
(SEAL)

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3 day of February, 2015, by JOHN KEARNS as CFO of KEARNS CONSTRUCTION COMPANY, a Florida corporation on behalf of the corporation. He is personally known to me or who has produced personally known (type of identification) as identification.

NOTARY'S SEAL:

*[Signature]*  
NOTARY PUBLIC, STATE OF FLORIDA  
Allyson Feanny  
(Name of Acknowledger Typed, Printed or Stamped)



7/1/18  
Commission Number

*[Handwritten mark]*

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

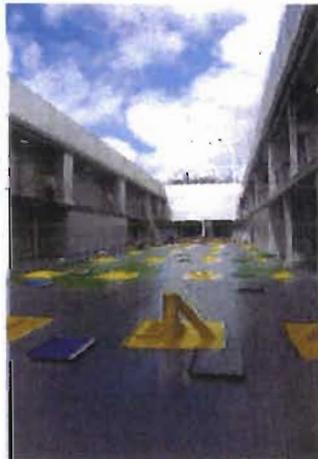
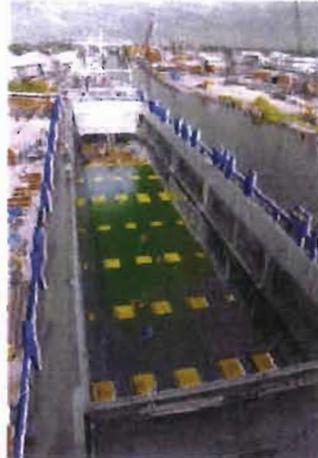
\_\_\_\_\_  
Commission Number

2/3/15  
L:agr/manager/2015-383ff



# CONTAINER SHIP FOR SALE

VESSEL NAME	M/V SANTE MANNA
FLAG	Panama
PORT OF REGISTRY	Rep of Panama
IMO No.	7116834
REGISTRATION No.	33357-07
CALL SIGN	3EKF6
VESSEL TYPE	Container Vessel
TEU CAPACITY	181
REEFER CAPACITY	35
GROSS TONNAGE ( ITC)	2556 MT
NATIONAL TONNAGE ( GRT)	2556 MT
NET TONNAGE	999.75 MTS
CRUISING SPEED	12 KNTS
LENGTH	82.75M
BREADTH	14.5M
DRAFT	Max 6.2 Average 4.2
MAIN ENGINE	MWM TBD-501 / 3000 HP
AUXILIARY ENGINES	3 CATERPILLAR 3406 (3x175 KW even)
REFRIGERATION GENERATOR #1	CUMMING 855, 200KW, 400V, 60HZ DIESEL
REFRIGERATION GENERATOR #2	CATEPILLAR DT-353, 350KW, 440V, 60HZ
VESSEL OWNERS	SANTE MANNA S.A.
VESSEL OPERATOR	TBD



**181 TEU VESSEL FOR CONTAINER CARGO  
OR BREAK BULK USE W/ TWEEN DECK, CAN  
ADD DECK CRANE FOR BREAK BULK USE**

**IN-CLASS & DOCUMENTED  
READY TO GO!**

**CONTACT: [ber@beai.com](mailto:ber@beai.com) / 305-491-7172**

**CHARTER RATE: NEGOTIABLE  
SALE PRICE: BRING OFFERS!**



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**  
SOUTHEAST DISTRICT OFFICE  
3301 GUN CLUB ROAD, MSC 7210-1  
WEST PALM BEACH, FL 33406  
561-681-6600

**EXHIBIT**  
2

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

JONATHAN P. STEVERSON  
SECRETARY

January 22, 2015

Broward County Board of Commissioners  
c/o Kenneth Banks, NRS IV  
115 S. Andrews Ave., Room 329H  
Fort Lauderdale, FL 33301  
Sent via e-mail to the designated agent: [KBanks@broward.org](mailto:KBanks@broward.org)

Re: File No.: 06-0331539-001  
File Name: Sante Manna Artificial Reef

Dear Mr. Banks:

On December 19, 2014, we received your notice of intent to use a General Permit (GP), pursuant to Rule 62-330.600, Florida Administrative Code (F.A.C.), and additional information received on January 5, 2015, to construct an artificial reef amid an approximately 1,195-foot by 1,043-foot area, whereas the vessel shall be flooded in proximity of the eastern edge of the delineated area so as to avoid any potential disruption of the outer reef located near the western edge of the delineated area. The project is located in the Atlantic Ocean, Class III Waters, approximately 7,300 ft. Southeast of the Hillsboro Inlet (Section 29, Township 48 South, Range 43 East), in Broward County within the area specified below:

Corner	Latitude	Longitude
NW	26°13.844'	-80°03.894'
NE	26°13.832'	-80°03.683'
SE	26°13.668'	-80°03.704'
SW	26°13.675'	-80°03.921'

Your intent to use a general permit has been reviewed by Department staff for three types of authorizations: (1) regulatory authorization, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal authorization. The authority for review and the outcomes of the reviews are listed below. Please read each section carefully.

**Your project did not qualify for the federal authorization, therefore, additional authorization must be obtained prior to commencement of the proposed activity.** This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity. Please refer to the specific section(s) dealing with that portion of the review below for advice on how to proceed.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

**1. Regulatory Review. – APPROVED**

Authority for review- Part IV of Chapter 373, F.S., Title 62, F.A.C. and in accordance with the operating agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

Based on the forms, drawings, and documents revised with your notice, it appears that the project meets the requirements for the General Permit under Rule 62-330.600, F.A.C. Any activities performed under a general permit are subject to general conditions required in Rule 62-330.405, F.A.C. (attached), and the specific conditions of Rule 62-330.600, F.A.C. (attached). Any deviations from these conditions may subject the permittee to enforcement action and possible penalties.

Please be advised that the construction phase of the GP must be completed within five years from the date the notice to use the GP was received by the Department. If you wish to continue this GP beyond the expiration date, you must notify the Department at least 30 days before its expiration.

**2. Proprietary Review (related to state-owned lands). – GRANTED**

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review activities on sovereign submerged lands under Chapter 253 of the Florida Statutes (F.S.) and 258, F.S. if located within an aquatic preserve, and Chapters 18-20 and 18-21 of the Florida Administrative Code.

The activity appears to be located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain the applicable proprietary authorization. As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity qualifies for a letter of consent under Section 253.77, Florida Statutes, to construct and use the activity on the specified sovereign submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. No further application is required for this exception.

During the term of this Letter of Consent you shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code. If such interest is terminated or the Board of Trustees determines that such interest did not exist on the date of issuance of this Letter of Consent, this Letter of Consent may be terminated by the Board of Trustees at its sole option. If the Board of Trustees terminates this Letter of Consent, you agree not to assert a claim or defense against the Board of Trustees arising out of this Letter of Consent.

