



**PROFESSIONAL SERVICES AGREEMENT
SAMPLE CONTRACT**



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AGREEMENT FOR ENGINEERING AND CONSULTING SERVICES

This AGREEMENT entered into on _____ (hereinafter "effective date") by and between the **DUNES COMMUNITY DEVELOPMENT DISTRICT (DCDD)**, a Community Development District as defined by the State of Florida, hereinafter referred to as "**DCDD**", and _____, hereinafter referred to as "**Consultant**".

W I T N E S S E T H:

WHEREAS, the DCDD proposes to do work relating to DCDD Operations as well as general utility management and supporting services; and, WHEREAS, the DCDD desires to engage the Consultant to perform certain professional services pertinent to such work in accordance with this Agreement; and

WHEREAS, the Consultant desires to provide such professional services in accordance with this Agreement, and has represented to the DCDD that it has the competency and experience to perform such services in accordance with the terms and conditions as set forth herein; and

WHEREAS, the Consultant has been selected to perform these professional services pursuant to the provisions of Section 287.055, Florida Statutes.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenant, and payments hereinafter set forth, the DCDD and Consultant hereby agree as follows:

SECTION 1 SCOPE OF SERVICES

The DCDD does hereby retain the Consultant, and Consultant shall furnish professional services relating to DCDD Operations as well as general utility management and supporting services, which may, from time to time, be assigned to Consultant by the DCDD, pursuant to a Task Order or Purchase Order. Whenever services are required of Consultant, additional detailed scopes of services shall be set forth in Task Orders executed by the parties, as addenda to this Agreement or by Purchase Orders. Such services may include work associated with the Capital Improvement Plan (CIP) as it currently exists.

SECTION 2 TERM

This Agreement shall be a "continuing contract," as defined under Section 287.055(2) (g), Florida Statutes and shall have an initial term of three (3) years from the effective date. This agreement may be renewed yearly upon mutual agreement from both parties.

SECTION 3 **SERVICES AND COMPENSATION**

If Consultant's services are required, DCDD will send Consultant a proposed Task Order or Purchase Order detailing the work to be done and the compensation to be paid. The

Consultant may negotiate compensation and time for completion of the work with the DCDD. Once the Task Order or Purchase Order has been signed by both parties, the DCDD will issue the Consultant a Notice to Proceed. Consultant shall commence work within five (5) working days of receipt of a written "Notice to Proceed" from the DCDD. The Consultant shall complete its work in accordance with the time schedule specified in the applicable Task Order or Purchase Order.

Consultant acknowledges and agrees that the DCDD is not obligated to issue any Task Order or Purchase Order for any specific project or part thereof and conversely may, in the DCDD's sole discretion, issue a Task Order or Purchase Order for all or any portion of any project. It is further understood and agreed that the DCDD may modify Task Orders or Purchase Orders as the DCDD deems appropriate including a commensurate increase or decrease in the fee.

As consideration for providing professional services hereunder, the DCDD shall pay Consultant a fee for services rendered as specifically provided in the applicable Task Order or Purchase Order. The fee provided in the applicable Task Order or Purchase Order shall be the only compensation to which Consultant is entitled. The fee shall include all of the Consultant's costs associated with the Task Order, office overhead, employee benefits, and other support for overhead services required by Consultant for performance of any and all duties or obligations described in the applicable Task Order or Purchase Order. Consultant Shall not perform any additional work or services without first receiving written authorization from the DCDD, specifying said services to be performed and a written "Notice to Proceed" from the DCDD. Consultant will adhere to and incorporate federal, state, local or other required addenda as required by DCDD to obtain funding such as Amendment 1 and Appendix A which are attached to this agreement and were required to obtain FEMA funding in the past. These additional requirements will be negotiated on a case by case basis.

If the cost of equipment purchases is included in the compensation for a Task Order or Purchase Order, then that equipment is the property of the DCDD and must be returned to the DCDD upon completion of the Task Order or Purchase Order.

