AGREEMENT BETWEEN COUNTY AND CONSULTANT
FOR PROFESSIONAL SERVICES

THIS AGREEMENT, effective this 18th day of December in the year, 2018, between:

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, (hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONSULTANT: (hereinafter CONSULTANT)	Estuarine, Coastal and Ocean Science, Inc. 5920 First Street, SW Vero Beach, FL 32968
Contract Name:	Petition to the U.S. Fish & Wildlife Service for Listing of Endangered Species of the St. Lucie River

In accordance with the terms further described on Exhibit A (attached):

Total Contract Value: $121,520.00

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SECTION 1
SCOPE OF SERVICES

1.1 Basic Scope of Services

The Basic Scope of Services has been agreed to by the parties, and is attached hereto and incorporated herein by reference as Exhibit A. The CONSULTANT shall provide Services for the COUNTY in all phases of the Project to which this AGREEMENT applies as hereinafter provided and within the schedule set forth in Exhibit A. The CONSULTANT shall perform any and all Services in a timely, efficient and cost effective manner and in accordance with the generally accepted standards of the applicable profession.

The COUNTY is selecting CONSULTANT as of this day, to provide services in connection with the Project in accordance with the provisions of this Agreement, applicable state codes and municipal ordinances, and in accordance with the Request for Qualifications (RFQ) document, and any and all addenda, modifications and revisions thereto.

1.2 Notice to Proceed

The CONSULTANT shall commence work within ten (10) days after receiving a Purchase Order or Notice to Proceed unless indicated otherwise.

SECTION 2
TERM

The term of this AGREEMENT shall commence on the date of execution of this AGREEMENT by the COUNTY and continue through approval of the final reports by the COUNTY. It is also agreed that the COUNTY shall have an option for extension of this AGREEMENT, as necessary to complete the services or to provide additional services.

SECTION 3
COUNTY'S RESPONSIBILITIES

3.1 Information Pertinent to the Project

The COUNTY shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project (including previous reports and any other relevant documents and data relative to the Project). The CONSULTANT is ultimately responsible for satisfying itself as to accuracy of any data provided, and, furthermore, the CONSULTANT is responsible for bringing to the COUNTY's attention, for the COUNTY's resolution, any material inconsistencies or errors in such data which come to the CONSULTANT's attention.

3.2 Access to Property

The COUNTY shall arrange for access to, and make provisions for, the CONSULTANT to enter upon public and private property (where required) as necessary for the CONSULTANT to perform its Services upon the timely written request of CONSULTANT to COUNTY.

3.3 Examination

The COUNTY shall examine any and all studies, reports, and other documents presented by the CONSULTANT, and render, in writing, decisions pertaining thereto within a reasonable time.

3.4 No Warranty by COUNTY

Approval by the COUNTY of any of the CONSULTANT's work products of any nature whatsoever furnished hereunder, shall not in any way relieve the CONSULTANT of responsibility for the technical accuracy and adequacy of the work. Neither the COUNTY's review, approval or acceptance of, or payment for, any of the Services furnished under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT. The CONSULTANT shall be and remain liable in accordance with all applicable laws for all damages to the COUNTY caused by the negligent performance by the CONSULTANT or any Specialty

3.5 Extension of Time

3.5.1 Notice of Extension of Time

The COUNTY shall give prompt written notice to the CONSULTANT whenever the COUNTY observes or otherwise becomes aware of any development that affects the timing or delivery of the CONSULTANT's Services. If the CONSULTANT has been delayed in completing its Services through no fault or negligence of either the CONSULTANT or any Specialty Consultant, and, as a result, will be unable complete timely performance fully and satisfactorily under the provisions of this AGREEMENT, then the CONSULTANT shall promptly notify the COUNTY. At the COUNTY's sole discretion, and only upon the previous submittal to the COUNTY of evidence of the causes of the delay, the COUNTY may grant the CONSULTANT an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed, subject to the COUNTY'S rights to change, terminate, or stop any or all of the Services at any time in accordance with this Agreement.

3.5.2 Force Majeure

The CONSULTANT shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the CONSULTANT's control and through no fault or negligence of the CONSULTANT. The parties acknowledge that adverse weather conditions (as defined by comparison to 10 year historical average), acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this AGREEMENT. If

such conditions and circumstances do in fact occur, then the COUNTY and CONSULTANT shall mutually agree, in writing, to the modifications to be made to this AGREEMENT.