Please be advised that any use of sovereign submerged lands without specific prior authorization from the Board of Trustees will be considered a violation of Chapter 253, Florida Statutes and may subject the affected upland riparian property owners to legal action as well as potential fines for the prior unauthorized use of sovereign land.

Authority for review - Chapter 253 F.S., and Chapter 18-21, F.A.C. and Section 62-330.075, F.A.C. as required.

### 3. SPGP REVIEW –NOT APPROVED

Authority for review - an agreement with the USACOE entitled “Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General Permit,” Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Your proposed activity as outlined on your notice and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit and a **SEPARATE permit** or authorization **may be required** from the Corps. A copy of your permit application has been forwarded to the Corps for their review. The Corps will issue their authorization directly to you or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date your application was received at the local FDEP Office, contact the Corps at the Palm Beach Gardens Regulatory Field Office at (561) 472-3530, for status and further information. **Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.**

#### **Additional Information**

Please retain this general permit. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

#### **NOTICE OF RIGHTS**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. **On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department.** Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

### Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any email address, any facsimile number, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

#### Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

If you revise your project after submitting the initial joint application, please contact us as soon as possible. Also, if you have any questions, please contact Michelle Decker at (561) 681-6641 or via e-mail at [Michelle.Decker@dep.state.fl.us](mailto:Michelle.Decker@dep.state.fl.us). When referring to this project, please use the FDEP file number listed above.

Executed in Palm Beach County, Florida.



#### 62-330.405 General Conditions for All General Permits

The following general permit conditions are binding upon the permittee and are enforceable under Chapter 373, F.S. These conditions do not apply to the general permit in Section 403.814(12), F.S.

(1) The general permit is valid only for the specific activity indicated. Any deviation from the specified activity and the conditions for undertaking that activity shall constitute a violation of the permit and may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.

(2) This general permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any construction, alteration, operation, maintenance, removal or abandonment authorized by this permit.

(3) This general permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the general permit.

(4) The general permit does not relieve the permittee from liability and penalties when the permitted activity causes harm or injury to: human health or welfare; animal, plant or aquatic life; or property. It does not allow the permittee to cause pollution that violates state water quality standards.

(5) Section 253.77, F.S., provides that a person may not commence any excavation, construction, or other activity involving the use of state-owned or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required consent, lease, easement, or other form of authorization authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on state-owned lands.

(6) The authorization to conduct activities under a general permit may be modified, suspended or revoked in accordance with Chapter 120, F.S., and Section 373.429, F.S.

(7) This permit shall not be transferred to a third party except pursuant to Rule 62-330.340, F.A.C. The permittee transferring the general permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to sale, conveyance, or other transfer of ownership or control of the permitted project, activity, or the real property at which the permitted project or activity is located.

(8) Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the permitted system to ensure conformity with the plans and specifications approved by the permit.

(9) The permittee shall maintain any permitted project or activity in accordance with the plans submitted to the Agency and authorized in this general permit.

(10) A permittee's right to conduct a specific activity under this general permit is authorized for a duration of five years.

(11) Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be implemented and maintained immediately prior to, during, and after construction as needed to stabilize all disturbed areas, including other measures specified in the permit to prevent adverse impacts to the water resources and adjacent lands. Erosion and sediment control measures shall be installed and maintained in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007)*, available at [www.dep.state.fl.us/water/wetlands/docs/erp/FLerosionSedimentManual\\_6\\_07.pdf](http://www.dep.state.fl.us/water/wetlands/docs/erp/FLerosionSedimentManual_6_07.pdf), and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, available at [www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf](http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf).

(12) Unless otherwise specified in the general permit, temporary vehicular access within wetlands during construction shall be performed using vehicles generating minimum ground pressure to minimize rutting and other environmental impacts. Within forested wetlands, the permittee shall choose alignments that minimize the destruction of mature wetland trees to the greatest extent practicable. When needed to prevent rutting or soil compaction, access vehicles shall be operated on wooden, composite, metal, or other non-earthen construction mats. In all cases, access in wetlands shall comply with the following:

(a) Access within forested wetlands shall not include the cutting or clearing of any native wetland tree having a diameter 4 inches or greater at breast height;

- (b) The maximum width of the construction access area shall be limited to 15 feet;
  - (c) All mats shall be removed within 72 hours after the work commences; and
  - (d) Areas disturbed for access shall be restored to natural grades immediately after the maintenance or repair is completed.
- (13) Barges or other work vessels used to conduct in-water activities shall be operated in a manner that prevents unauthorized dredging, water quality violations, and damage to submerged aquatic communities.
- (14) The construction, alteration, or use of the authorized project shall not adversely impede navigation or create a navigational hazard in the water body.
- (15) Except where specifically authorized in a general permit, activities must not:
- (a) Impound or obstruct existing water flow, cause adverse impacts to existing surface water storage and conveyance capabilities, or otherwise cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
  - (b) Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S., or a Works of the District established pursuant to Section 373.086, F.S.; or
  - (c) If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
- (17) The activity must be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed, and must comply with any applicable District special basin and geographic area criteria.
- (18) The permittee shall comply with the following when performing work within waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon:
- (a) All vessels associated with the project shall operate at "Idle Speed/No Wake" at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
  - (b) All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.
  - (c) All in-water activities, including vessel operation, must be shutdown if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All on-site project personnel are responsible for observing water-related activities for the presence of listed species.
  - (d) Any listed species that is killed or injured by work associated with activities performed shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com.
  - (e) Whenever there is a spill or frac-out of drilling fluid into waters accessible to the above species during a directional drilling operation, the FWC shall be notified at imperiledspecies@myfwc.com with details of the event within 24 hours following detection of the spill or frac-out.
- (19) The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any activity authorized by the general permit.
- (20) The permittee shall immediately notify the Agency in writing of any submitted information that is discovered to be inaccurate.

*Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.044, 373.118(1), 373.129, 373.136, 373.406(5), 373.413, 373.4131, 373.414(9), 373.4145, 373.416, 373.422, 373.423, 373.429, 403.814(1) FS. History—New 10-3-95, Amended 10-1-07, Formerly 62-341.215, Amended 10-1-13.*

**62-330.600 General Permit for the Construction of Artificial Reefs.**

- (1) A general permit is provided for the construction of an artificial reef by any person, provided:
- (a) The material to be used shall be clean concrete or rock, clean steel boat hulls, other clean, heavy gauge steel products with a thickness of 1/4 inch or greater, and prefabricated structures that are a mixture of clean concrete and heavy gauge steel;
  - (b) The material shall be free of soils, oils and greases, debris, litter, putrescible substances or other pollutants;
  - (c) The material shall be firmly anchored to the bottom and shall not be indiscriminately dumped; and
  - (d) The material shall be placed so that the top of the reef does not exceed 1/2 the distance from the bottom to the surface of the water unless a greater distance from the surface is required for safe navigation. At no time shall the distance between the top of the reef and the surface of the water be less than 6 feet.
- (2) This general permit shall be subject to the following specific conditions:
- (a) The permittee shall conduct a survey of the bottom of the waterbody on which the reef is to be built and shall submit the survey to the Agency with the notice required in Rule 62-330.402, F.A.C., demonstrating that the bottom does not have submerged grassbed communities, shellfish or other hardbottom communities, or corals;
  - (b) There shall be no reefs constructed in bays, lagoons, or estuaries that are less than 12 feet deep;
  - (c) There shall be no “white goods” (inoperative and discarded refrigerators, freezers, ranges, water heaters, washers, and other similar domestic and commercial appliances), asphalt material, tires, other polluting materials used in construction of the reef;
  - (d) The site shall be marked with perimeter buoys during construction to ensure that no material is deposited outside of the site;
  - (e) The size of the boundaries within which the artificial reef is to be deposited shall not exceed 1/4 nautical mile on any side;
  - (f) The artificial reef site shall not be established within any shipping lanes; and
  - (g) The permittee shall notify the National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Maryland, and the Florida Fish and Wildlife Conservation Commission (FWC), Division of Marine Fisheries Management, via e-mail at [artificialreefdeployments@myfwc.com](mailto:artificialreefdeployments@myfwc.com) of the precise location of the reef within 30 days of placement of the reef material.

*Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.418, 403.805(1) FS. Law Implemented 373.118(1), 373.406(5), 373.413, 373.4131, 373.414(9), 373.416, 373.418, 403.814(1) FS. History—New 10-3-95, Formerly 62-341.600, Amended 10-1-13.*

**GENERAL CONSENT CONDITIONS FOR  
USE OF SOVEREIGNTY SUBMERGED LANDS**

Any use of sovereignty submerged lands is subject to the following general conditions are binding upon the applicant and are enforceable under Chapter 253, F.S.

1. Sovereignty submerged lands may be used only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use will constitute a violation. Violation of the authorization will result in suspension or revocation of the applicant's use of the sovereignty submerged lands unless cured to the satisfaction of the Board of Trustees.
2. Authorization under Rule 18-21.005, F.A.C., conveys no title to sovereignty submerged lands or water column, nor does it constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations under Rule 18-21.005, F.A.C., may be modified, suspended or revoked in accordance with its terms or the remedies provided in Sections 253.04, F.S. and Chapter 18-14, F.A.C.
4. Structures or activities will be constructed and used to avoid or minimize adverse impacts to resources.
5. Construction, use, or operation of the structure or activity will not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
6. Structures or activities will not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity will be modified in accordance with the court's decision.
7. Structures or activities will not create a navigational hazard.
8. Structures will be maintained in a functional condition and will be repaired or removed if they become dilapidated to such an extent that they are no longer functional.
9. Structures or activities will be constructed, operated, and maintained solely for water dependent purposes.
10. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
11. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
12. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
13. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
14. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF GENERAL PERMIT

The Department of Environmental Protection gives notice that the project to construct an artificial reef amid an 1195-foot by 1043-foot area has been determined to qualify for a General Permit. The project is located in the Atlantic Ocean, Class III Waters, approximately 7,300 ft. Southeast of the Hillsboro Inlet (Section 29, Township 48 South, Range 43 East), in Broward County within the area specified below:

Corner	Latitude	Longitude
NW	26°13.844'	-80°03.894'
NE	26°13.832'	-80°03.683'
SE	26°13.668'	-80°03.704'
SW	26°13.675'	-80°03.921'

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Mediation is not available.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rule 62-110.106(3), F.A.C., petitions for an administrative hearing must be filed within 21 days of publication of the notice or receipt of written notice, whichever occurs first. Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 prior to the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. Upon motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect, the Department may also grant the requested extension of time.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

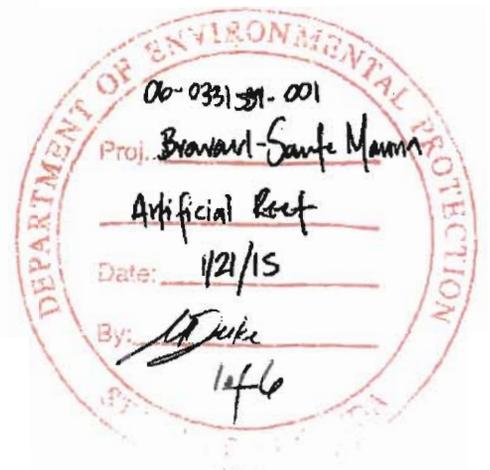
Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing shall be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Complete copies of all documents relating to this determination are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at the Southeast District office, 3301 Gun Club Road, MSC 7210-1, West Palm Beach, Florida 33406.

Broward County

Proposed Artificial Reef Project

The County requests a Noticed General Permit to deploy a 300 ft steel container ship, the MV Sante Manna, in the summer of 2015. The deployment depth is planned to be in 120' to 150' on sand bottom. After cleaning and preparation and receiving US Coast Guard approval, the ship will be anchored in position and sunk by flooding. Specifications of the ship are attached.



