RESOLUTION NO. 2020- 47 8

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF A MATERIAL REMOVAL AGREEMENT BETWEEN ST. JOHNS COUNTY AND THE FLORIDA INLAND NAVIGATION DISTRICT, FOR THE PROVISION OF OBTAINING BEACH QUALITY SAND; AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

RECITALS

WHEREAS, St. Johns County, Florida (County) desires to enter into a Material Removal Agreement with the Florida Inland Navigation District (FIND), in order for FIND to make available to the County beach quality sand from FIND's Site FL-3 for a berm restoration project along Summer Haven beach (hereinafter the "Project"); and

WHEREAS, FIND is willing to participate in the Project because of the benefit to FIND and the Atlantic Intracoastal Waterway, subject to terms and provisions in the Material Removal Agreement; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Material Removal Agreement, attached hereto and incorporated herein; and

WHEREAS, the County has determined that accepting the terms of the Material Removal Agreement and entering into said agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

- Section 1. The above Recitals are hereby incorporated into the body of this Resolution and adopted as Findings of Fact.
- Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Material Removal Agreement between St. Johns County and the Florida Inland Navigation District, and authorizes the County Administrator, or designee, to execute the agreement on behalf of St. Johns County in substantially the same form and format as attached.
- Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of this day of, December 2020.	County Commissioners of St. Johns County, Florida, BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA
	By: Me Oleman Henry Dean, Vice Chairman
ATTEST: Brandon J. Patty, Clerk of the Cirand Comptroller By: Yau Halterna Deputy Clerk	RENDITION DATE 12/3/20

THIS MATERIAL REMOVAL AGREEMENT ("Agreement") dated as of this 19th day of October, 2020 by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as "DISTRICT," and ST. JOHNS COUNTY, FLORIDA a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

RECITALS

- A. DISTRICT is the owner of a parcel of land located in Flagler County, Florida and known as "Dredge Material Management Area DMMA FL-3," as more particularly described in Exhibit "A" attached hereto and made a part hereof by reference ("DMMA FL-3").
- B. COUNTY is a political subdivision of the State of Florida.
- C. COUNTY desires to obtain fill material from DMMA FL-3 for beach renourishment purposes (the "Project"), more particularly described in Exhibit "B".
- D. COUNTY has requested the DISTRICT to allow the COUNTY to remove spoil material from DMMA FL-3 for use in the Project.
- E. DISTRICT has determined that it will benefit the DISTRICT to allow the COUNTY to remove spoil material from DMMA FL-3, as this will help create additional capacity for future dredging events in connection with the maintenance and improvement of the Intracoastal Waterway.
- F. DISTRICT is willing to allow COUNTY to remove suitable spoil material for use in the Project, upon the terms and conditions of this Agreement.

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Therefore, in consideration of the terms below, the sufficiency of which is mutually acknowledged, DISTRICT and COUNTY agree that:

1. INCORPORATION OF RECITALS

The foregoing recitals are true, correct and incorporated herein by reference.

2. CONSENT TO REMOVAL OF SPOIL MATERIAL

DISTRICT hereby consents to the removal of up to 49,000 cubic yards of spoil material from DMMA FL-3 exclusively for use in the Project. The DISTRICT's consent will expire on the 30th day of June, 2021 unless a further extension is approved by the DISTRICT. Prior to the removal of any spoil material from DMMA FL-3, the COUNTY shall submit a detailed spoil material removal plan ("Plan") to the DISTRICT for approval by the DISTRICT's Engineer. The Plan shall insure, among other things, that the integrity of the dikes, weirs, storm water management system, monitoring wells, fences, gates, roadways and other facilities are not compromised. The COUNTY and its contractors shall comply with the Plan at all times.

3. PAYMENT

- a) COUNTY shall pay DISTRICT a removal fee in the amount of \$0.20 per cubic yard of material removed. The COUNTY acknowledges that any removed material shall only by utilized for beach renourishment. Not later than five (5) working days after the end of each calendar month, the COUNTY shall deliver to the DISTRICT a certified tally sheet of the volume of spoil material removed from DMMA FL-3 for the preceding month, in order to calculate the applicable fee.
- b) COUNTY shall make any and all payments due hereunder to DISTRICT at that address set forth as follows unless otherwise notified by DISTRICT in writing:

FLORIDA INLAND NAVIGATION DISTRICT ATTN: EXECUTIVE DIRECTOR 1314 MARCINSKI ROAD JUPITER, FL 33477-9427

c) COUNTY shall pay such fees and other charges without demand and without setoff as required to be paid by COUNTY under this Agreement. If such fees or charges are not paid at the time provided in this Agreement, they shall bear interest from the due date thereof to the date of payment at the rate of eighteen percent (18%) per annum or such lesser rate as shall be the maximum permitted by law.

4. USE OF PREMISES/CONDUCT OF BUSINESS

- a) COUNTY and its authorized contractor shall occupy and use DMMA FL-3 solely for the removal of suitable spoil material for use in the Project (hereinafter the "Permitted Use"). COUNTY shall not use DMMA FL-3 or construct other improvements thereupon except as specifically provided above without DISTRICT's prior written consent.
- b) COUNTY and its authorized contractor shall, at COUNTY's expense, comply with all laws, ordinances and regulations of the United States, State of Florida and the County of Flagler, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of DMMA FL-3, and shall not make any use of DMMA FL-3 which shall unreasonably disturb DISTRICT's neighbors or otherwise become a nuisance.

5. COUNTY'S FIXTURES AND ALTERATIONS

a) COUNTY agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to DMMA FL-3, without first obtaining the written consent

of DISTRICT. At the DISTRICT's option, all alterations, improvements and additions made by COUNTY and all chattels affixed by COUNTY to DMMA FL-3 shall remain upon the premises at the expiration or earlier termination of this Agreement, and shall become the property of DISTRICT, except as otherwise provided herein.

b) In addition to the above, COUNTY shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at COUNTY's expense.