3.6 County Project Manager

The COUNTY reserves the right to appoint a Project Manager for this Project. The Project Manager shall issue all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this AGREEMENT. The Project Manager shall also:

A. act as the COUNTY's agent with respect to the Services rendered hereunder;
B. transmit instructions to and receive information from the CONSULTANT;
C. communicate the COUNTY's policies and decisions to the CONSULTANT regarding the Services;
D. determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and
E. determine, initially, the merits of any allegation by the CONSULTANT respecting the COUNTY's non-performance of any Project obligation.

All determinations made by the Project Manager, as outlined above, shall be final and binding upon the CONSULTANT, but shall not be binding upon the CONSULTANT in regard to general appearances before or appeals to the COUNTY, or appearances before or appeals to a court of competent jurisdiction.

SECTION 4
PAYMENTS TO CONSULTANT

4.1 General

4.1.1 The COUNTY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT's invoices ("Invoices"), in accordance with the Contract and Section 218, Fla. Stat.

4.1.2 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services which have not been fully negotiated, reduced to writing and formally executed by both the COUNTY and CONSULTANT, then the CONSULTANT shall perform such Services without liability to the COUNTY, and at the CONSULTANT's own risk.

4.2 Method of Payments by COUNTY

4.2.1 For Basic Scope of Services, CONSULTANT shall submit invoices in a form approved by the COUNTY.

4.3 Time of Payment

The COUNTY shall pay CONSULTANT for Services and expenses pursuant to Florida Statute after receipt of the CONSULTANT's invoice. Any portion of an invoice that is objected to or questioned by the COUNTY shall not be considered due for the purposes of this Section. To the extent the COUNTY does not pay CONSULTANT the total amount invoiced, the COUNTY shall provide the CONSULTANT a written explanation of the objection along with any amount paid on that invoice or in lieu of payment if the objection is to the entire amount invoiced.

4.4 Scope, Cost and Fee Adjustment

4.4.1 General

The COUNTY may at any time notify the CONSULTANT of requested changes to the Scope of Basic Services as set forth in Exhibit A to this AGREEMENT. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in Exhibit A to reflect such modification. The CONSULTANT and the COUNTY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Basic Services must be approved or authorized by the COUNTY. Duties, responsibilities and limitations of authority of the CONSULTANT shall not be restricted, modified or extended without written agreement of the COUNTY and the CONSULTANT.

4.4.2 Scope Reduction

The COUNTY shall have the sole right to reduce (or eliminate, in whole or in part) any portion of the Scope of Services for the overall Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction.

4.5 Final Payment

The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this AGREEMENT, shall constitute a full and complete release of the COUNTY from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the COUNTY under the provisions of this AGREEMENT. This Section does not affect any other portion of this AGREEMENT that extends obligations of the parties beyond Final Payment.

SECTION 5
CONSULTANT'S PROJECT TEAM

The CONSULTANT shall assign members of its staff as the CONSULTANT's Project Team, who shall collectively devote such working time and attention as may be reasonably required to ensure that the Services are properly, economically, and efficiently performed. The CONSULTANT shall indicate to the COUNTY the authority and powers that the CONSULTANT's Project Team shall possess during the life of the Project. The CONSULTANT agrees that the COUNTY shall have the right to approve the

CONSULTANT's Project Team, and that the CONSULTANT shall not change any member of its Project Team without written notice to the COUNTY. Furthermore, if any member of the CONSULTANT's Project Team is removed from Project duties, or employment is otherwise terminated or curtailed by the CONSULTANT, or if the CONSULTANT's Project Team member terminates his employment with the CONSULTANT, then the CONSULTANT shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the COUNTY's approval. The COUNTY covenants that its approval shall not be unreasonably withheld.

SECTION 6
INDEPENDENT CONSULTANT RELATIONSHIP

The CONSULTANT is and shall be an independent contractor in the performance of all work, services, and activities under this AGREEMENT and is not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this AGREEMENT shall at all times and in all places be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work and in all respects the CONSULTANT's relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than such power or authority that is specifically provided for in this AGREEMENT.

