Agenda Item: 3L-6

# PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

#### **AGENDA ITEM SUMMARY**

Meeting Date:	August 22, 2023	(X) Consent ( ) Workshop	()Regular ()Public Hearing
Department:	Environmental Resou	rces Management	

#### I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** Change Order No. 3 for Palm Beach County Sawfish Island Restoration Contract No. 2021ERM03 (Contract) with Arbor Tree & Land Inc. (ATL) to extend the Contract by 179 days from March 23, 2023 to September 18, 2023.

Summary: On December 7, 2021, the Board of County Commissioners (BCC) approved the Contract (R2021-1825) with ATL for a term expiring 210 days from the Notice to Proceed, which was subsequently issued on June 1, 2022. Change Order No. 1 for a time extension of 85 days was authorized on December 21, 2022 through the Contract Review Committee. Change Order No. 2 for a time extension of 30 days was authorized on February 24, 2023, under the authority of the Environmental Resources Management Department Director. Change Order No. 3 for a time extension increases the existing Contract time modifying the current Substantial Completion deadline from March 23, 2023 to September 18, 2023. Change Order No. 3 puts the cumulative time extensions over the 120-day threshold. The time extension allows for sufficient time to address owner-directed changes and minimizes impacts to State-designated Threatened bird species that nested at the project's disposal location. There is no cost to the County. District 1 (YBH)

Background and Justification: The Contract provides for the removal of 2.4 acres of exotic vegetation and the excavation of 18,000 cubic yards of suitable sand material to create wetland habitat for fish and wildlife. The work also entails stabilizing two inlets to the wetland basins with 1,500 tons of rip-rap and excavating a channel connection between basins for tidal flushing to the mangroves. Excavated suitable sand material will be barged to the Tarpon Cove restoration project for beneficial re-use. The project will provide enhancement of both water quality and wetland habitat function within the Loxahatchee River- Lake Worth Creek Aquatic Preserve. The project is funded by the combination of Florida Inland Navigation District Agreement No. PB-20-211 (R2021-0361) providing \$701,700, Florida Department of Environmental Protection Agreement No. LPA 0238 (R2021-1542) providing \$370,185.30 and Manatee Protection Funds providing \$287,134.70.

Attachment:  1. Change Order N	o. 3 for Time Extension with Attachments	1, 2, 3, and 4				
Recommended by	Recommended by: MCM Falanh Day 8-1-2023					
	Department Director	Date				
Approved by:	- Fee	8/8/23				
	<b>Assistant County Administrator</b>	Date				

# II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years		2023	2024	2025	2026	2027
Capital Expe	enditures		·····			
Operating C	osts					
External Rev	enues/				-	
Program Inc	ome (County	y)		*****		
In-Kind Mate	ch (County)		·			
NET FISCA	L IMPACT	0		and the second s		
# ADDITIONS		e)				
Is Item Inclu Does this ite	ded in Curre em include tl	ent Budget? he use of fed	Yes eral funds?	No _ Yes	No	_
Budget Acc	ount No.:					
Fund <u>1232</u>	Department <sub>.</sub>	<u>380</u> U	nit <u>3308</u> (	Object <u>3401</u>	Program_	
B.	Recommen	ded Sources	of Funds/Su	ımmary of Fi	scal Impact:	
	There is no	fiscal impact.	•			
C.	Departmen	t Fiscal Revi	ew: <u>S-Na</u>	ely		
			IEW COMME			
A.	OFMB Fisc	al and /or Co	ontract Dev. a	ınd Control C	omments:	
	Jusan OFMB	<u>at eli</u>	203   Con	tract Develor	fawbac oment and Co	8/3/23 Introl
B.	Legal Suffi Assistant (	ciency: /  County Attor	4/4/20 ney //	23		
C.	Other Depa	artment Revi	ew:			
	Departmen	nt Director	,			