6. 'ASSIGNMENT

- a) COUNTY shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Agreement or any interest of COUNTY herein, in whole or in part, nor permit DMMA FL-3 or any part thereof to be used or occupied by others, without the prior written consent of DISTRICT in each and every instance, which may be unreasonably and arbitrarily withheld. The consent of DISTRICT to any assignment shall not constitute a waiver of the necessity for such consent to any subsequent assignment. If this Agreement or any interest of COUNTY herein be assigned or if the whole or any part of DMMA FL-3 be used or occupied by others after having obtained DISTRICT's prior written consent thereto, COUNTY shall nevertheless remain fully liable for the full performance of all obligations under this Agreement to be performed by COUNTY and COUNTY shall not be released therefrom in any manner.
- b) Should COUNTY, in violation of the provisions of this Paragraph, assign this Agreement, or allow DMMA FL-3 to be used or occupied by others without obtaining DISTRICT's prior written consent, then such assignment or occupancy shall be null and void and of no force and effect. Such act on the part of COUNTY shall be deemed a default of COUNTY entitling DISTRICT to exercise any of the rights and remedies therefor as set forth in Paragraph 13 hereof.

7. LIENS

- a) Mechanics' or Materialmen's Liens: COUNTY shall not cause any liens of mechanics, laborers or materialmen to stand against DMMA FL-3 for any labor or material furnished or claimed to have been furnished to COUNTY in connection with any work of any character performed or claimed to have been performed on or in connection with DMMA FL-3, by or at the direction of COUNTY.
- b) If DMMA FL-3 or any part thereof becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter

called a "lien"), other than a lien caused by the actions of the DISTRICT, COUNTY shall immediately notify DISTRICT of the filing or the threatened filing of any such lien, shall immediately cause the lien to be transferred to other security, and shall from time to time notify DISTRICT of the status of such contest.

c) DISTRICT's Liability for COUNTY's Liens: It is hereby agreed by the parties hereto that DISTRICT will not be liable for any labor, services or materials furnished or to be furnished COUNTY or to anyone occupying DMMA FL-3, or any part thereof, through or under COUNTY, and that no liens for any labor or material shall attach to or affect the interest of DISTRICT in and to DMMA FL-3. All contracts for construction or repair shall contain the above cautionary language and shall require all subcontractors, materialmen and laborers to be so advised. Failure of COUNTY to so notify and advise such potential lienors in writing prior to the commencement of any work to be performed shall constitute a default hereunder and entitle DISTRICT to those rights and remedies set forth in Paragraph 13 hereof.

8. LIABILITY OF DISTRICT/WAIVER/INDEMNIFICATION

- a. As a consideration for the making of this Agreement and in light of the fact that COUNTY has had the opportunity to make such inspections and tests as COUNTY, in COUNTYs' judgment, has deemed necessary, COUNTY accepts DMMA FL-3 in its "As-Is Condition" and DISTRICT shall not be liable for any condition, latent or patent, existing in, on or under DMMA FL-3, nor for injury or damage which may be sustained to person or property of COUNTY or any other person caused by or resulting from water, rain, groundwater, soil, sand, silt or any other material which may leak or flow from or into any part of DMMA FL-3, from noise, vibration, smoke or odors emanating from DMMA FL- 3, or from any other source or cause whatsoever, nor the interference with light or incorporeal hereditaments, specifically excluding from such waiver such damage or injury which results from the negligence of DISTRICT, nor shall DISTRICT be liable for any defect in DMMA FL-3, latent or otherwise, except as provided by law. Without limiting the generality of the foregoing, COUNTY acknowledges and agrees that COUNTY has conducted its own samples and tests of the spoil material within DMMA FL-3 and has satisfied itself as to the composition, quality, suitability for COUNTY's purposes, and freedom from contaminants, and further, that DISTRICT has not made, nor has COUNTY relied upon, any representations made by DISTRICT or on DISTRICT's behalf.
- b. COUNTY, subject to and within the limitations set forth in Section 768.28, F.S., will indemnify DISTRICT and save DISTRICT harmless from and against any and all claims, actions, damages, liability and expense (including disbursements) in connection with the loss of life, personal injury or damage to property or business arising from, related to, or in connection with the occupancy or use by COUNTY of DMMA FL-3 or occasioned wholly or in part by act or omission of COUNTY, its contractors, subcontractors, licensees, or concessionaires, or its or their respective agents, servants or employees, except to the extent such loss of life, personal injury or damage to property or business is due to or arises out of the negligent or intentional act or omission of the DISTRICT.

- c. COUNTY shall include in any construction contract for work upon or involving DMMA FL-3 that the contractor shall indemnify and hold harmless the COUNTY and DISTRICT, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.
- d. The provisions of this Paragraph 8 shall survive the termination of this Agreement.