SECTION 7
CONFLICTS OF INTEREST

7.1 The CONSULTANT represents and warrants to the COUNTY that no officer, employee, or agent of the COUNTY has any interest, either directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the COUNTY that it has not employed or retained any company or person, other than a bona fide employee working solely for the 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 bona fide Personnel working solely for the CONSULTANT any fee, commission, percentage, gift or other consideration, contingent upon, or resulting from the award or making of this AGREEMENT. Further, the CONSULTANT also acknowledges that it has not agreed as an expressed or implied condition for obtaining this AGREEMENT, to employ or retain the services of any person, company, individual or firm in connection with carrying out this AGREEMENT. It is understood and agreed by the CONSULTANT that, upon the breach or violation of this Section, the COUNTY shall have the right to terminate the AGREEMENT without liability and at its sole discretion, and to deduct from the AGREEMENT price, or to otherwise recover, the full amount of such fee, commission, percentage, gift or consideration paid by the CONSULTANT.

7.2 The CONSULTANT represents that it presently has no interest, either direct or indirect, while performing the services required by this AGREEMENT, which would conflict in any manner with Florida Statutes. The CONSULTANT represents that no person having any such interest shall be employed during the term of this AGREEMENT, including any officer, employee or agent of the COUNTY.

7.3 The CONSULTANT represents and warrants that it has no current contracts with any entity that would create any conflict of interest in the CONSULTANT's ability to perform the services required by this AGREEMENT. Further, the CONSULTANT represents and warrants that throughout the term of this AGREEMENT, it will not undertake any work that would create such a conflict in interest.

7.4 The CONSULTANT shall promptly notify the COUNTY 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 the CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into such association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

SECTION 8
NO CONTINGENCY FEES

CONSULTANT warrants that it will not employ or retain any company or persons, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 9
NOTICES

All notices under this Agreement shall be in writing and shall be (as elected by the person giving such notice) mailed solely by Certified Mail, Return Receipt Requested, Hand Delivery with Proof of Service, or by Overnight Courier to the COUNTY and CONSULTANT at the addresses listed on page one of this Agreement. Either party may change its address, for the

purposes of this Section, by 30 day prior written notice to the other party given in accordance with the provisions of this Section.

SECTION 10
WAIVER OF CLAIM

The CONSULTANT and the COUNTY hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this AGREEMENT or any part thereof, or by any judgment or award in any suit or proceeding declaring this AGREEMENT null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

SECTION 11
INDEMNIFICATION

11.1 Indemnification

CONSULTANT shall indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract. CONSULTANT'S obligation under this provision shall not be limited in any way by the Firm Fixed Price, or CONSULTANT'S, or its Professionals', Subconsultants', or Subcontractors' limit of, or lack of, sufficient insurance. This Article shall survive the termination of this AGREEMENT and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists, unless otherwise prohibited by law. The parties acknowledge that the duties and limits of indemnity coverage provided by the CONSULTANT herein are as set forth in §725.08, Fla. Stat. This Article shall survive the termination of this AGREEMENT and shall continue in full force and effect so long as the possibility of any liability claim or loss exists.

11.2 Repair of Damage

The CONSULTANT agrees to promptly repair, at its sole cost and expense and in a manner acceptable to the COUNTY, any damage caused by the CONSULTANT or any Specialty Consultant, or by any of their respective employees or agents, to COUNTY property, or to any improvements or property located thereon.

SECTION 12
INSURANCE

12.1 General.

The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, such insurance that is further described below, including tail coverage, and any other

insurance necessary to fully protect CONSULTANT from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT's operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT's Operations), whether the CONSULTANT's Operations are by the CONSULTANT, any of its agents or Specialty Consultants, or anyone for whose act or acts it may be liable:

A. claims under Worker's Compensation, disability benefit, or other (similar) employee benefit acts;
B. claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
C. claims for damages for personal injury; and
D. claims for damages because of injury to or destruction of tangible property, including the loss of property use resulting there from; and
E. claims for professional liability/errors and omissions.

CONSULTANT shall furnish the COUNTY with Certificate(s) of Insurance signed by an authorized representative of the insurer evidencing the insurance so required. The Certificate(s) of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation, nonrenewal, or restriction of coverage.