SECTION 4 **ADMINISTRATION OF SERVICES**

Consultant shall be responsible for recruiting, hiring, training, supervising, disciplining and discharging personnel necessary to perform all professional services contemplated by the Agreement. Consultant shall have the right to subcontract portions of the services required to be performed to other firms, persons and companies from time to time, to carry

out any applicable Task Order or Purchase Order. Consultant shall, at all times, remain liable for the proper performance and completion of all work and other services required hereby, including supervision and administration of all such personnel, firms and companies. Consultant shall not subcontract any portion of the work required under this Agreement without prior written approval of the DCDD. This approval by the DCDD shall not be unreasonably withheld.

The Consultant is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other Services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its Designs, drawings, specifications, reports, and other services.

SECTION 5 **BILLING AND TIME OF PAYMENT**

Consultant shall submit invoices for payment to the DCDD either (a) on a monthly basis or (b) contemporaneously with services rendered pursuant to the timeline specified in each Task Order or Purchase Order. The DCDD shall pay Consultant after the DCDD's receipt and approval of each invoice from Consultant, unless payment is otherwise specified in a Particular Task Order or Purchase Order. The request for payment shall be in the form and in the manner, required by the DCDD, and shall relate to work performed since the last invoiced work. The DCDD may require supplemental and accompanying data to support Consultant's request for payment. If the DCDD objects to all or any portion of an invoice, the DCDD shall so notify Consultant. The parties shall immediately make an effort to settle the disputed portion of the invoice. Upon approval of such invoice by the DCDD, DCDD agrees to pay the approved or undisputed portion of the invoice within the time frame specified in Section 218.70, et seq., Florida Statutes, the "Florida Prompt Payment Act". In the event that this Agreement is terminated by either party hereto, in accordance with the provisions of this Agreement entitled "Termination", then Consultant shall be entitled to be paid as provided for in said section.

SECTION 6 **ADDITIONAL SERVICES**

To the extent the DCDD requests Consultant to perform additional services which are not described in a Task Order or Purchase Order, or with respect to which there is a disagreement between the parties as to whether the service is already required by a particular Task Order or Purchase Order, then the Consultant shall perform such service only upon receipt of a written directive from the DCDD to perform such additional service. In the case of services provided to which there is a disagreement, Consultant shall provide written notice to the DCDD that the Consultant is following the DCDD's written directive without prejudice to Consultant's right to seek additional compensation from the DCDD. The DCDD's delivery of a written "Notice to Proceed" following Consultant's notice shall be without prejudice to the DCDD's right to maintain that such additional service does not

constitute the basis for additional compensation under the applicable Task Order or Purchase Order.

SECTION 7

AUTHORIZED REPRESENTATIVES

The parties agree that in order to facilitate the orderly and efficient implementation of the work contemplated by this Agreement, each party shall appoint an authorized representative (or representatives) for such party. The DCDD's representative shall have the authority to transmit instructions, receive information, and interpret and define the DCDD's policies and decisions pertinent to the work covered by this Agreement as long as such transmissions do not result in an increase in the cost of or time to perform work. The parties understand and agree that only the Board of Supervisors, District Manager or Utility Manager has the authority to issue Task Orders or approve changes or modifications to this Agreement on behalf of the DCDD. The Consultants representative shall be authorized to act on behalf of Consultant regarding all matters involving the conduct of its performance under this Agreement. The DCDD's initial representative will be the District Manager and the Consultant's representative shall be specified by the consultant. Either party shall have the right to change its authorized representative or representatives, or to add additional representatives, from time to time, throughout the term hereof, by giving written notice to the other party hereto in accordance with the notice provisions of this Agreement.

SECTION 8

DCDD ASSISTANCE

The DCDD shall assist Consultant by making available to Consultant DCDD personnel with knowledge of the operation of the DCDD as it relates to the Task Order or Purchase Order. The DCDD shall provide Consultant with all available information pertinent to the work, including previous reports and documents and any data relevant to the project. The DCDD shall also make its facilities accessible to Consultant, where feasible, and as required for Consultant's performance of its services under this Agreement. In those instances where Consultant may deem it necessary to obtain access or entry upon privately owned property in its performance under this Agreement, Consultant may request assistance from the DCDD in facilitating such access. No obligation for DCDD to provide access.