9. INSURANCE:

- a) COUNTY will keep in force, with companies and in a form acceptable to DISTRICT, at COUNTY's expense, during the term of this Agreement and any extension or renewal thereof and during such other time as COUNTY occupies DMMA FL-3 or any part thereof general liability insurance with respect to DMMA FL-3 with a minimum One Million Dollars (\$1,000,000.00) combined single limit coverage of bodily injury, property damage or combination thereof.
- b) COUNTY will further deposit policies of insurance required by the provisions of this Paragraph 9 together with satisfactory evidence of the payment of the required premium or premiums therefor with DISTRICT at or prior to the commencement date, and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage.
- c) All policies of insurance required to be carried by COUNTY by Paragraph 9 (a) hereof shall provide that the policy shall not be subject to cancellation, termination or change except after thirty (30) days prior written notice to DISTRICT and shall name DISTRICT as an additional insured.
- d) All such policies required hereunder shall be obtained from companies licensed, organized and authorized to do business in the State of Florida
- e) The COUNTY's insurance shall be primary insurance as respects the DISTRICT, its Commissioners, officers, employees and agents, and any insurance or self-insurance maintained by the DISTRICT, its Commissioners, officers, employees and agents shall be excess of the COUNTY's insurance and shall not contribute to it.
- f) The policies shall contain a waiver of subrogation against the DISTRICT, its Commissioners, officers, employees and agents for any claims arising out of the work of the COUNTY.
- g) The policy may provide coverage which contains deductible or self-insured retentions of not more than \$50,000 as to COUNTY and no deductible or self-insured retention as to any additional insured without prior approval of the DISTRICT. The COUNTY shall be solely responsible for deductible and/or self-insured retention.

10. REPAIRS AND MAINTENANCE OF DMMA FL-3:

a) COUNTY shall at all times at its sole cost and expense keep and maintain those portions of DMMA FL-3 used in connection with or affected by the Project, in good order, condition and repair and shall not commit or suffer any waste on DMMA FL-3.

11. HAZARDOUS MATERIALS:

COUNTY agrees that, during the term of this Agreement, it:

- a) Shall keep or cause DMMA FL-3 to be kept free of hazardous wastes or substances.
- b) Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of COUNTY, or COUNTY's assignees, employees, agents or contractors, a release of hazardous wastes or substances onto DMMA FL-3.
- c) Shall comply with and ensure compliance by its assignees, employees, agents or contractors and all others under its direction with all applicable federal, state, and local laws, ordinances, rules, and regulations
- d) The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", if used in this Agreement, shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and recovery Act, 49 U.S.C. Section 6901 et seq., the Florida Resource and Management Act, Chapter 403, Florida Statutes, the Pollution, Spill, Prevention, and Control Act, Chapter 376, Florida Statutes, or any other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.
- e) Shall immediately provide DISTRICT with notice of any release or threatened release of hazardous waste on or about DMMA FL-3, and shall immediately provide DISTRICT with notice of any injury or action taken by any local, state, or federal governmental body with respect to hazardous waste on or about DMMA FL-3.
- f) Shall remove any hazardous waste or hazardous substances which exceed allowable levels in the ground or the groundwater within DMMA FL-3, arising from COUNTY's use of DMMA FL-3.

12. EVENTS OF DEFAULT

The following shall constitute Events of Default:

a) If COUNTY defaults in the payment of any sum of money due hereunder and such default shall continue for three (3) days after the date of notice from DISTRICT to COUNTY

b) If COUNTY defaults in fulfilling any of the other covenants of this Agreement on COUNTY's part to be performed hereunder and such default shall continue for the period of seven (7) days after notice from DISTRICT to COUNTY specifying the nature of said default, or, if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said seven (7) day period, if COUNTY shall not in good faith have commenced the curing or remedying of such default within such seven (7) day period and shall not thereafter diligently proceed therewith to completion.

In the Event of Default, DISTRICT shall provide COUNTY with such written notice thereof as shall be required under Florida law.

13. REMEDIES IN EVENT OF DEFAULT

- a) In the event of a default hereunder and such default shall continue after the giving of written notice thereof to COUNTY, DISTRICT may at DISTRICT's option, immediately terminate the Agreement and avail itself of any other option or remedy available under Florida law.
- b) If COUNTY defaults in the performance of any of the terms and conditions of this Agreement and DISTRICT employs the services of an attorney to enforce performance of COUNTY hereunder, COUNTY shall pay a reasonable attorney's fee as well as all expenses and costs incurred by the DISTRICT pertaining thereto and in enforcement of any remedy available to the DISTRICT.

14. MISCELLANEOUS

- a) COUNTY has inspected DMMA FL-3 and is familiar with its present condition and takes DMMA FL-3 in "As-Is" condition
- b) The failure of DISTRICT or COUNTY to take any action against the other for violation of any of the terms of the Agreement shall not prevent a subsequent act of a similar nature from being a violation of the Agreement
- c) This Agreement fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed or terminated unless in writing and signed by the parties hereto.
- d) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR COUNTY'S USE OF DMMA FL-3.

- e) COUNTY hereby acknowledges COUNTY's responsibility to insure COUNTY's property maintained within or upon DMMA FL-3 at COUNTY's expense.
- f) If any term or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall not be affected thereby, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- g) This Agreement shall not be recorded in the Office of the Clerk of any Circuit Court in the State of Florida, except that DISTRICT may file a memorandum of this Agreement.
- h) This Agreement shall be construed under the laws of the State of Florida.
- i) The Section headings of this Agreement are for convenience only and are not to be considered in construing the same.
- j) This Agreement may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- k) Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Agreement (b) it has all necessary power and authority to enter into this Agreement and to perform the agreements contained in this Agreement, and (c) the person signing this Agreement on behalf of such party is authorized to execute and deliver this Agreement on behalf of such party.
- I) The parties participated in the drafting of this Agreement and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of: or against, any party in interpreting this Agreement and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- m) RADON GAS. RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

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IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

Signed, sealed and delivered in the presence of:		
AS TO DISTRICT:		
FLORIDA INLAND NAVIGATIONS DISTRICE WITNESS: PRINT NAME: Janet Zimmerman Docusigned by: WITNESS: PRINT NAME: Glenn*Scalinolef* Approved as to formoand lagal sufficiency: Peter L. Breton, Esquire Adendal Counsel	_ P0	
AS TO COUNTY: WITNESS: PRINT NAMES: WITNESS: PRINT NAMES:	BY:	