12.2 Limits of Liability

The insurance required by this Section shall be written for not less than the limits of liability specified below, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the CONSULTANT's obligation:

- Worker's Compensation including Employer's Liability Insurance. (present Florida statutory limit)
- Employer’s liability of $500,000 each accident,$500,000 disease policy limit, and $500,000 per occurrence.
- Comprehensive General Liability Insurance. Commercial general liability coverage, including coverage for Personal & Advertising Injury, Products & Contractual Liability and Independent Contractors, with a minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate. Acord forms marked “Policy” or “Location” shall be considered non-compliant. Instead, check “Project” (meaning the “Contract”) for the aggregate limit. No exclusion should apply for Fellow Employees, Cross Liability, or Insured vs. Insured on the policy. Certificate Holder must be listed as Additional Insured.
- Professional liability insurance at minimum limits of $1,000,000.
- Business Automobile Insurance. This coverage should include all owned, hired, and non-owned vehicles at a minimum combined single limit of $1,000,000. Liability Limits should be shown as “Primary”.

12.3 Insurance Administration

Insurance Certificates, evidencing all insurance coverage referred to in this Section, shall be filed (or be on file) with the COUNTY at least ten (10) calendar days before the final execution of this AGREEMENT. The Insurance Certificates shall be fully acceptable to COUNTY in both form and content, and shall provide and specify that the related insurance coverage shall not be cancelled (Coverage Change) without at least thirty (30) calendar days prior written notice having been given to the COUNTY. It is also understood and agreed that it is the CONSULTANT's sole burden and responsibility to coordinate activities between itself, the COUNTY, and the CONSULTANT's insurer(s) so that the Insurance Certificates are acceptable to and accepted by COUNTY within the time limits described in this Section.

12.4 COUNTY as Additional Insured

The COUNTY shall be listed as an additional insured on all insurance coverage required by this AGREEMENT, except Worker's Compensation and Professional Liability errors and omissions insurance. Furthermore, all other insurance policies pertaining to the Services to be performed under this AGREEMENT shall memorialize that the CONSULTANT's, or the CONSULTANT's Specialty Consultant's, or all of these entities' (Primary Insured's) insurance, shall apply on a primary basis, and that any other insurance maintained by the COUNTY shall be in excess of and shall not contribute to or be commingled with the Primary Insured's insurance. Where the COUNTY has been named as an additional insured, the CONSULTANT shall include the provisions of this Section in its Specialty Consultant's contracts, and the Primary Insured's insurance shall contain a severability of interest provision stating that, except with respect to total limits of liability, all insurance shall apply separately to each Primary Insured or additional insured in the same manner as if separate policies had been issued to each. This Section does not increase the dollar amount of insurance for either per occurrence or aggregate coverage.

12.5 Notifications

The CONSULTANT acknowledges, understands, and agrees that it shall give prompt and prior written notice to the COUNTY that any insurance policy defined or contemplated in this Section has been invalidated because of the violation of any term or provision of any other insurance policy issued to the CONSULTANT.

12.6 Waiver of Subrogation

CONSULTANT hereby waives any and all rights of Subrogation against the COUNTY, 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 CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

SECTION 13
DISPUTE RESOLUTION

13.1 Prior to the initiation of any litigation by the parties concerning this Agreement, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. Each party to the mediation shall pay the mediator's fee in equal shares.

13.2 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

13.3 The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of contract as to any issue in any way connected with this Agreement.

SECTION 14
LICENSES

The CONSULTANT shall, during the life of this AGREEMENT, procure and keep in full force, effect, and good standing all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for the CONSULTANT to render its Services as described herein. The CONSULTANT shall also require all Specialty Consultants to comply by contract with the provisions of this Section.

SECTION 15
TERMINATION

15.1 Termination

15.1.1 Generally

This AGREEMENT may be terminated as follows:

A. by the COUNTY, at is convenience pursuant to paragraph 15.2;
B. by the COUNTY for CONSULTANT's failure to adequately perform the Agreement, pursuant to paragraph 15.3;
C. by the mutual agreement of the parties; or
D. as may otherwise be provided below.

In the event of the termination of this AGREEMENT, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

15.2 Termination for COUNTY's Convenience

The COUNTY, by written notice, shall have the right to terminate and cancel this Agreement, without the CONSULTANT being at fault, for any cause or for its own convenience, and require the CONSULTANT to immediately stop work. In such event, the COUNTY shall pay the CONSULTANT for the work actually performed. The COUNTY shall not be liable to the CONSULTANT for any other costs, charges, or expenses, including but not limited to, prospective profits and overhead on work not performed.