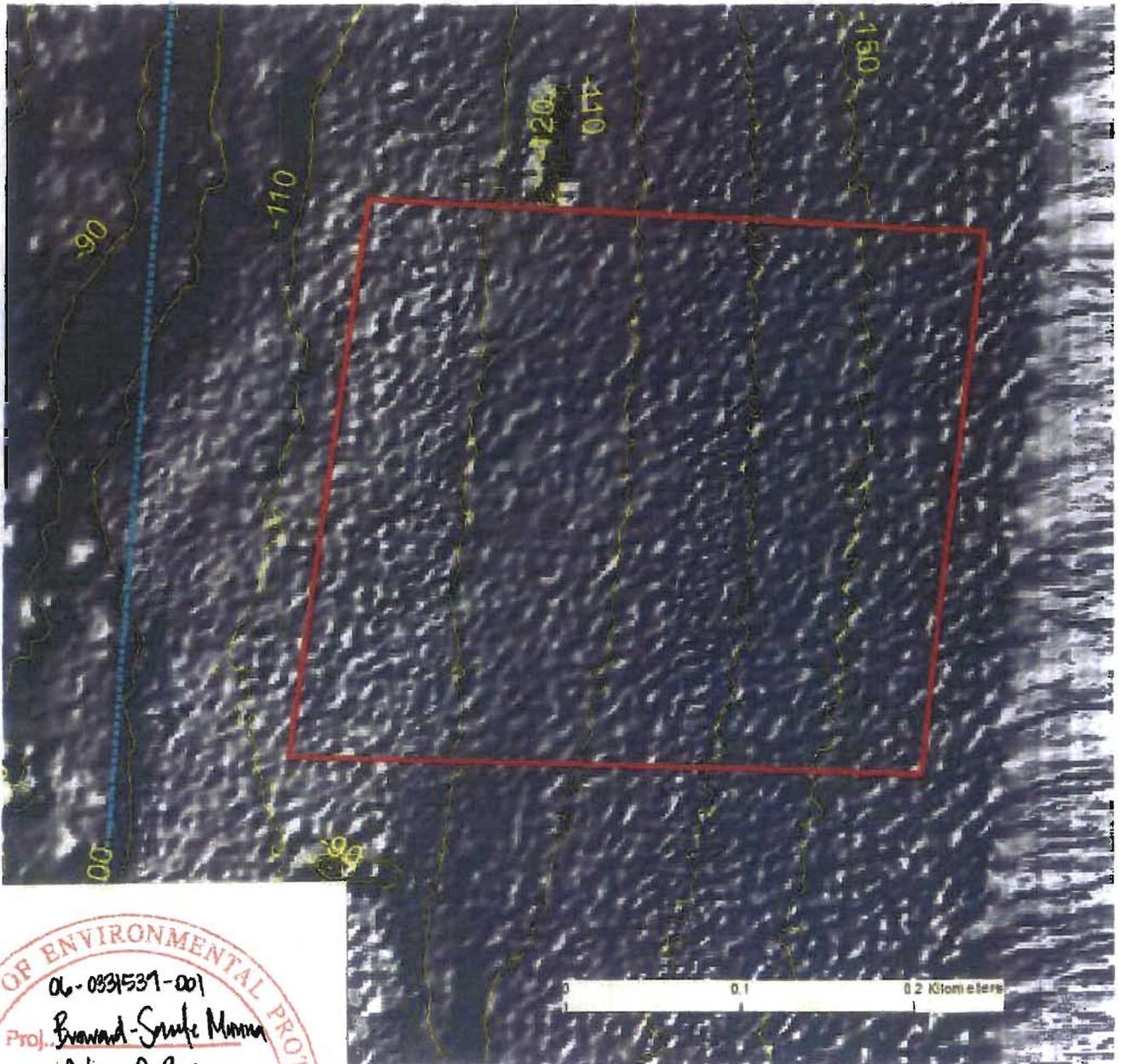
# Broward County, Florida, Proposed Artificial Reef Site



DEPARTMENT OF ENVIRONMENTAL PROTECTION  
FLORIDA

06-0331 539-001  
Proj. Broward-Saupe Marina  
Artificial Reef  
Date: 1/21/15  
By: [Signature]  
2 of 6

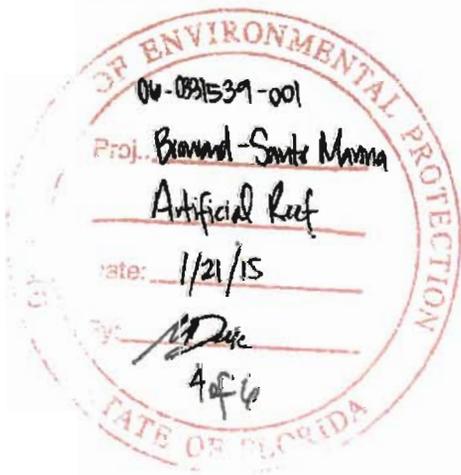
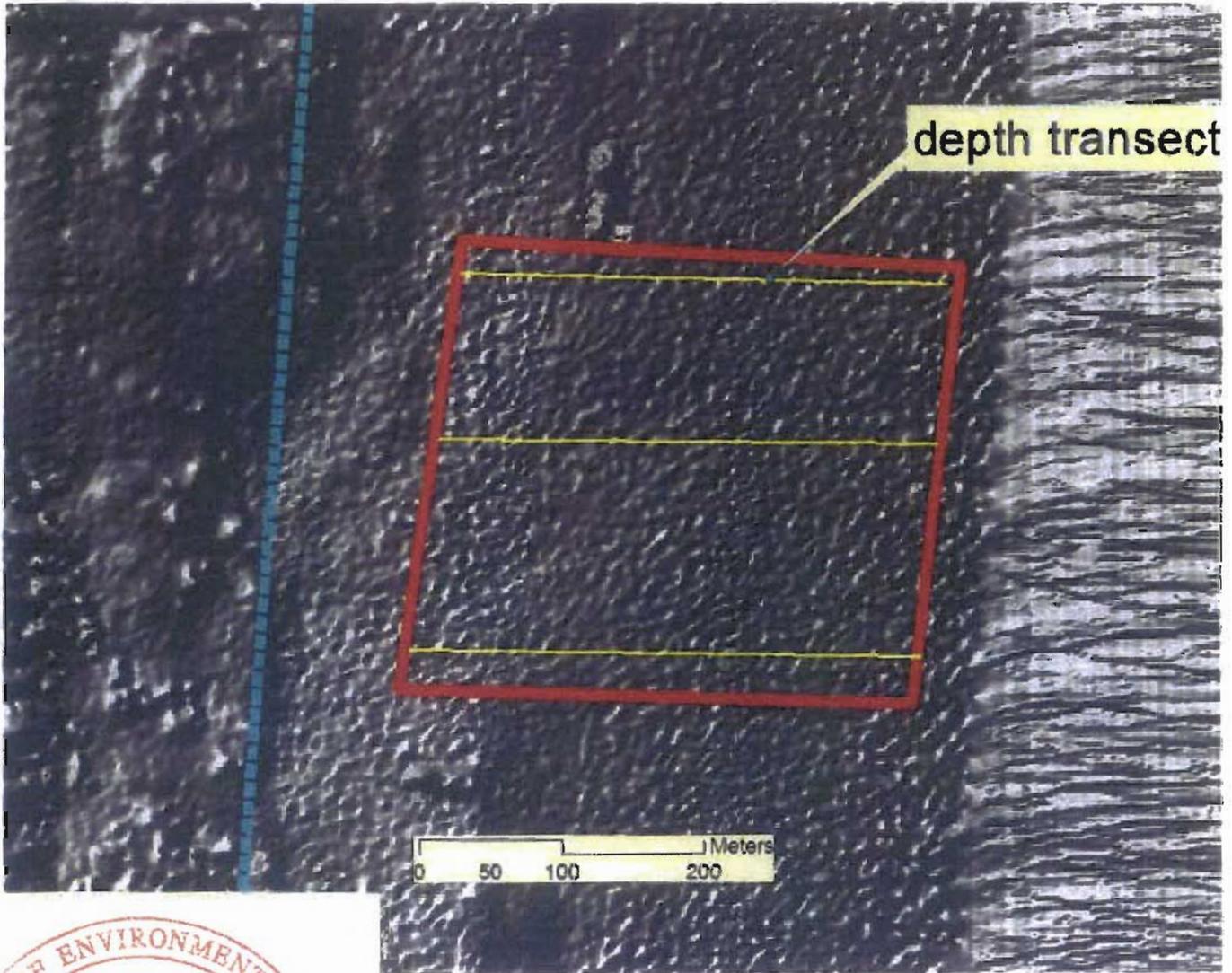
# Broward County, Florida, Proposed Artificial Reef Site Depth (ft) Contours



DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE OF FLORIDA

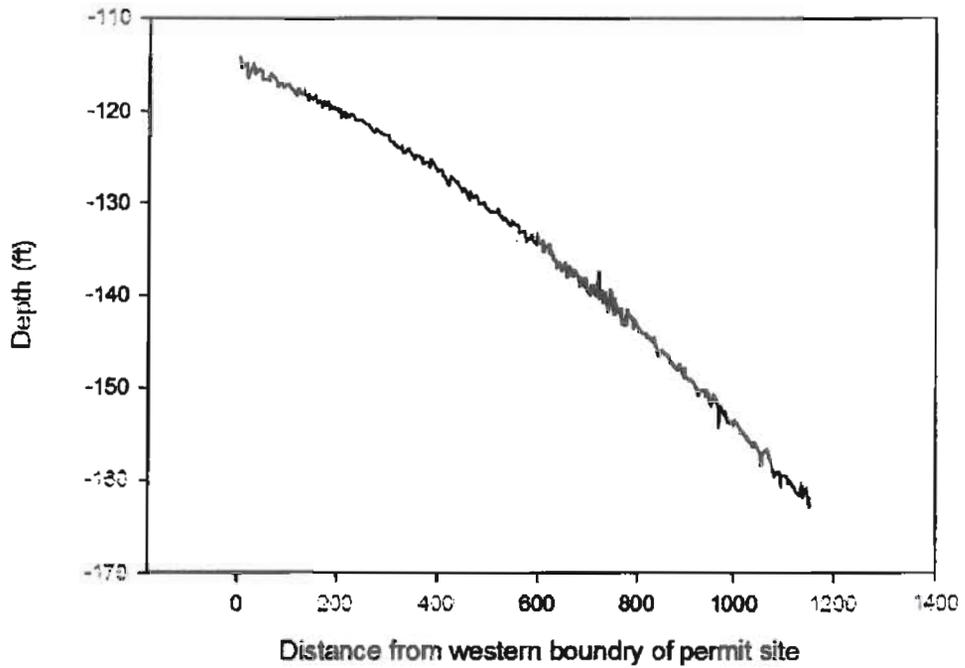
06-0831537-001  
Proj. Broward Seagrass  
Artificial Reef  
Date: 1/21/15  
By: [Signature]  
346

# Broward County, Florida, Proposed Artificial Reef Site Depth Transect Locations

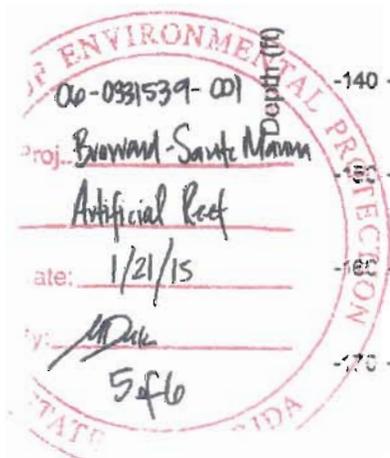
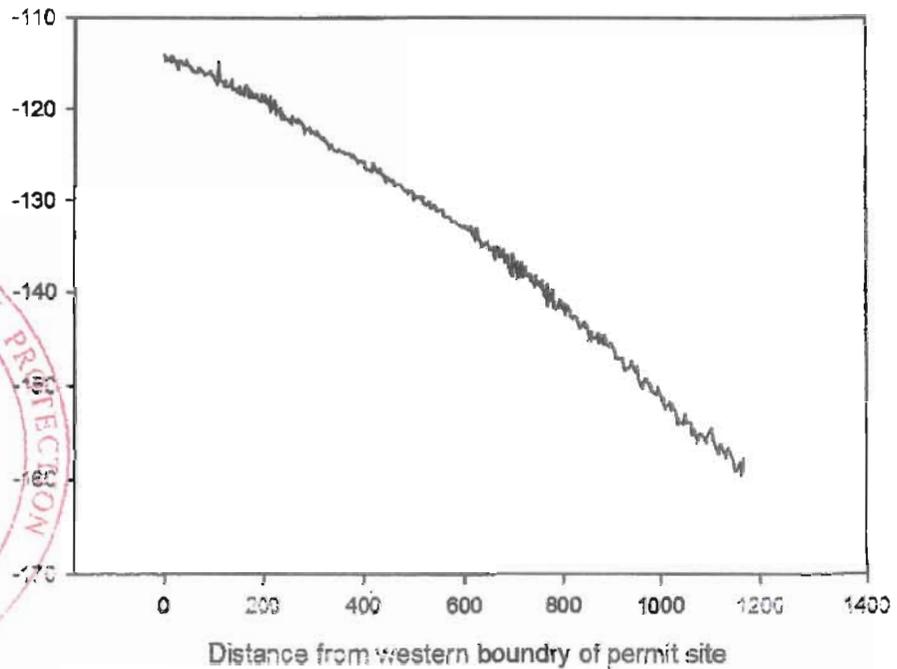