SUMMER HAVEN DUNE NOURISHMENT

ST. JOHNS COUNTY, FLORIDA JANUARY 2020



COUNTY COMMISSIONERS:

JAMES K. JOHNS
JEB SMITH
PAUL M. WALDRON
JEREMIAH RAY BLOCKER
HENRY DEAN

DISTRICT 1 DISTRICT 2 DISTRICT 3 DISTRICT 4 DISTRICT 5

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NOTE:

1. THE CONTRACTOR SHALL ADHERE TO AND ABIDE BY THESE CONSTRUCTION PLANS AND ALL CONTRACT DOCUMENTS INCLUDING THE SPECIFICATIONS AND REGULATORY AUTHORIZATIONS, INCLUDING THE JULY 2019 FEMA ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT (FONSI), SUMMER HAVEN NORTH AND SUMMER HAVEN SOUTH (SECTIONS OF OLD A1A), ST. JOHNS COUNTY, FLORIDA, PUBLIC ASSISTANCE PROGRAM (PA-04-FL-4243-PW-00652 AND PW-00653).

2. SCALES AS INDICATED REFER TO 22X34 SIZED DRAWING SHEETS.

DUVAL ST.JOHNS SHRBORROW AREA

FLAGLER

VICINITY MAP

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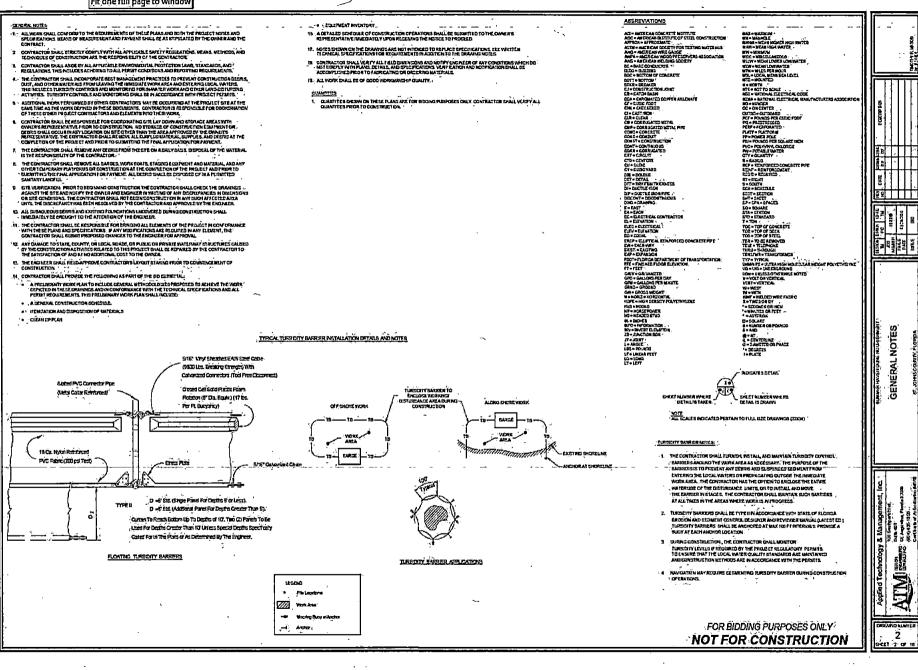