15.3 Termination for CONSULTANT's Failure to Perform

In addition to any other termination provisions that may be provided in this AGREEMENT, the COUNTY may terminate this AGREEMENT in whole or in part if the CONSULTANT makes a false Invoice or fails to perform any obligation under this AGREEMENT and does not remedy the failure within fifteen (15) calendar days after receipt by the CONSULTANT of written demand from the COUNTY to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within fifteen (15) calendar days, in which case the CONSULTANT shall have such time as is reasonably necessary to remedy the failure, provided the CONSULTANT promptly takes and diligently pursues such actions as are necessary therefore.

15.4 Payment upon Termination

Upon termination of this AGREEMENT, the COUNTY shall pay the CONSULTANT for those Services actually rendered and contracted for under this AGREEMENT, and those reasonable and provable expenses required and actually incurred by the CONSULTANT for Services prior to the effective date of termination. Where the AGREEMENT is terminated for cause by the COUNTY, such payment shall be reduced by an amount equal to any additional costs incurred by the COUNTY as a result of the termination.

15.5 Delivery of Materials Upon Termination

In the event of termination of this AGREEMENT by the COUNTY, prior to the CONSULTANT's satisfactory completion of all the Services described or alluded to herein, the CONSULTANT shall promptly furnish the COUNTY, at no additional cost or expense, with one (1) copy of the following items (collectively "Documents"), any or all of which may have been produced prior to and including the date of termination: data (including electronic data), specifications, calculations, estimates, plans, drawings, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any Specialty Consultant, in rendering the Services described herein, and not previously furnished to the COUNTY by the CONSULTANT pursuant to this AGREEMENT. The Documents shall be the sole property of the COUNTY, and the COUNTY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Specialty Consultants agree in writing to be bound by the provisions of this Section.

SECTION 16
SUSPENSION

The COUNTY may, at any time and for any reason, direct the CONSULTANT to suspend work (in whole or in part) under this AGREEMENT. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The CONSULTANT shall resume its Services upon the date specified or upon such other date as the COUNTY may thereafter specify in writing. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this AGREEMENT; provided, however, that any work stoppage not approved or caused by the actions or inactions of the COUNTY shall not give rise to any claim against the COUNTY by the CONSULTANT.

SECTION 17
MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

The final work product of all such materials along with all formal CONSULTANT/COUNTY correspondence concerning the Project shall be the sole property of the COUNTY. All materials described above shall be retained by the CONSULTANT for the statutory period (§95.11 Fla. Stat., as it may be from time to time amended). Furthermore, the COUNTY may reuse them at no additional cost, and the COUNTY shall be vested with all rights of whatever kind and however created that may be in existence thereto; provided, however, that the CONSULTANT shall not be liable or legally responsible to anyone for the COUNTY's reuse of any such materials on any other COUNTY Project and that the COUNTY timely notified the CONSULTANT of such potential liability.

SECTION 18
MISCELLANEOUS PROVISIONS

18.1 Local, State and Federal Obligations

18.1.1 No Discrimination

The CONSULTANT, for itself, its delegates, successors interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that: 1) in connection with the furnishing of Services to the COUNTY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this AGREEMENT on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and 2) the CONSULTANT shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this Section, the COUNTY shall have the right to terminate this AGREEMENT, without liability, as set forth in Section 15 of this AGREEMENT, and such right shall not be exercised unreasonably.

18.1.2 Compliance with Law

The CONSULTANT and its employees shall promptly observe, comply with, and execute the provisions of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders, codes, mandatory guidelines, and mandatory directions, including §287.055, Fla. Stat., and §553.70 et. seq., Fla. Stat., which may pertain or apply to the Services that may be rendered pursuant to this AGREEMENT, or to the wages paid by the CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all Specialty Consultants shall comply with the provisions of this Section.

18.1.3 Compliance with New Regulations

The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the COUNTY or the CONSULTANT to qualify for local, state, or federal funding for the Services rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the COUNTY shall have the right, by written notice to the CONSULTANT, to terminate this AGREEMENT without liability, as outlined in Section 15, above. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this AGREEMENT, then the COUNTY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend this AGREEMENT.

18.2 CONSULTANT Not Agent of County

The CONSULTANT is not authorized to act as the COUNTY's agent hereunder and shall have no authority, expressed or implied, to act for or bind the COUNTY hereunder, either in CONSULTANT's relations with Specialty Consultants, or in any other manner whatsoever except as elsewhere provided for in this AGREEMENT.