Atta	chm	ent	1
4 Press.			•

	CHANGE ORDER NO.: 3	
Mark applicable category:)  X Owner Initiated Differing Site Conditions Zoning/Code/Ordinance Changes Errors/Omissions/In Design	Quantity Overruns/Underruns Request By Another Agency/Outsic A. Reimbursable B. Non-Reimbursable X Other	de Party
PROJECT: Palm Beach County Sawfish Isla PROJECT NO.: 2021ERM03	nd Restoration	
Arbor Tree & Land, Inc. (Contractor)	CONTRACT RESOL. NO. COMMISSIONER DISTRICT NO.: CONTRACT DATE: NOTICE TO PROCEED DATE: COMMENCEMENT DATE: BUDGET LINE ITEM:	R2021-1825 1 12/7/21 5/25/22 6/1/22
You are directed to make the following Co	ontract change(s):	

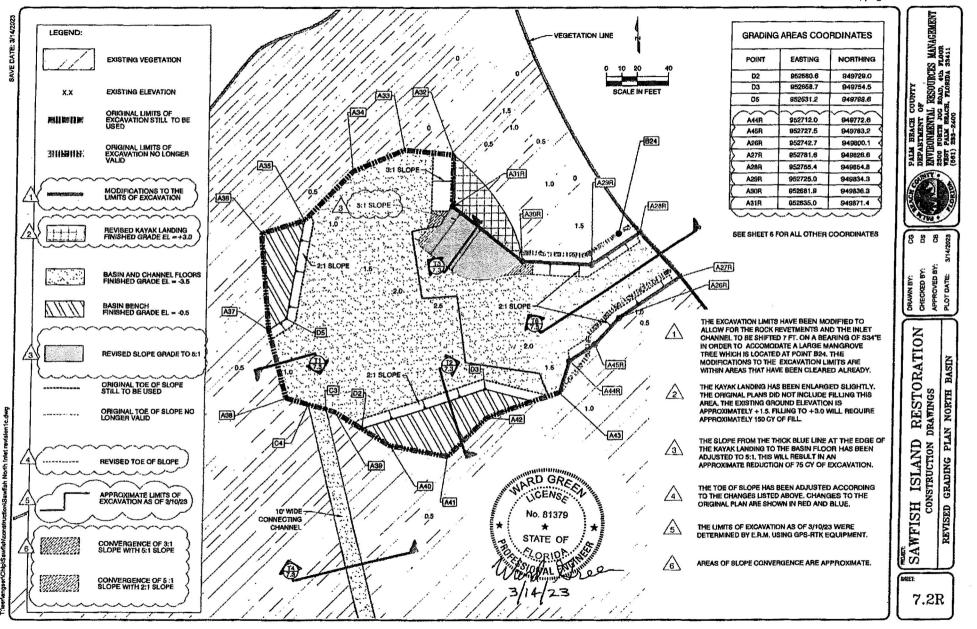
Increase existing contract time by 179 days and modify current Substantial Completion deadline from March 23, 2023 to September 18, 2023 due to: 1) revised construction plans issued by County, Attachment 1 (Revisions); 2) Contractor's request to use stockpiled excavated material from the Project at Tarpon Cove (Disposal Location), Attachment 2, and; 3) State-designated Threatened bird species nesting on the stockpile of excavated material at the Disposal Location, Attachment 3. Owner directed Revisions call for adjustments to the footprint and elevation for the picnic pads on the North and South basins and the kayak landing on the North basin. This time extension grants Contractor sufficient time to address the Revisions, provide dry and suitable workspaces and barge access at the Disposal Location, and allow for Threatened bird species to finish nesting and fledge chicks from the Disposal Location. The contributing factors behind Change Order 3 for time extension are different from those that led to previous Change Orders 1 and 2 for time extensions.

