

RESOLUTION NO. 2011- 128

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF AMENDMENT NO. 9 TO DEP CONTRACT RP730 TO PROVIDE LIFEGUARDS TO ANASTASIA RECREATION AREA.**

**WHEREAS**, the Board of County Commissioners of St. Johns County ("the Board") entered into DEP Contract No. RP730 ("the County") with the State of Florida Department of Environmental Protection (the "State") to provide lifeguards from the County to provide water surveillance and emergency response to Anastasia State Recreation Area for peak summer Season between Memorial Day weekend and Labor Day weekend; and

**WHEREAS**, the Contract provides for additional increments of funding amount of the Contract from \$297,935 to \$345,016 (an increase of \$47,081) to cover the period of service from May 27, 2011 to September 5, 2011.

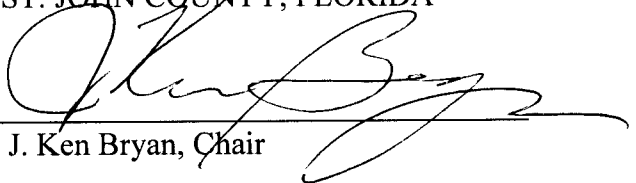
**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida, as follows:

1. The above Recital are hereby incorporated herein by reference and adopted as finding of fact in support of this Resolution.

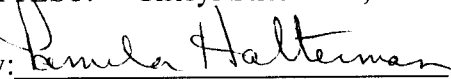
2. The County Administrator of St. Johns County is hereby authorized to execute Amendment No. 9 to DEP Contract No. RP730 (attached) to increase the funding increment amount to the Contract.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 17<sup>th</sup> day of May, 2011.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHN COUNTY, FLORIDA

By:   
J. Ken Bryan, Chair

ATTEST: Cheryl Strickland, Clerk

By: 

RENDITION DATE 5/23/11

**CONTRACT**

THIS CONTRACT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (hereinafter referred to as the "Department") and the ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS, whose address is St. Johns County Fire Rescue, 3657 Gaines Road, St. Augustine Beach, Florida 32084-6565 (hereinafter referred to as the "County"), a political subdivision of the State of Florida, to provide lifeguard services for Anastasia State Park.

In consideration of the mutual benefits to be derived herefrom, the Department and County do hereby agree as follows:

1. The Department does hereby retain the County to perform lifeguard services for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp. The County will set up lifeguard stands as shown on the map in Attachment A, traditionally the primary use area. One stand will be placed just south of the beach entrance ramp, a second and third stand, if needed, will be placed north of the beach entrance ramp. The County lifeguards may need to adjust the placement of the stands based on their experience with the tides and the number of visitors using the area.
2. The County shall perform the services in a proper and satisfactory manner as determined by the Department. The lifeguard services to be provided by the County are described in Attachment A, Scope of Services, attached hereto and made a part hereof. It is hereby understood and agreed by both parties that the County shall not be expected to provide lifeguard services in situations as described in paragraph 6 of this Contract. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the County.
3. The County shall perform as an independent contractor and not as an agent, representative, or employee of the Department. The County has been determined to be a vendor to the Department under this Contract.
4.
  - A. As consideration for the services rendered by the County under the terms of this Contract, the Department shall pay the County on a fixed price basis as specified in Attachment A. It is hereby understood and agreed that the compensation under this Contract for the initial period of service (May, 27, 2011 through September 5, 2011) shall not exceed \$47,081.70. The initial funding increment for the initial period of service is set at \$16,088.34 for services provided through June 30, 2011. Based upon continued satisfactory performance and annual appropriations by the Legislature, the Department reserves the right to increase the compensation amount to provide for each additional year of the Contract and the possible renewal periods.
  - B. In no event shall the County continue to perform services once the authorized funding increment level has been reached. It is understood and agreed that the County shall not perform any services that will exceed the balance of the current funding increment level until notice is received by the County of an increase in funding. It is the County's responsibility to know when the authorized funding increment level has been reached.
  - C. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. All travel and incidental expenses are included in the fixed price amount of this Contract and no additional travel expenses will be authorized.
5.
  - A. The Department shall disburse funds to the County pursuant to the payment schedule provided in Attachment A. It is understood that no overtime shall be paid under this Contract. An individual lifeguard shall not be scheduled for, nor work, more than, forty (40) hours in a workweek.
  - B. All invoices shall be submitted in duplicate no later than the date specified in Attachment A for the services provided during the established performance period. A final invoice shall be submitted no later than thirty (30) days following the completion date of this Contract. Payment shall be made upon satisfactory completion of services as approved by the Department's Contract Manager.