18.3 Specialty Consultants

18.3.1 General

The CONSULTANT shall have the right, conditioned upon the COUNTY's prior consent (which shall not be unreasonably withheld), to employ or use (whether or not for compensation or consideration of any nature whatsoever) other firms, consultants, contractors, subcontractors, and so forth (Specialty Consultants); provided, however, that the CONSULTANT shall: 1) inform the COUNTY as to the nature of particular Services for which the Specialty Consultants shall be employed; 2) inform the COUNTY as to the extent (what percentage) of the total Project Services each Specialty Consultant shall be employed to do; 3) be solely responsible for the performance of all of the CONSULTANT's Specialty Consultants, including but not limited to maintenance of schedules, correlation of Services, and the resolution of all differences between or among them; 4) promptly terminate the use and services of any Specialty Consultants upon written request from the COUNTY (which may be

made for the COUNTY's convenience); and 5) promptly replace each such terminated Specialty Consultant with a Specialty Consultant of comparable experience and expertise and who are otherwise acceptable to the COUNTY. After the Specialty Consultant has received notice of the termination, or two (2) business days after the COUNTY has notified the CONSULTANT in writing of the required termination of the Specialty Consultant whichever shall occur first, the COUNTY shall have no obligation to reimburse the CONSULTANT for the Services subsequent to the notice of termination of any Specialty Consultant who may be terminated pursuant to the provision of this Section. It is also understood that the COUNTY does not, by accepting a Specialty Consultant, warrant or guarantee the reliability or effectiveness of that entity's Services.

18.3.2 Work Outside Scope and Time of Payment

The COUNTY shall have no obligation to reimburse the CONSULTANT for the services of any Specialty Consultant that may be in addition to the Services, or for those Specialty Consultant Services not previously made known to the COUNTY, or that are otherwise outside of the Scope of the Project unless and until the COUNTY has given written approval of such reimbursement. CONSULTANT agrees to pay all such Specialty Consultants for their Project related Services within thirty (30) calendar days after the CONSULTANT's receipt of payment, from the COUNTY for work performed by the Specialty Consultants, unless such payment is disputed by the CONSULTANT, and the COUNTY receives written notice thereof.

18.3.3 Specialty Consultant Contracts

The CONSULTANT shall provide a copy of all relevant provisions of this AGREEMENT to all Specialty Consultants hired by it, or for which it may have management responsibilities and shall inform all Specialty Consultants that all Services performed hereunder shall strictly comply with the AGREEMENT terms and provisions. The CONSULTANT shall also furnish the COUNTY, upon demand, with a copy of all CONSULTANT Specialty Consultant contracts. The COUNTY agrees that it shall not demand that the CONSULTANT hire a particular Specialty Consultant for the Project.

18.4 Assignment and Delegation

The COUNTY and the CONSULTANT bind themselves and their respective partners, successors, executors, administrators, and assigns, to the other party of this AGREEMENT in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this AGREEMENT; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or either or both of these things, under this AGREEMENT without the prior written consent of the COUNTY. The COUNTY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the COUNTY's consent, then the COUNTY may terminate this AGREEMENT as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect whatsoever. The COUNTY shall have the right to assign its rights (or any part of them) or to delegate its duties

and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this AGREEMENT. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY or the CONSULTANT.

18.5 Audits

18.5.1 Periodic Auditing of CONSULTANT's Books

The Consultant's financial and accounting records ("Books") specific to this AGREEMENT may (but need not) be kept separate and apart from the CONSULTANT's other Books; but the COUNTY shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books related to business conducted under this AGREEMENT for the COUNTY, for the purpose of verifying the accuracy of any Invoice or Completion Report and to ensure payment to subconsultants or vendors of the CONSULTANT. In addition, upon request of the COUNTY, the CONSULTANT shall prepare an audit (for the most recent fiscal year) for the COUNTY, which shall include the CONSULTANT's paid salary, fringe benefits, general and administrative overhead costs, and the total amount of money paid by the COUNTY to the CONSULTANT related to business conducted under this AGREEMENT. The audit shall be certified as true and correct by, and shall bear the signature of, the CONSULTANT's chief financial officer or its certified public accountant.