# Sante Manna Artificial Reef Site Depth Transects

## North

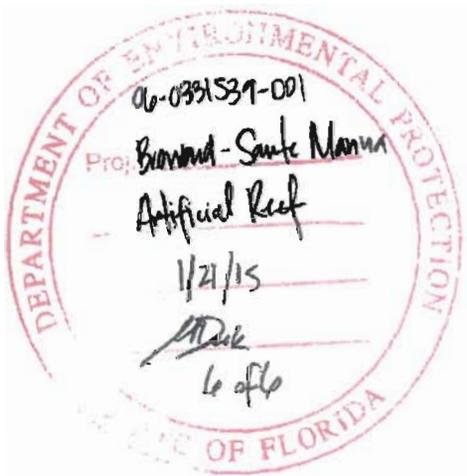
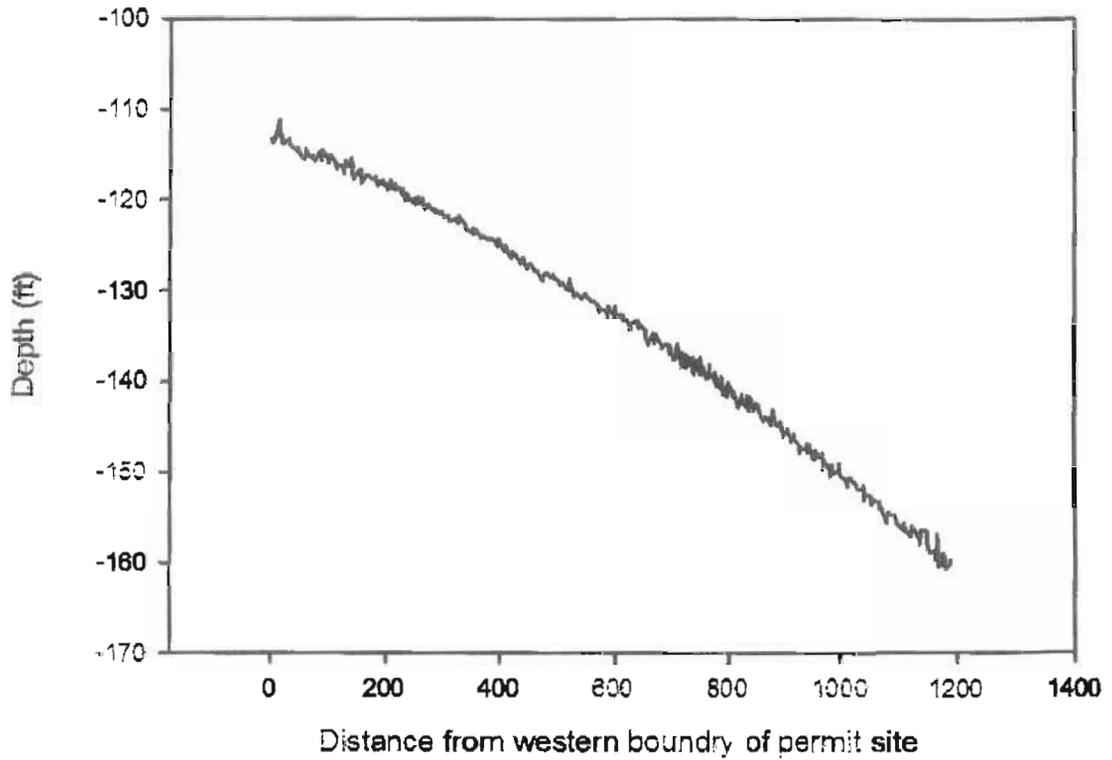


## Central



# Sante Manna Artificial Reef Site Depth Transects

South





**DEPARTMENT OF THE ARMY**  
**JACKSONVILLE DISTRICT CORPS OF ENGINEERS**  
 4400 PGA BOULEVARD, SUITE 500  
 PALM BEACH GARDENS, FL 33410

**EXHIBIT**

3

**MAR 18 2013**

REPLY TO  
ATTENTION OF

Palm Beach Gardens Regulatory Office  
 SAJ-1989-90804(MOD-LCK)  
 Modification-2

Broward County Natural Resources  
 Planning & Management Division  
 Attn: Kenneth Banks  
 1 North University Drive  
 Plantation, FL 3324

Dear Mr. Banks:

The U.S. Army Corps of Engineers has completed the review and evaluation of your modification request received December 10, 2012 in which you asked to revise the plans authorized by Department of the Army permit number 1989-90804(MOD-LCK), for continued deposition of suitable artificial reef material at four authorized artificial reef sites identified in the table below. The permit was modified on October 26, 2009, to authorize the relocation of two existing reef modules previously deployed within permitted site C3 and to extend the expiration date to October 26, 2014. The project is located in the Atlantic Ocean at eight separate existing sites that range from near shore waters with depths of -12 feet Mean Low Water (MLW) to approximately 5,000 yards offshore with depths of -400 feet MLW and extends from just north of the Hillsboro Inlet south to Hallandale, Broward County, Florida.

Locations	Latitude	Longitude	Minimum clearance (ft) from the top of deployed material relative to MLW
Site A1 (Deerfield Beach Reef)	26.1918°	-80.0410°	35-feet
	26.1918°	-80.0219°	
	26.1766°	-80.0239°	
	26.1766°	-80.0420°	
Site A2 (Deerfield Beach Reef)	26.1918°	-80.0429°	6-feet
	26.1918°	-80.0410°	
	26.1766°	-80.0420°	
	26.1766°	-80.0449°	
Site B	26.0448°	-80.0391°	40-feet
	26.1442°	-80.0272°	
	26.1190°	-80.0288°	
	26.1200°	-80.0413°	
Site C1	26.1122°	-80.0427°	40-feet
	26.1117°	-80.0323°	
	26.0802°	-80.0363°	
	26.0802°	-80.0477°	
Site C2	26.1032°	-80.0509°	40-feet
	26.1023°	-80.0442°	
	26.0802°	-80.0477°	

	26.0732°	-80.0508°	
	26.0734°	-80.0543°	
Site C3	26.1040°	-80.0560°	7-feet
	26.1032°	-80.0509°	
	26.0734°	-80.0543°	
	26.0740°	-80.0590°	
Site E1	26.0066°	-80.0610°	40-feet
	26.0065°	-80.0424°	
	26.5800°	-80.0420°	
	26.5800°	-80.0610°	
Site E2	26.0066°	-80.0675°	6-feet
	26.0065°	-80.0610°	
	26.5800°	-80.0610°	
	26.5800°	-80.0688°	

The proposed modification is to extend the expiration date to complete your proposed project. This authorization is hereby extended for 2 year(s) from the date of the previous authorizations October 26, 2014. The modified expiration date is now October 26, 2016. The modification must be completed in accordance with the 5 enclosed construction drawings, and the revised and re-numbered special conditions, which are incorporated in, and made a part of the permit. These permit conditions replace and supersede the special conditions in the permit issued on November 28, 2007 and the subsequent modification issued on October 26, 2009.

**Special Conditions:**

1. All structures shall be constructed to be stable in a 20-year storm event verified by stability analysis.

2. **Reporting Addresses:** The Permittee shall reference this permit number, SAJ-1989-90804(IP-KLV), on all correspondence. Unless specifically notified to the contrary, the Permittee shall use the following addresses for transmitting correspondence to the referenced agencies:

(a) Jacksonville District Corps of "Engineers (Corps),  
Regulatory Division, Enforcement Section,  
4400 PGA Boulevard, Suite 500, Attn: Jose Rivera,  
email [CESAJ-ComplyDocs@usace.army.mil](mailto:CESAJ-ComplyDocs@usace.army.mil)

(b) National Oceanic and Atmospheric Administration  
(NOAA), Office of  
Coast Survey, N/CS26, Sta. 7317  
1315 East-West Highway  
Silver Springs, MD, 20910-3282  
Or email at: [ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov).