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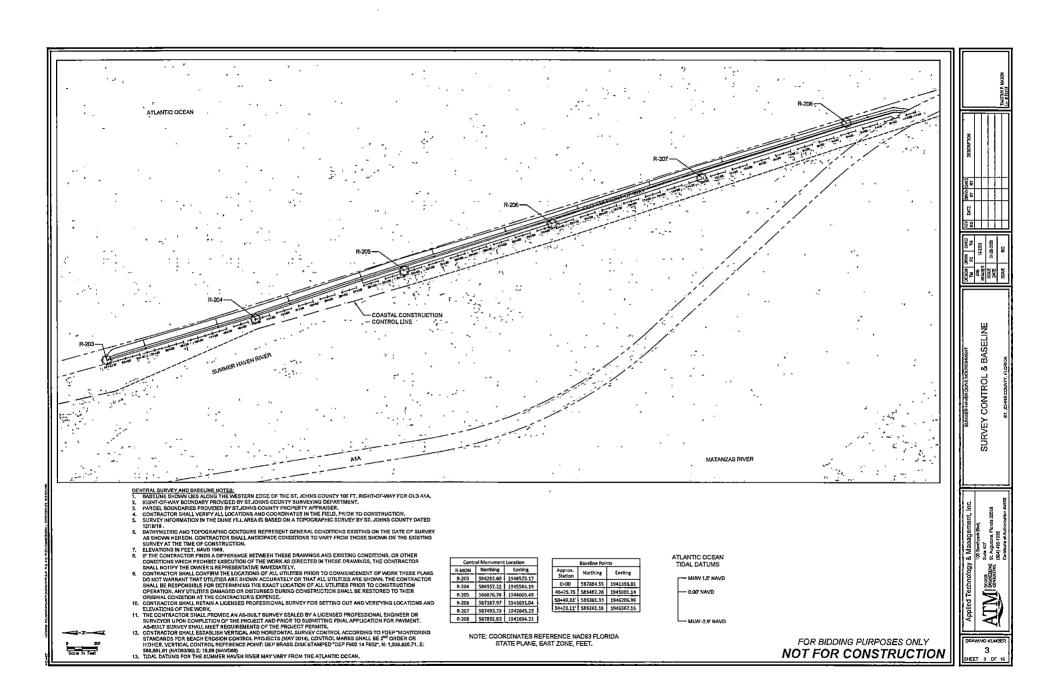
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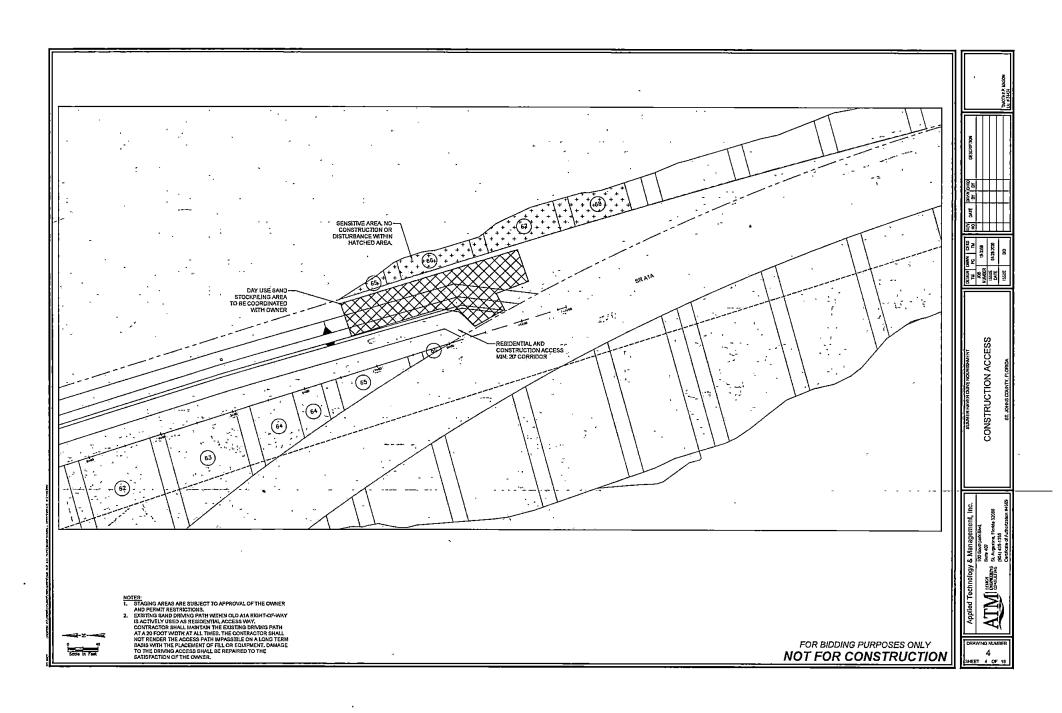
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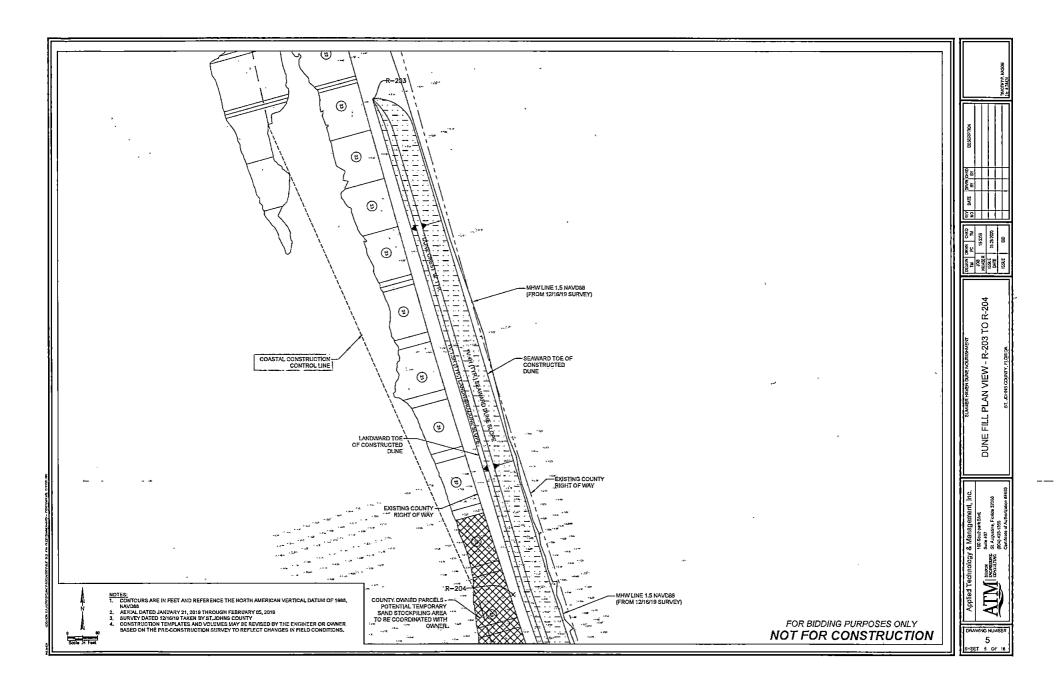
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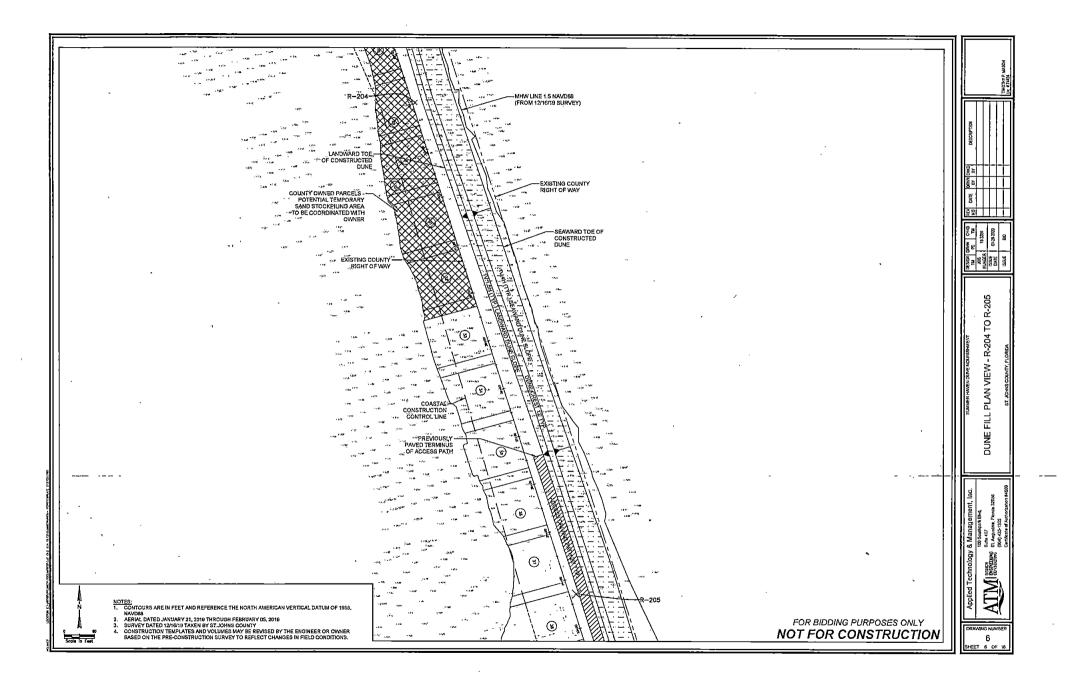
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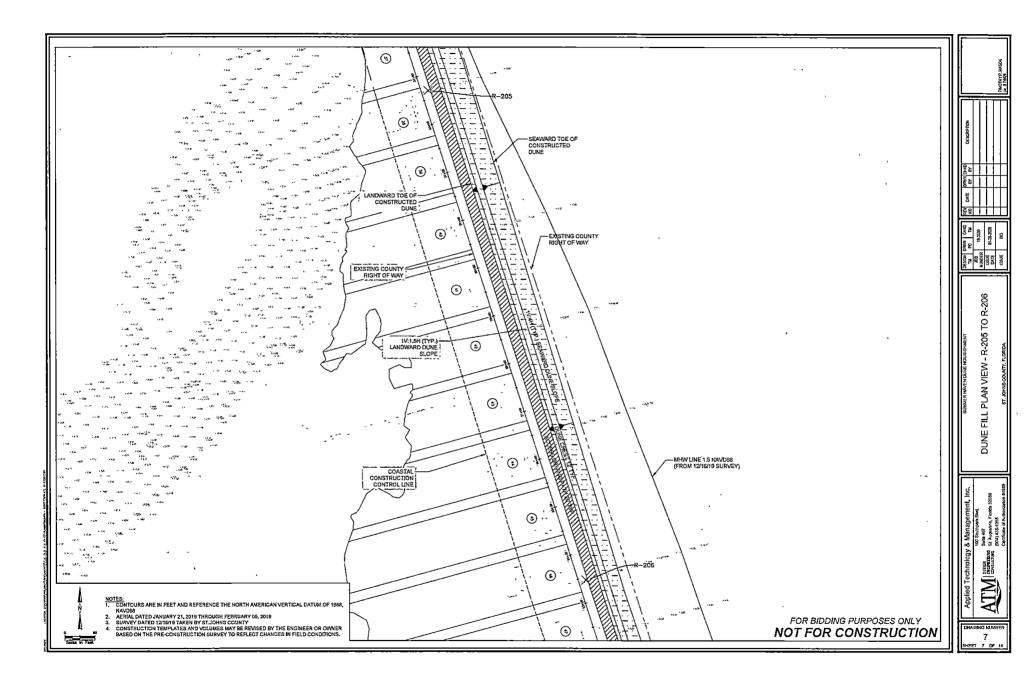