18.5.2 Retention of Books

The CONSULTANT shall retain the Books, and make them available to the COUNTY as specified above, until the later of five (5) years after the date of termination of this AGREEMENT, or such longer time if required by any federal, state, or other governmental law, regulation, policy, or contractual or grant requirement or provision.

18.5.3 Overpayment

In the event any audit or inspection conducted after final payment, but within the period provided in Section 15 above, reveals any overpayment to the CONSULTANT by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

18.6 Availability of Funds

The obligations of the COUNTY under this AGREEMENT are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Martin County.

18.7 Pledge of Credit

The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this AGREEMENT.

18.8 Public Records

18.8.1 The CONSULTANT shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

a. Keep and maintain public records required by the County to perform the Agreement.
b. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONSULTANT does not transfer the records to the County.
d. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the CONSULTANT or keep and maintain public records required by the County to perform the Agreement. If the CONSULTANT transfers all public records to the County upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

18.8.2 **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, public_records@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FL 34996.**

18.8.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

18.9 Federal and State Taxes

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONSULTANT shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY's Tax Exemption Number in securing such materials. The CONSULTANT shall be responsible for payment of all federal, state, and local taxes and fees incurred in connection with this AGREEMENT.

18.10 Governing Law; Venue

Prior to the initiation of any litigation by the parties concerning this Agreement, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation pursuant to Article 13 above.

The validity, interpretation, construction, and effect of this AGREEMENT shall be in accordance with and governed by the laws of the State of Florida, only. Venue for any lawsuit to enforce the terms and obligations of this Agreement shall lie exclusively in Martin County, Florida.

18.11 Remedies, Attorneys' Fees and Costs

All remedies provided in this AGREEMENT shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. If any legal action or other proceeding is brought for the enforcement of this AGREEMENT or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this AGREEMENT, each party shall bear its own costs and attorney's fees.

18.12 Entire Agreement

This AGREEMENT, including the Exhibits hereto and bid package, constitutes the entire AGREEMENT between the parties, and shall supersede and replace all prior or contemporaneous negotiations, correspondence, conversations, agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18.13 Amendment

This AGREEMENT may be amended or modified only by a writing of import equal to this AGREEMENT, and as duly authorized and executed by the parties.

18.14 Severability

If any term or provision of this AGREEMENT or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this AGREEMENT, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this AGREEMENT shall be deemed valid and enforceable to the extent permitted by law. In the event any provision hereof or be determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this AGREEMENT, which shall remain in full force and effect. To that extent, this AGREEMENT is deemed severable.

18.15 Headings

The headings of the Sections of this AGREEMENT are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections.

18.16 Construction

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this AGREEMENT was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsperson shall be inapplicable to this AGREEMENT.

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

ESTUARINE, COASTAL AND OCEAN SCIENCES, INC.	**BOARD OF COUNTY COMMISSIONERS MARTIN COUNTY, FLORIDA**
_____	_____
R. Grant Gilmore, Jr., Ph.D. Senior Scientist	Taryn Kryzda County Administrator

EXHBIT A
STATEMENT OF WORK

LISTING THE ENDANGERED SPECIES OF THE ST. LUCIE RIVER

R. GRANT GILMORE, JR., PH.D.
SENIOR SCIENTIST, ECOS

The following work items are listed for the purpose of gathering and presenting sufficient information to warrant listing fish and crustacean species that are indigenous to the freshwaters of the St. Lucie, Loxahatchee and St. Sebastian Rivers whose predictable reproducing populations are only found in these waters of the United States.

PHASE I. LISTING PROCEEDURES

A. Travel/Meetings/Correspondence with appropriate authorities/agencies with legal jurisdiction and professional interest in protecting endangered and threatened species.

1. US. Fish and Wildlife Service (USFWS), Federal Agency
2. Florida Fish and Wildlife Conservation Commission (FWC), Florida Institute of Marine Research (FMRI), State Agency
3. Center for Biological Diversity, Non-Profit Org. to Save ET species.
4. United Nations Red List committee on ET Species.

PURPOSE: (a) to obtain information on best procedures for successful listing; (b) to obtain sources of best data and information on targeted species for listing.

PHASE II. DATA COLLECTION

A. Travel/Correspondence with national and international museum collections: (a) Harbor Branch Oceanographic Museum (HBOM); (b) Florida State Museum (FSM); (c) U.S. National Museum (USNM); (d) American Museum of Natural History (AMNH); (e) Academy of Natural Sciences of Philadelphia (ANSP); (f) Chicago Museum of Natural History (CMNH).