(c) Commander, U.S. Coast Guard (USCG)  
Sector Miami  
Attn: Captain Chris P. Scraba  
100 MacArthur Causeway

Miami Beach, FL 33139

(d) Florida Fish and Wildlife Conservation Commission  
(FWC), Artificial Reef Program,  
620 S. Meridian Street, Box 4B2  
Tallahassee, FL 32399.  
Fax: 850-922-0463 email: Jon.Dodrill@myfwc.com,  
bill.horn@myfwc.com,  
and keith.miller@myfwc.com  
artificialreefdeployments@MyFWC.com

**3. Initial Agency Notification:** The Permittee shall provide to the Corps, NOAA and USCG written notification of the planned deployment start date at least two weeks prior to the initial deployment on the authorized artificial reef site.

**4. Reef Parameters:** The Permittee shall deploy all reef materials within the site boundaries as defined on the enclosed permit drawings and as listed in the table above.

- Site A1 (page 1 of 5): A minimum clearance of 35-feet from the top of the deployed material relative to MLW shall be maintained.
- Site A2 (page 1 of 5): A minimum clearance of 6-feet from the top of the deployed material relative to MLW shall be maintained.
- Site B (page 2 of 5): A minimum clearance of 40-feet from the top of the deployed material relative to MLW shall be maintained.
- Site C1 and C2 (page 3 of 5): A minimum clearance of 40-feet from the top of the deployed material relative to MLW shall be maintained.
- Site C3 (page 3 of 5): A minimum clearance of 7-feet from the top of the deployed material relative to MLW shall be maintained.
- Site E1 (page 4 of 5): A minimum clearance of 40-feet from the top of the deployed material relative to MLW shall be maintained.
- Site E2 (page 4 of 5): A minimum clearance of 6-feet from the top of the deployed material relative to MLW shall be maintained.

**5. Authorized Reef Materials:** No reef materials or module will weigh less than 500 pounds. Reef materials shall be clean and free from asphalt, petroleum, other hydrocarbons and toxic residues, loose free floating material or other deleterious substances. All artificial reef materials and/or structures will be selected, designed, constructed and deployed to create, stable and durable marine habitat. The Permittee shall deploy only the following authorized reef materials:

(a). Prefabricated artificial reef modules composed of ferrous and/or aluminum-alloy metals  $\frac{1}{4}$ " or more in thickness, concrete, rock or a combination of these materials.

(b). Natural rock boulders and other pre-cast concrete material, such as, culverts, stormwater junction boxes, power poles, railroad ties, jersey barriers, or other similar concrete material.

(c). Clean steel and concrete bridge or large building demolition materials such as slabs or pilings with all steel reinforcement rods severed as close to the concrete surface as possible but

not to extend more than 6 inches to ensure the rod will not create a fishing tackle or diver ensnaring hazard.

(d). Heavy gauge ferrous & aluminum alloy metal material components or structures, ¼" or more in thickness, such as utility poles, antenna towers.

(e). Heavy gauge ferrous & aluminum alloy metal hulled vessels which equal or exceed 60 ft. hull length prepared and deployed in accordance with all applicable U. S. Coast Guard, U.S. Environmental Protection Agency, Florida Fish and Wildlife Conservation Commission, or other applicable state or federal agency regulations or policies. The vessel shall not be deployed until all necessary inspections and clearances have been obtained or waived and a stability analysis has been completed demonstrating that the vessel will be stable during a 50-year storm event based on vessel and deployment site characteristics. The permittee shall follow the National guidance regarding preparation of vessels for deployment as artificial reefs which are available at: <http://www.epa.gov/owow/oceans/habitat/artificialreefs/index.html>. The Permittee shall maintain a record of all inspections, clearances or waivers and provide to the Corps upon request.

**6. Pre-Deployment Notification:** No less than 14 days prior to deployment of material on an artificial reef, the Permittee shall transmit by electronic mail ("email") a complete and signed "*Florida Artificial Reef Materials Cargo Manifest and Pre-Deployment Notification*" form, provided in Attachment A of this permit, to the Corps and FWC to allow inspection of the proposed reef materials as deemed necessary by the agencies. Inspection is allowable at the staging area. By signing the Pre-Deployment Notification the Permittee certifies that all materials are free from asphalt, petroleum, other hydrocarbons and toxic residues. The Permittee shall not deploy material if notified by the Corps or FWC that the material is questionable. The material needs to be evaluated before it is released for deployment. Any material that is deemed unacceptable for reef material will be disposed in an approved upland disposal site.

Deployment of the material shall not occur until after the end of the 14-day inspection period. The Permittee shall ensure both a copy of the Corps permit and the signed "*Florida Artificial Reef Materials Cargo Manifest and Pre-Deployment Notification Form*" (Attachment A) are maintained aboard the deployment vessel at all times during loading, transit, and deployment.

**7. Post-Deployment Placement Report/As-Built Drawing:** No less than 30 days after deployment at the reef site, the Permittee shall transmit by email to the Corps, FWC, an NOAA a complete and signed "*Florida Artificial Reef Materials Placement Report and Post-Deployment Notification*" form (Attachment B) of this permit. Please note, the Corps requires the latitude and longitude to be accurate within 5 meters horizontal distance on the post-deployment report. Attach to the report, an as-built drawing that contains the approximate deployment configurations and the height of the material after placement. Depth shall be verified utilizing fathometer, depth sounder, or similar device accurate to within 1 meter. Also, include information on the condition of the material at the time of deployment. The report and drawing shall be limited to a few pages per deployment. Representative photographs and/or video, if available, are encouraged to be submitted.

**8. Protection of Existing Resources:**

The Permittee shall not deploy artificial reef materials until an assessment of the bottom conditions have been accomplished by diver, submersible video camera, fathometer,

depth/bottom sounder (e.g. "fish finder"), or side-scan sonar. The inspection of the deployment area may occur at the time of deployment, but no more than one year prior to deployment. The Permittee shall maintain a deployment buffer of at least 200 feet from any submerged beds of sea grasses, coral reefs, live bottom, areas supporting growth of sponges, sea fans, soft corals, and other sessile macroinvertebrates generally associated with rock outcrops, oyster reefs, scallop beds, clam beds, or areas where there are unique or unusual concentrations of bottom-dwelling marine organisms. If, during the inspection, evidence is observed of cultural/archaeological resources, such as sunken vessels, ballast, historic refuse piles, or careenage areas the Corps will be notified by the Permittee and the above referenced deployment buffer will be implemented. The Permittee shall maintain a record of the information gained during the inspection such that it can be provided upon request to the Corps.

**9. Ownership/Maintenance/Liability:** By signing this permit, the Permittee certifies and acknowledges ownership of all artificial reef materials deployed on the reef, accepts responsibility for maintenance of the artificial reef, and possesses the ability to assume liability for all damages that may arise with respect to the artificial reef.

**10. Marine Life Entrapment:** Neither reef structure nor material or the method of design or deployment should pose more than minimal risk of entrapping fish, marine turtles, or marine mammals. The Permittee shall take all necessary action to minimize this risk. Any observation of entrapped marine turtles or marine mammals on this artificial reef site should be reported immediately to the Corps and FWC.