SECTION 9

TITLE TO DELIVERABLES

No reports, data, programs, plans, specifications, or other material produced either in whole or in part under this Agreement shall be subject to copyright by the Consultant in the United States, or any other country. No reports, data, programs, plans, specifications, or other material produced under subcontracts either in whole or in part under this Agreement shall be subject to copyright by the Consultant, or subcontractor in the United States, or any other country. The DCDD and its assigns shall have unrestricted authority to publish, disclose,

distribute and otherwise use, in whole or in part, any reports, data, programs or other material prepared under this Agreement. The Consultant may retain its original notes, working documents, design calculations, computations and plans provided the DCDD shall be entitled to a copy of such materials upon request and further provided said materials shall not be destroyed without the prior written approval of the DCDD. Any final writings, maps, charts, computer programs, plans, specifications or drawings prepared, either in whole or in part, under this Agreement shall become the property of the DCDD.

SECTION 10 **INDEMNIFICATION**

Consultant shall indemnify and hold harmless the DCDD, and its officers and employees, from liabilities, damages, attorneys' losses, and costs, including, but not limited to, reasonable fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the services.

SOVEREIGN IMMUNITY

Nothing in this agreement shall be deemed as a waiver of immunity or limits of liability of the district beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida legislature in section 768.28, Florida statutes, or other law, and nothing in this agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

SECTION 11 **INSURANCE**

Consultant shall procure and maintain during the entire term of this Agreement insurance of the types and at least in the amount set forth as follows:

A. Worker's Compensation Insurance in full compliance with the Worker's Compensation Act of the State of Florida, including coverage of all subcontractors of Consultant.

B. Comprehensive General Liability:

Bodily Injury and Property Damage:
Each Occurrence \$1,000,000.00

Products and Completed Bodily Injury and Property Damage:
Each Occurrence \$1,000,000.00

Professional Liability (Errors & Omissions)
Per Claim \$1,000,000.00

Aggregate \$1,000,000.00

Such insurance shall be maintained for four years after termination of the Agreement between the DCDD and Consultant.

C. Comprehensive Automobile Liability: (owned, leased, non-owned & hired)

Bodily Injury and Property Damage:
Each Accident \$1,000,000.00

Said insurance policies shall be written by a company or companies licensed to do business in the State of Florida and deemed satisfactory to the DCDD. The DCDD is to be named or endorsed as Additional Insured. A certificate or certificates evidencing the maintenance of said insurance shall be furnished to the DCDD within five (5) days of execution of this Agreement and shall provide that the insurance evidenced by the certificate shall not be canceled or reduced, except after thirty (30) days from receipt by the DCDD of written Notice thereof.

SECTION 12 NOTICES

Any notices required or permitted by this Agreement shall be in writing and shall be deemed delivered upon hand delivery, or three (3) days following deposit in the United

States postal system, postage prepaid, return receipt requested, addressed to the parties at the following addresses:

**FOR DUNES COMMUNITY
DEVELOPMENT DISTRICT**

FOR CONSULTANT

Gary Crahan, Chairman
101 Jungle Hut Road
Palm Coast, FL 32137

Either party shall have the right to change its address for notice purposes at anytime throughout the term hereof, by sending written notice of such change of address to the other party in accordance with the provisions hereof not less than ten (10) days prior to the effective date of such change.

SECTION 13 **FORCE MAJEURE**

Neither party shall be liable for its failure to perform hereunder if its performance is rendered impossible by any act, event or condition beyond its reasonable control which by the exercise of due diligence it shall be unable to overcome. Such acts, events or conditions shall include, but not be limited to the following:

- acts of God, hurricanes, tornado, lightning, or earthquake
- strikes or lockouts
- acts of war, civil insurrection or terrorism
- Fire or flood not caused by the party unable to perform
- change in law not due to improper conduct or to any negligent or intentional act or omission on the part of the party unable to perform.