B. Conduct detailed international literature search on: (a) targeted species biogeography, life history, evolution, eco-physiology, reproductive biology, endangerment, other efforts to protect these species.

C. Determine factors causing endangerment within local streams: (a) water contamination with toxic chemicals (pesticides, herbicides, PCBs, heavy metals), bacterial pathogens, fungal pathogens, radioactive compounds, other vectors; (b) critical habitat loss due to direct removal and chemical treatment; (c) introduction of predatory or competitive exotic species that directly or indirectly impact the survival of targeted species.

PHASE III. DATA ANALYSES

A. Analyze all data obtained above for thorough and successful argument to listing the species.

PHASE IV. PRODUCE DETAILED SPECIES ACCOUNTS

A. Include all items listed in PHASE II, Part B. and C. in a species by species account that allows understanding and reason for protection of the species targeted for protection.

PHASE V. PRESENTATION OF ACCOUNTS and ARGUMENTS FOR LISTING

A. Distribute final reports, documents and analyses to Martin County, USFWS and FWC and other parties with direct interest in listing the targeted species for conservation purposes.

B. Conduct presentation of findings to interested parties.

PHASE VI. TRAVEL & PRESENT DATA TO FEDERAL AND STATE REVIEW PANELS.

This activity was required during the last effort to list these species with travel to Washington, D.C., possibly Tallahassee.

BUDGET FOR LISTING ST. LUCIE RIVER ENDANGERED AND THREATENED SPECIES

It is anticipated that one person will be hired part time to aid the principal (R.G. Gilmore/ECOS) in obtaining data and networking with the appropriate authorities and data sources as well as in data analyses. R.G. Gilmore/ECOS will develop intial networks of information and correspondence, produce the final species accounts and endangerment discussion, document preparation and presentations. Attorneys have volunteered with the Center for Biodiversity and locally to aid in legal activities associated with this effort.

	PI hrs	RATE	SubTOTAL	ASSIST. Hrs	RATE	SubTOTAL	TOTAL AMT.
PHASE I. LISTING PROCEEDURES	120	$150.00	$18,000.00	0	$20.00	$0.00	$18,000.00
PHASE II. DATA COLLECTION							
MUSEUM COLLECTIONS	80	$150.00	$12,000.00	40	$20.00	$800.00	$12,800.00
LITERATURE SEARCH	40	$150.00	$6,000.00	80	$20.00	$1,600.00	$7,600.00
ENDANGERMENT FACTORS	20	$150.00	$3,000.00	120	$20.00	$2,400.00	$5,400.00
						Sub-Total Phase I & II	**$43,800.00**
PHASE III. DATA ANALYSES							
MUSEUM COLLECTIONS	20	$150.00	$3,000.00	20	$20.00	$400.00	$3,400.00
LITERATURE SEARCH	80	$150.00	$12,000.00	20	$20.00	$400.00	$12,400.00
ENDANGERMENT FACTORS	40	$150.00	$6,000.00	40	$20.00	$800.00	$6,800.00
PHASE IV. PRODUCE DETAILED SPECIES ACCOUNTS							
B. Include detailed international literature search on: (a) targeted species biogeography, etc., etc…….	120	$150.00	$18,000.00	16	$20.00	$320.00	$18,320.00
C. Discuss & argue for factors causing endangerment within local streams: (a) water contamination , etc. etc….	80	$150.00	$12,000.00	16	$20.00	$320.00	$12,320.00
						Sub-Total Phase III & IV	**$53,240.00**
PHASE V. PRESENTATION OF ACCOUNTS and ARGUMENTS FOR LISTING							
A. Distribute final reports and documents	40	$150.00	$6,000.00	24	$20.00	$480.00	$6,480.00
B. Conduct presentation of findings to interested local parties	80	$150.00	$12,000.00	0	$20.00	$0.00	$12,000.00
PHASE VI. TRAVEL/PRESENT DATA TO FEDERAL & STATE AGENCIES							
	40	$150.00	$6,000.00	0	$20.00	$0.00	$6,000.00
	760			376			
						Sub-Total Phase V & VI	**$24,480.00**
						TOTAL COST	**$121,520.00**