**11. Sea Turtle and Smalltooth Sawfish Conditions:** The Permittee shall comply with National Marine Fisheries Service's "Sea Turtle and Smalltooth Sawfish Construction Conditions" dated March 23, 2006 (Attachment C).

**12. Manatee Protection:** The Permittee shall ensure that wharf fenders are installed to reduce the risk of a vessel crushing a manatee. The wharf fenders shall be installed with appropriate materials to provide sufficient standoff space of at least 3 feet under compression. Fenders or buoys providing a minimum standoff space of at least 3 feet under compression shall be utilized between two vessels that are moored together.

**13.** The Permittee shall comply with the "Standard Manatee Conditions for In-Water Work" provided in this permit (Attachment D)

**14. Assurance of Navigation and Maintenance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

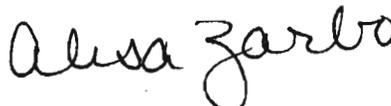
**15. Protected Species Guidance:** The Permittee shall comply with the "Vessel Strike Avoidance Measures and Injured or Dead Protected Species Reporting" guidance for marine turtles and marine mammals (Attachment E).

The impact of your proposal on navigation and the environment has been reviewed and found to be insignificant. The permit is hereby modified in accordance with your request. You should attach this letter to the permit. All other conditions of the permit remain in full force and effect.

If you have any questions concerning permit modification, please contact the project manager Ms. Linda C. Knoeck at the letterhead address, by telephone at 561-472-3527 or by electronic mail at [Linda.C.Knoeck@usace.army.mil](mailto:Linda.C.Knoeck@usace.army.mil).

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit <http://per2.nwp.usace.army.mil/survey.html> and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise. Please be aware this web address is case sensitive and should be entered as it appears above.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

  
607 Alan M. Dodd  
Colonel, U.S. Army  
District Commander

Enclosures:

1. Drawings (5 pages)
2. Florida Artificial Reef Materials Cargo Manifest and Pre-Deployment Notification form (Attachment A).
3. Florida Artificial Reef Materials Placement Report and Post-Deployment Notification form (Attachment B).
4. Sea Turtle and Smalltooth Sawfish Construction Conditions (Attachment C).
5. Manatee Construction Conditions (Attachment D)
6. Vessel Strike Avoidance Measures and Injured or Dead Protected Species Reporting guidance for marine turtles and marine mammals (Attachment E)

Copies Furnished:

NOAA Office of Coast Survey ([ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov))  
CESAJ-RD-PE



EXHIBIT  
4

Artificial Reefs International  
2627 Staples Avenue, Suite B  
Key West, FL 33040-3924  
(305) 797-7077

January 22, 2015

Greg Harrison  
Assistant City Manager  
City of Pompano, FL

Dear Greg,

Artificial Reefs International, LLC (ARI) is pleased to present this concept document to you and the Pompano Beach Shipwreck Park (PBSP) outlining some of our history and describing what we will together accomplish with the sinking of the Santé Manna as an artificial reef off Pompano Beach, FL. We have had a number of enthusiastic conversations about what is possible with this effort. I want to make sure that all party's expectations are clearly articulated, understood, met and if possible, surpassed to enjoy as successful a project as is possible.

While sinking ships as artificial reefs is not a new idea, the concept for the PBSP is. Project organizers of the PBSP have met with leadership of ARI in an effort to maximize the media impact and the tourism revenue from the project for the City of Pompano, Broward County, and local businesses. The ship to be deployed as an artificial reef is the Santé Manna, a 320' coastal freighter of a type not uncommonly used as artificial reefs, especially in southeast Florida. The concerted effort to maximize the economic impact of the PBSP will be undertaken by ARI in concert with local and regional marketing professionals. The discussed sink date for this project is to be in late May or June of 2015.

ARI has demonstrated expertise in working with its clients to market artificial reefs. ARI has presented clear rationale and economic justification for an artificial reef project to business leaders in the City of Pompano and Broward County. ARI also presented a series of ideas to the PBSP leadership outlining ways that the PBSP could both set itself apart from other artificial reef projects as well as attract the sponsors and media attention necessary to make the project a success. ARI presented the idea of a "Casino Ship" to the PBSP leadership among whom was Rob Wyre, General Manger of the Isles Casino in Pompano. On being presented with this idea Mr. Wyre agreed to sponsor the project with \$312,500, representing approximately half of the total project funding.

The Casino Ship idea as presented to the PBSP leadership entails:

- A live sinking event produced by the ARI Team and delivered real time to Isles Casino to be made available by Isles Casino worldwide for betting on the actual time it takes the ship to sink. This has never been attempted before. The ship is to be fitted with a camera or cameras to broadcast live video of the sinking ship.



Artificial Reefs International  
2627 Staples Avenue, Suite B  
Key West, FL 33040-3924  
(305) 797-7077

- A set of casino gaming tables and chairs are to be fabricated, painted and welded to one of the hatch covers over the cargo bay of the Santé Manna. This will provide recreational scuba divers with the world's first underwater casino and a unique Pompano photo opportunity. Underwater gambling events and tournaments and promotions to fill hotel rooms in Pompano have also been discussed.
- The ship will also have some large custom signage to make her highly appealing and unique. This will be especially true on the day she is deployed, Sink Day.

ARI works with sponsors that have expressed interest in the PBSP. Among them are the Dive Equipment and Marketing Association, Coastal Conservation Association of Florida, Marine Trades Association of Florida, Wyland's Ocean Realm Magazine, Scuba Diving Magazine, Dive News Network and Pegasus Thruster to name a few. ARI has the key relationships to bring even more sponsors into the PBSP to enhance our success.

ARI enthusiastically looks forward to participating in this historic, valuable project, and being a part of its ultimate victory. I respectfully suggest a conference call to address and firm up on any outstanding issues. I am willing to discuss any questions and/or concerns that arise. It's clear that all parties have a basic understanding of each other's expectations and I personally look forward to signing a contract and getting started.

Respectfully,

A handwritten signature in blue ink that reads "Joe Weatherby".

Joe Weatherby  
President  
Artificial Reefs International

## **Exhibit 5**

### **CONTRACTOR'S SCOPE OF WORK FOR TOPSIDE MODIFICATIONS**

- Crane sufficient to lift five (5) tons;
- 2,500 square feet of upland space with vehicle access for temporary staging;
- Welders - up to 3 man days; and
- Approximately 40 hours of general labor for Topside Modifications

## **Exhibit 6**

### **Items To Be Salvaged from the Santé Manna and Provided to the City of Pompano Beach**

- All portholes;
- Binnacle;
- Compass;
- Telegraph;
- 3 hatches;
- Propeller; and
- Any other small items later agreed upon by both parties.