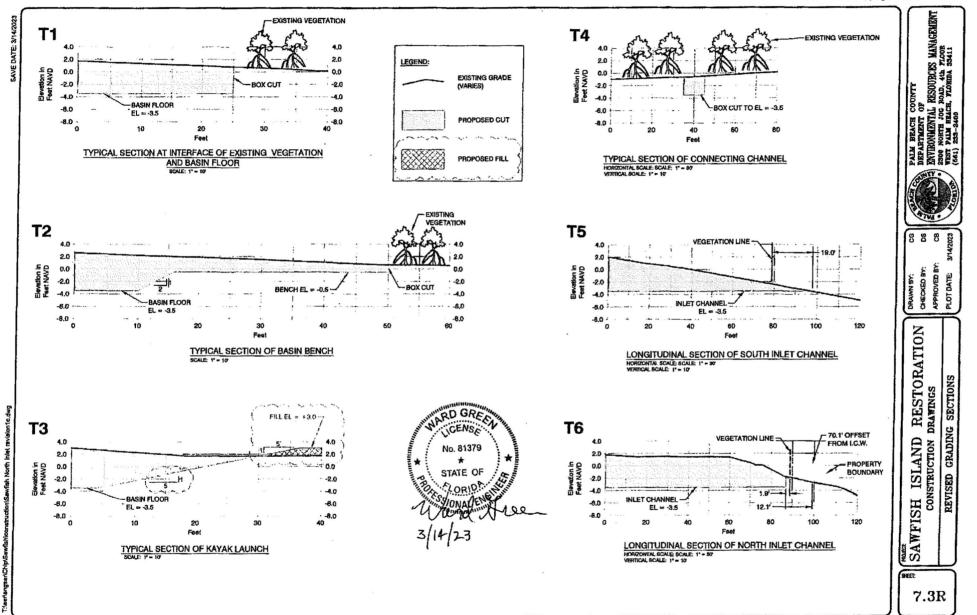
SIGNATURE OF THE CONTRACTOR INDICATES CONTRACTOR'S AGREEMENT TO THE ADJUSTMENTS HEREIN, INCLUDING AGREEMENT TO AND SETTLEMENT OF ANY ADJUSTMENT IN THE CONTRACT PRICE AND/OR CONTRACT TERM, AND CONTRACTOR SHALL NOT BE ENTITLED TO, NOR SHALL CONRACTOR MAKE ANY CLAIM FOR ADDITIONAL SUMS OR TIME RELATED TO THIS CHANGE.

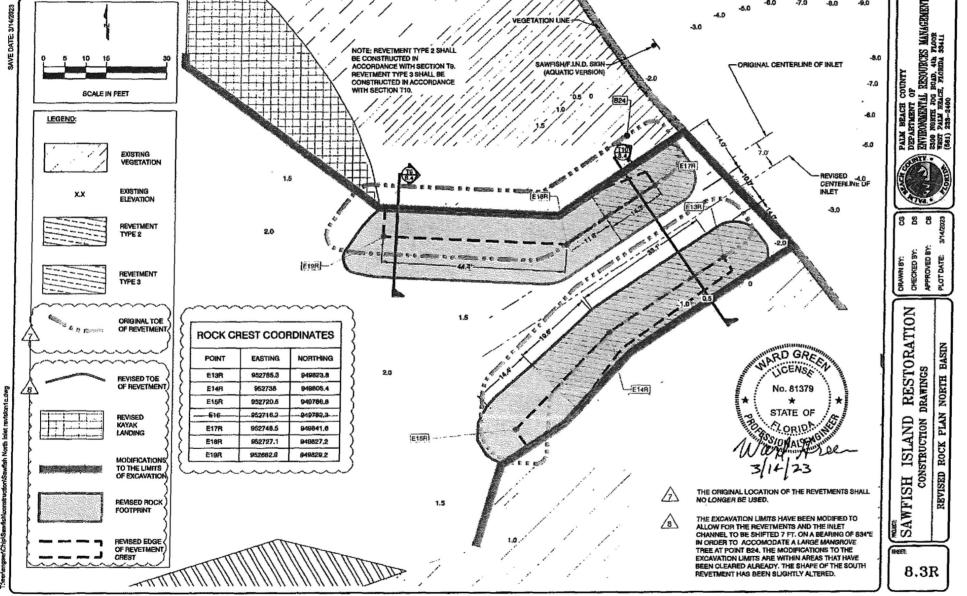
The Original Contract Sum was	\$1,359,020.00
Net Change by previous Change Orders	\$ n/a
The Contract Sum prior to this Change Order was	\$1,359,020.00
The Contract Sum will be increased/decreased by this Change Order	\$0.00
The New Contract Sum including this Change Order will be	\$ <u>1,359,020.00</u>
The Contract Time will be increased by	<u>179 days</u>
The Date of Substantial Completion including this Change Order	9/18/23
The Date of Final Completion including this Change Order	Will be specified on punchlist