SECTION 14 **TERMINATION**

The DCDD may, by fourteen (14) days prior written notice to the Consultant, terminate this Agreement, in whole or in part, either for the DCDD's convenience or because of the Failure of Consultant to fulfill its Agreement obligations. Upon receipt of such notice, Consultant will:

- A. Immediately discontinue all services affected, unless the notice directs otherwise; and
- B. Deliver to the DCDD all data, drawings, specifications, reports, estimates, summaries, plans, and such other information or materials as may have been accumulated by Consultant in performing this Agreement, whether completed or in process.

If the termination is for the convenience of the DCDD, Consultant shall be paid its compensation for services performed to the date of termination, based on the percentage of work completed or hourly rate if the Task or Purchase Order is hourly. The DCDD shall not be obligated to pay for any services performed after Consultant has received notice of termination. If the notice of termination

is due to the failure of Consultant to fulfill its agreement obligations, Consultant shall have 14 calendar days within which to correct such deficiencies as noted in said notice. If Consultant fails to correct such deficiencies to the satisfaction of the DCDD within the stated time period, then the DCDD may take over the work and prosecute the same to Completion by Agreement or otherwise. In such case, the DCDD preserves all rights and remedies available, including, but not limited to the DCDD's additional cost incurred in securing complete performance. The rights and remedies of the DCDD provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement. If, after notice of termination for failure to fulfill Agreement obligations, it is determined that Consultant had not so failed, the termination shall be deemed to be effected for the Convenience of the DCDD. In such event, adjustment in the Agreement price shall be made as provided above in this Section.

Consultant may, by fourteen (14) days prior written notice to the DCDD, terminate this Agreement, in whole or in part, because of the DCDD's failure to fulfill its Agreement Obligations. If not cured within the fourteen (14) day notice period, the Consultant may discontinue providing service to the DCDD, and shall be paid for prior services performed by either the percentage complete method or by hourly rate per the applicable approved Task Order or Purchase Order.

SECTION 15 **WAIVER**

The waiver by the DCDD or Consultant of the other party's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the other party Under this Agreement, nor shall a waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

SECTION 16 **CONFLICT OF INTEREST: DCDD**

No officers, members, employees of the DCDD, no member of its governing body, no other public official of the governing body of the locality or localities in which services for the facilities under this Agreement are to be carried out, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 17

CONFLICT OF INTEREST: CONSULTANT

Consultant covenants that it presently has no interest and shall not acquire interest, direct or indirect, which shall conflict with the performances or services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement that the Consultant shall employ no person having any such interest services to the DCDD as soon as he/she becomes aware of it. A conflict of interest is any situation in which the Consultant, his employees, or his subcontractors, are in a position to exploit their professional relationship with the DCDD in any way for their personal or Corporate benefit.

SECTION 18

COVENANT AGAINST CONTINGENT FEES

Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, 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 Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this section, the DCDD shall have the right, but not the duty, to terminate this Agreement without liability, and, at its discretion, to deduct from the Agreement such price, or otherwise recover the full amount of such fee, commission, percentage, gift or other consideration.

SECTION 19

RECORDS AND AUDITS

If federal funds are used for any work under this Agreement, the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to any books, Documents, papers, and records of Consultant which are directly pertinent to work performed under this Agreement, for purposes of making audit, examination, excerpts, and transcriptions.

In performance of this Agreement, the Consultant shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Consultant in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the DCDD. The Consultant shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to the Consultant by the DCDD in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119,

Florida Statutes. All records stored electronically must be provided to the DCDD in a format compatible with the information technology systems of the DCDD. The Consultant shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if the Consultant does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, the Consultant may transfer, at no cost to the DCDD, all public records in possession of the Consultant. If the Consultant transfers all public records to the DCDD upon termination of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

FLORIDA PUBLIC RECORDS LAW: Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to the DCDD. If the DCDD does not possess the requested records, the DCDD shall immediately notify the Consultant of the request and the Consultant must provide the records to the DCDD or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so the DCDD can comply with the requirements of Sections 119.07. The Consultant may also provide a cost estimate to produce the requested documents.