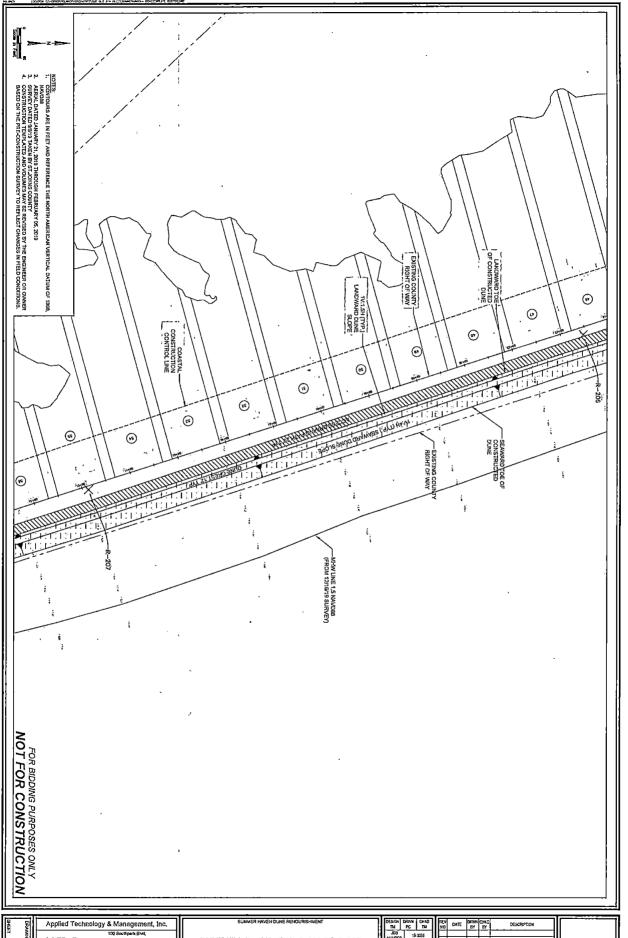


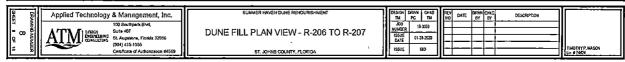


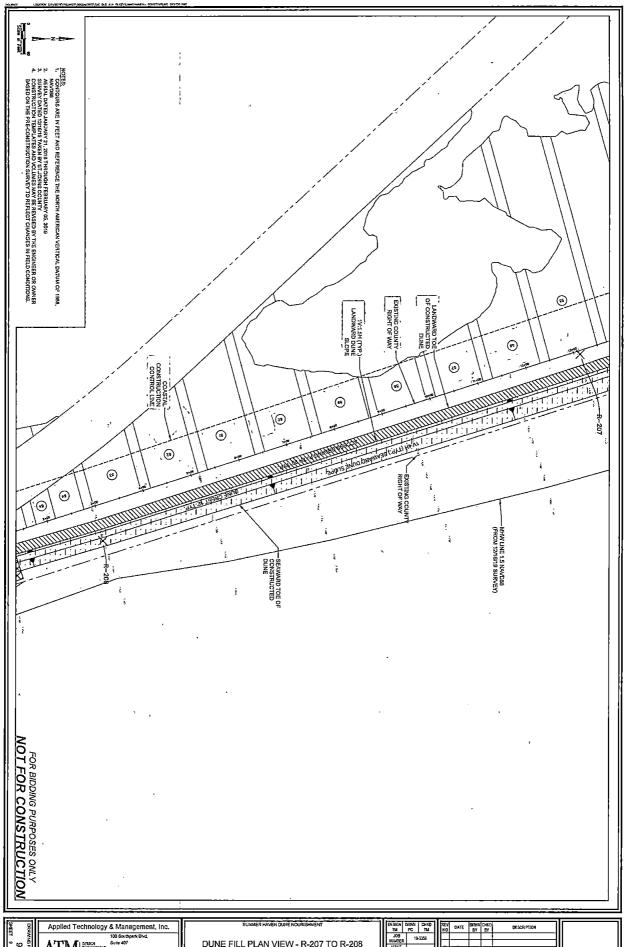




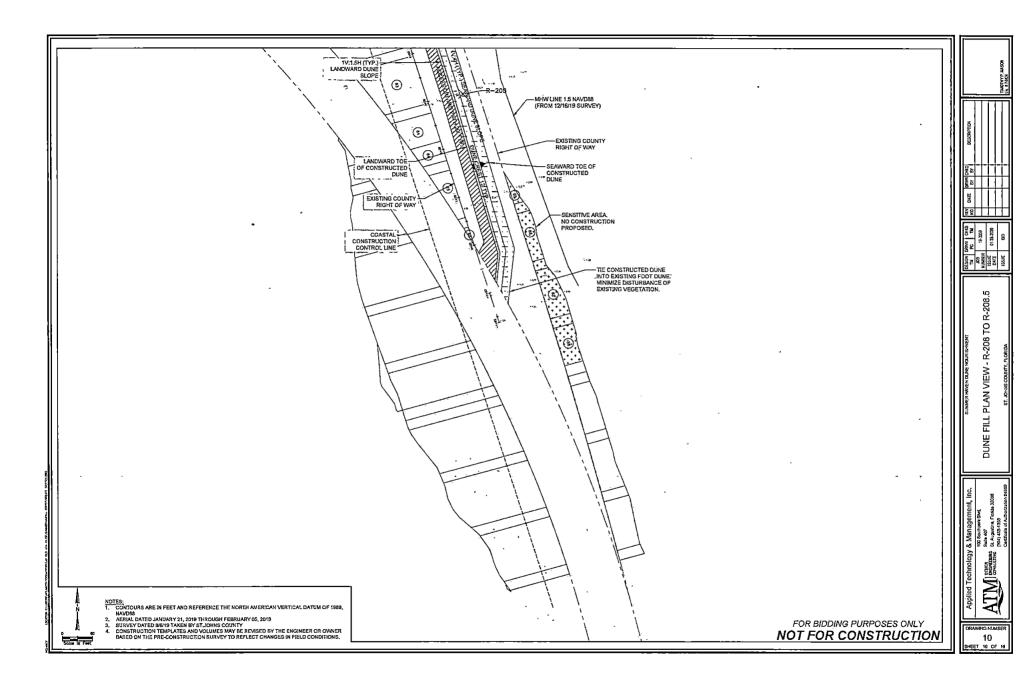


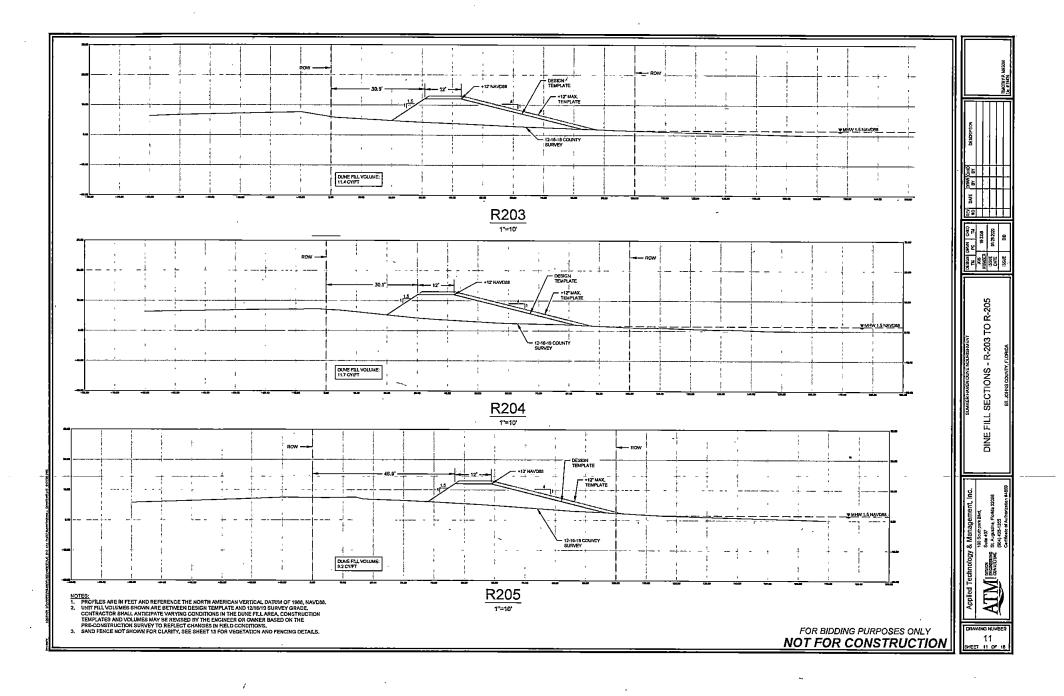