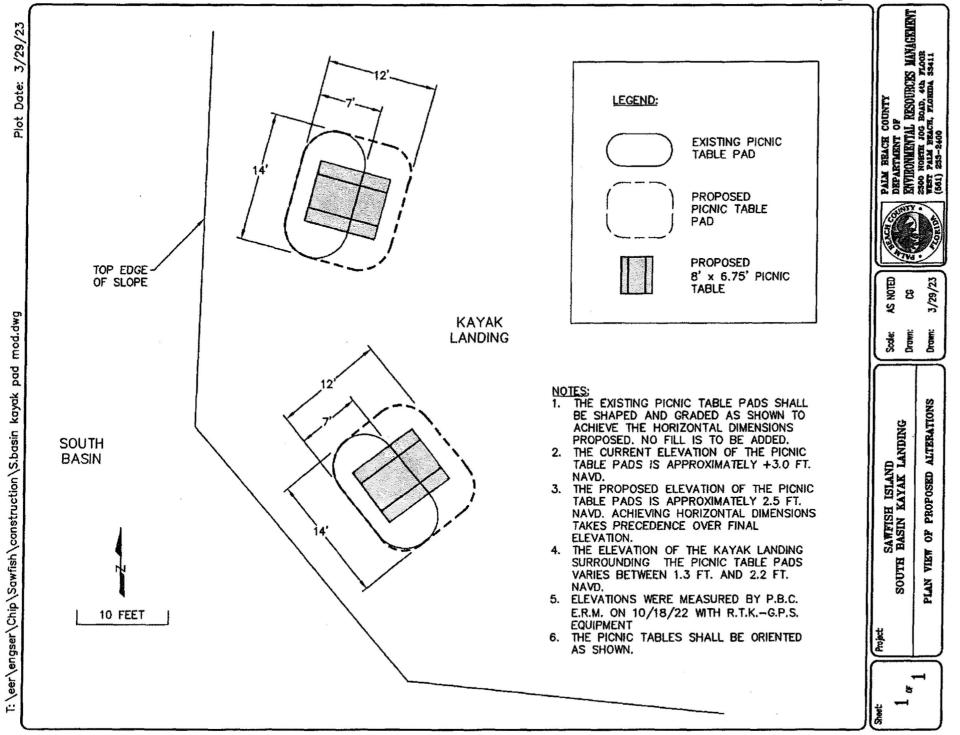
Execution of this Change Order acknowledges final settlement of, and releases, all claims for costs and time associated, directly or indirectly, with the above stated modification(s), including all claims for cumulative delays or disruptions resulting from, caused by, or incident to such modification(s), and including any claim that the above stated modification(s) constitutes, in whole or part, a cardinal change to the contract. The completion date, Contract Price, and all terms, covenants, and conditions of the above referenced Contract, except as duly modified by this and previous Change Orders, if any, shall remain in full force and effect.

CONTRACTOR	REP: Zachariah Hødges, Corporate Secretary	DATE: 8-1-23
APPROVED AS	TO TERMS AND CONDITIONS: R:	DATE: <u>8-1-33</u>
	TO FORM AND LEGAL SUFFICIENCY:	DATE:
ATTEST: JOSE	Yelizaveta B. Herman	DATE:
	Deputy Clerk	DATE:
BOARD OF CO	UNTY COMMISSIONERS:Gregg K. Weiss, Mayor	DATE.
Attachments:	Revisions to Plans (Attachment 1) Contractor's Request to Use Stockpiled Material (Attachment 2) State-designated Threatened Species (Attachment 3) Contract History (Attachment 4)	









Attachment 2, page 1 of 4

## Mayra Ashton

From:

Clinton Hodges <chodges@atldiversified.com> Friday, April 07, 2023 10:19 AM

Sent:

To:

Mayra Ashton

Cc: Subject: Eric Anderson; Zachariah Hodges

Attachments:

Material Placement Request Material Placement Letter.pdf

#### This Message Is From an External Sender

This message came from outside your organization.