If the Consultant fails to provide the requested public records to the DCDD within a reasonable time, the Consultant may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. The Consultant's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination. Should the DCDD face any legal action to enforce inspection or production of the records within the Consultant's possession and control, The Consultant agrees to indemnify the DCDD for all damages and expenses, including attorney's fees and costs. The Consultant shall hire and compensate attorney(s) to represent the Consultant and DCDD in defending such action. The Consultant shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GREGORY L. PEUGH 386-445-9045, GPEUGH@DUNESCDD.ORG

SECTION 20

EQUAL OPPORTUNITY EMPLOYMENT

Consultant agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, gender, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color,

religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfers; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 21 **ASSIGNMENT**

The DCDD and Consultant each bind itself and its successors, legal representatives, and assigns to the other party to this Agreement, and to the partners, successors, legal representatives, and assigns of such other party, and in respect to all covenants of this Agreement; and neither the DCDD nor Consultant shall assign no transfer their interest in this Agreement without the prior written consent of the other party.

SECTION 22 **INDEPENDENT CONTRACTOR**

It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of Consultant to the DCDD is that of independent contractor, and not that of employee. No statement contained in this Agreement shall be construed so as to define Consultant an employee of the DCDD, and Consultant shall be entitled to none of the rights, privileges or benefits of the DCDD employees.

SECTION 23 **CLAIMS FOR SERVICES**

The DCDD will honor no claim for services rendered by Consultant not specifically provided for in this Agreement.

SECTION 24 **ENTIRE AGREEMENT**

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

SECTION 25

SEVERABILITY

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 26

MODIFICATIONS OR AMENDMENTS IN WRITING

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties with the same formality as herewith.

SECTION 27

PERMITS, FEES, and LICENSES

Permits, fees and licenses necessary for performance of work pursuant to this Agreement will not be waived by the DCDD, and the Consultant shall be responsible for obtaining, and shall pay for their own professional permits, fees and licenses as required. The DCDD shall pay to the governing authority, the cost of permits, fees, and/or licenses required for completion of the scope of services for a particular Task Order.

SECTION 28

TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of the Agreement are accurate, complete and current as of the time of contracting. The original contract price and additions thereto shall be adjusted to exclude any significant sums by which the DCDD determines the contract price was increased due to inaccurate, incomplete or non-current wage rate, and other factual unit costs. All such contract adjustments shall be made within one (1) year following the termination of the Agreement.

SECTION 29

COMPLIANCE WITH LAWS

Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations during the course of this Agreement.

SECTION 30

ATTORNEY'S FEES

In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

SECTION 31

APPLICABLE LAW

The law of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related thereto. Venue shall be deemed to be in the Circuit Court, Seventh Judicial Circuit, in and for Flagler County, Florida.

SECTION 32

VENUE

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for the Circuit Court of the Seventh Judicial Circuit, in and for Flagler County, Florida, and a waiver of jury trial

SECTION 33

UNAUTHORIZED ALIEN WORKERS

The DCDD will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 (e) Section 274(e) of the Immigration and Nationality Act. The DCDD shall consider a contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

SECTION 34

PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business

with any public entity in excess of threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from date of being placed on convicted vendor list.

SECTION 35

JURY TRIAL

The parties expressly, knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any litigation, whether in law or equity, based on or arising out of, or in connection with the Contract Documents, this Agreement, any representations, oral or written with respect hereto, and any claims or counterclaims hereunder.

SECTION 36

MEDIATION

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to pre-suit mediation as a condition precedent to legal or equitable proceedings by either party. Pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of this Agreement.

SECTION 37

EFFECTIVE DATE

The effective date of this Agreement means the date on which the last of the parties hereto executes this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

DUNES COMMUNITY DEVELOPMENT DISTRICT

Gregory L. Peugh
Secretary

Gary Crahan
Chairman

Approved by the Board on

Date: _____

Reviewed for legal form and content:

DCDD Attorney

CONSULTANT

Signature

Date

Name & Title, Printed

Name of Company, Corp., etc.

Mailing Address

City, State, Zip

(Area Code) Telephone Number

ATTEST:

Signature

Name & Title Printed