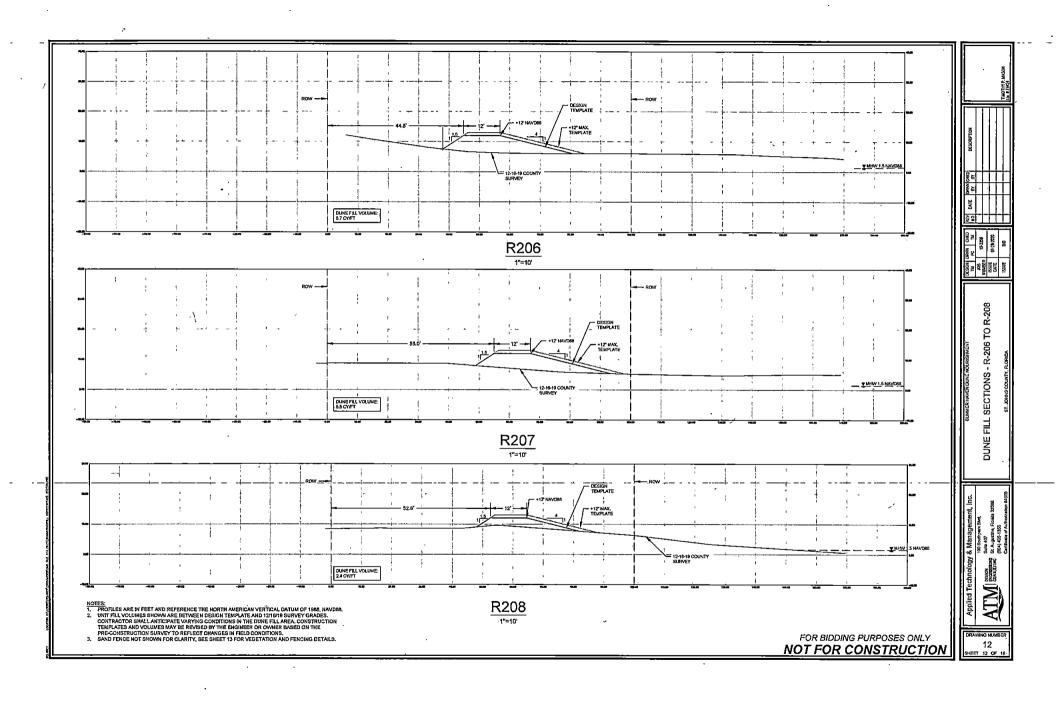


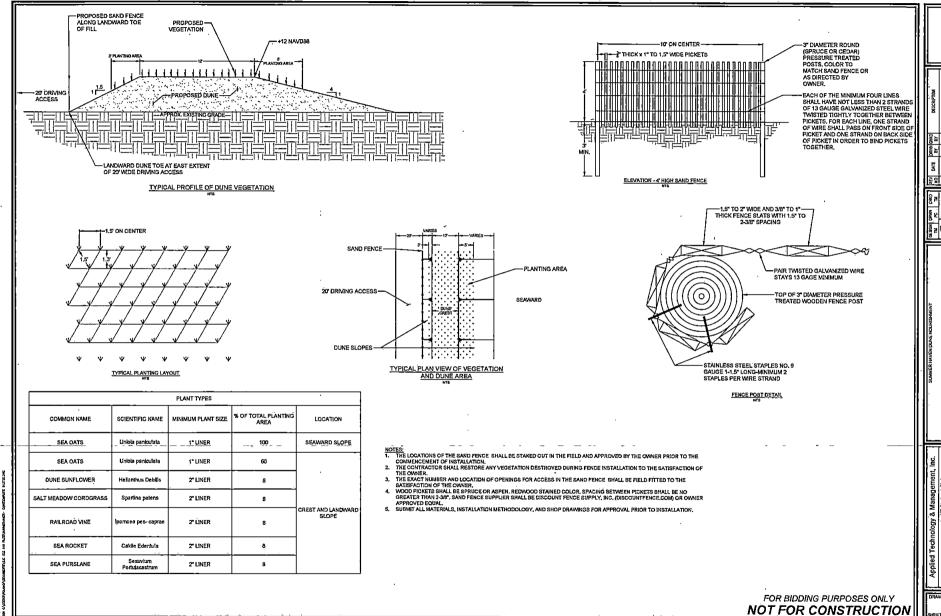












PLANTING DETAILS AND NOTES

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