#### Good morning,

Please see ATL's formal request to use the excavated material from Sawfish Island as a work pad for Tarpon Cove Phase 3 construction. It is understood at the completion of phase 3 that all material will be at final grades per the original contract.

thanks

Clinton S. Hodges Project Management and Estimating

ATL Diversified, Inc. Cell 561-722-5630 Office 561-965-2198 www.atldiversified.com [atldiversified.com]



GENERAL CONTRACTING SERVICES | CGC #1525226

Arbor Tree and Land, Inc 7089 Hemstreet Place, West Palm Beach, FL 33413

April 7, 2023

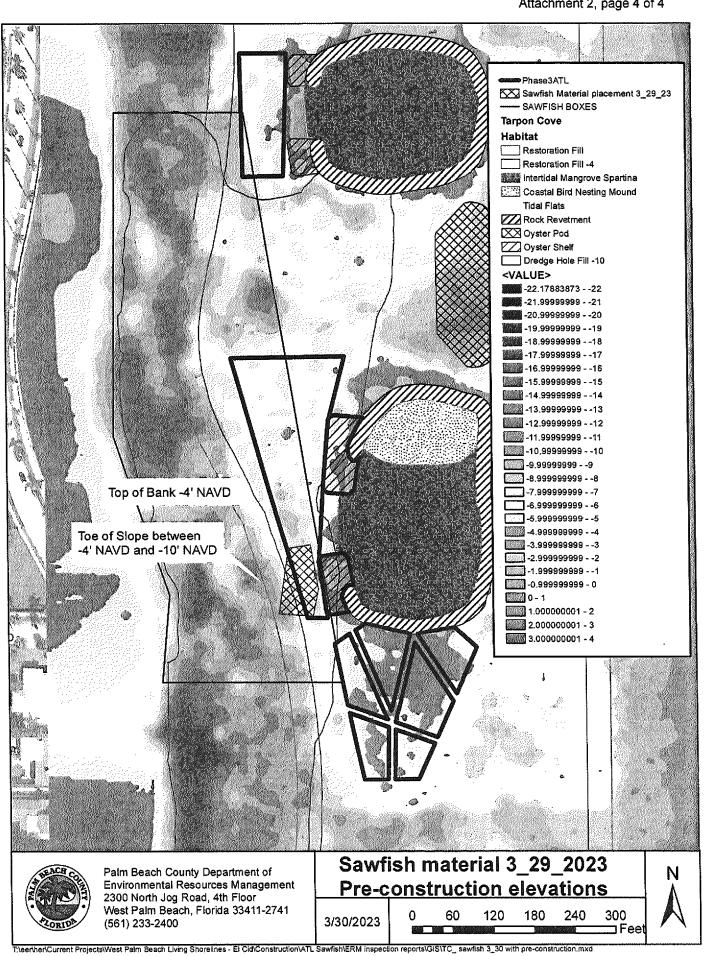
Mr. Eric Anderson Department of Environmental Resources Management 2300 North Jog Road, West Palm Beach, FL 33411

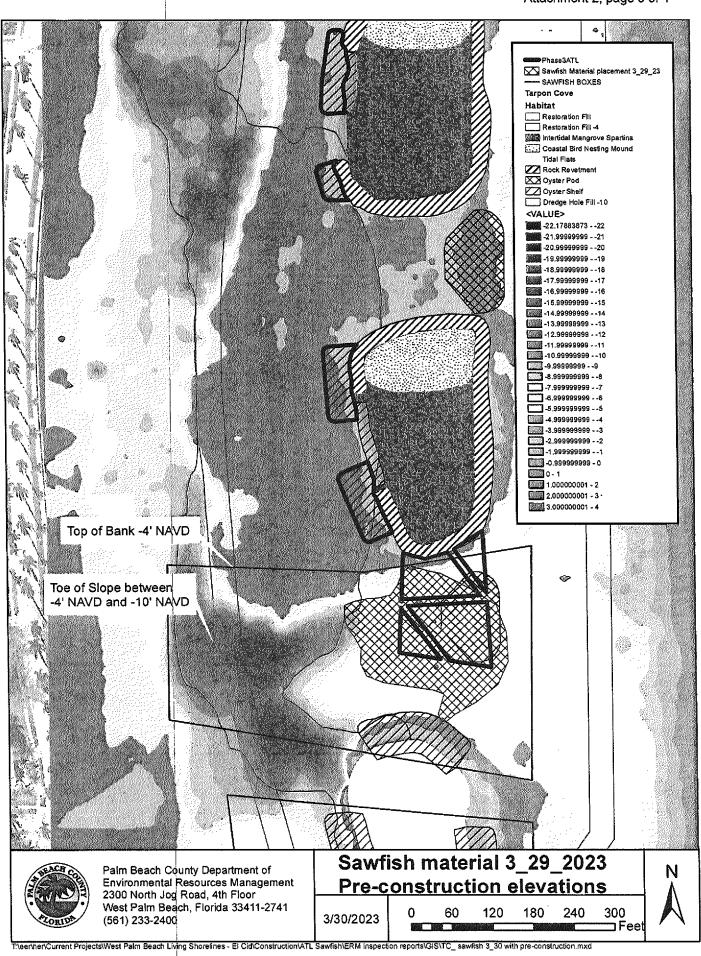
Dear Mr. Anderson,

At the time of the SAWFISH ISLAND RESTORATION PROJECT award, it was unknown that TARPON COVE RESTORATION PHASE 3 PROJECT would also be awarded to ATL. With this new scope of work, ATL would like to request that the excavated material that is being transported from Sawfish Island to Tarpon Cove be approved to stay above grade through the duration of the Tarpon Cove Restoration Project. The two areas where material will be staged above grade is in Sub Area 2 & 3. This will create a dry and suitable workspace along with keeping the entry channel deep enough for barge access to complete the material transport and placement under the Tarpon Cove Project. If this request is granted, it would be in agreement that this area of work would be transferred from the Sawfish Island contract to the Tarpon Cove contract and at the completion of the Tarpon Cove Project all material in question would be installed to final grade as per the original contract.

Sincerely,

William Hodges President





Attachment 3, page 1 of 1

## **Mayra Ashton**

From:

Zambrano, Ricardo < Ricardo. Zambrano@MyFWC.com>

Sent:

Thursday, May 18, 2023 11:18 AM

To:

Eric Anderson

Cc:

David Carson; Tabilo, Daniela; Mayra Ashton; Jennifer Baez; McDevitt, Erin

Subject:

RE: AMOY and LETE update

# This Message Is From an External Sender

This message came from outside your organization.

Eric,

Below is the Florida Administrative Code (FAC) for State Threatened Species. As you know, the Least Tern, Black Skimmer, and American Oystercatcher are all State Threatened species. The State (FWC) cannot force Palm Beach County to stop work due to the nesting activity. However, it would be in the best interest of the County and the birds to do stop work if you run the risk of "take" as a result of direct "harm" or "harass" of the nesting species at Tarpon Cove or any other nesting site in the Lake Worth Lagoon.

68A-27.001(4), F.A.C. Take – to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. The term "harm" in the definition of take means an act which actually kills or injures fish or wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The term "harass" in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Thanks,

Ricardo Zambrano Regional Biologist Florida Fish and Wildlife Conservation Commission 8535 Northlake Boulevard West Palm Beach, FL 33412 Phone: 561-882-5719

Cell: 561-248-9072 Fax: 561-625-5129

Attachment 4, page 1 of 1

#### ERM's CONTRACT HISTORY FOR

Arbor Tree & Land, Inc. Sawfish Island Restoration Project # 2021ERM03
R2021-1825 expiring 9/18/23

Contract R No.

Contract Date:

NTP

December 07, 2021 June 01, 2022

1,359,020.00

Total ERM Allotment:
ERM Allotment Spent to Date
(including latest W/O):
Available ERM Allotment (Balance):

1,359,020.00

PROJECT NAME	PROJECT TOTAL	SBE AMOUNT	DUE DATE	DESCRIPTION	APPROVED BY/DATE
Change Order 1	\$0.00	11/2	2/21/23	85-day time extension modifying Substantial Completion from 11/28/22 to 2/21/23	CRC/12/21/22
Change Order 2	\$0.00	n/a	3/23/23	30-day time extension modifying Substantial Completion from 2/21/23 to 3/23/2023	ERM/2/24/23
Change Order 3	\$0.00	n/a		179-day time extension modifying Substantial Completion from 3/23/2023 to 9/18/2023	BCC/pending
					,

Report File Date:

May 22, 2023