6. A. It is hereby understood by both parties that the County shall not be responsible for providing lifeguard services during a force majeure event. A force majeure event shall be an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, governmental restraint, and any other cause, whether the kind specifically enumerated herein or otherwise, which is not reasonably within the control of the County.
- B. The County shall submit a report documenting the dates on which lifeguard services were not provided due to the circumstances outlined above. In addition to the dates, the reason for the County's inability to provide the services must be documented. Said documentation shall be submitted with each invoice.
7. This Contract shall begin on May 27, 2011 or upon execution by both parties, whichever date is later, and end September 15, 2014, inclusive. In accordance with Section 287.058(2), Florida Statutes, the County shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract. This Contract may be renewed for an additional term not to exceed three (3) years or the original term of the Contract, whichever period is longer. Renewal of this Contract shall be in writing and subject to the same terms and conditions of this Contract. All renewals are contingent upon satisfactory performance by the County and the availability of funds.
8. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
9. Pursuant to Section 215.422, Florida Statutes, the Department's Contract Manager shall have five (5) working days, unless otherwise specified herein, to inspect and approve the services for payment; the Department must submit a request for payment to the Florida Department of Financial Services within twenty (20) days; and the Department of Financial Services is given ten (10) days to issue a warrant. Days are calculated from the latter date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to a contractor for correction(s) will result in a delay in the payment. A Vendor Ombudsman has been established within the Florida Department of Financial Services who may be contacted if a contractor is experiencing problems in obtaining timely payment(s) from a State of Florida agency. The Vendor Ombudsman may be contacted at 850-413-5516.
10. In accordance with Section 215.422, Florida Statutes, the Department shall pay the County, interest at a rate as established by Section 55.03(1), Florida Statutes on the unpaid balance, if a warrant in payment of an invoice is not issued within forty (40) days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services. Interest payments of less than \$1 will not be enforced unless a contractor requests payment. The interest rate established pursuant to Section 55.03(1), Florida Statutes may be obtained by calling the Department of Financial Services, Vendor Ombudsman at the telephone number provided above or the Department's Procurement Section at 850-245-2361.
11. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
12. Either party may terminate this Contract with or without cause by giving sixty (60) calendar days written notice to the other party. Said notice shall be sufficient if delivered personally or by certified mail to the address contained herein. In the event of termination, the County shall only be compensated for work satisfactorily completed up to the date of termination.

Notice shall be sufficient if delivered personally or by certified mail to the address set forth in paragraph 13.

13. Any and all notices shall be delivered to the parties at the following addresses:

**County**

St. Johns County Fire Rescue  
 Attn: Fire Chief Robert V. Hall, Jr.  
 3657 Gaines Road  
 St. Augustine, Florida 32084-6565

**Department**

Anastasia State Park  
 Attn: Paul Crawford, Park Manager III  
 1340A A1A South  
 St. Augustine, Florida 32080-5422

14. The Department's Contract Manager is Paul Crawford, Park Manager III, Phone 904-461-2000. The County's Contract Manager is Robert V. Hall, Jr., Phone 904-209-1700. All matters shall be directed to the Contract Managers for appropriate action or disposition.
15. This Contract may be unilaterally canceled by the Department for refusal by the County to allow public access to all documents, papers, letters, or other material made or received by the County in conjunction with this Contract, unless the records are exempt from Section 24(a) of Article I of the State constitution and Section 119.07(1), Florida Statutes.
16. The County shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five years following Contract completion. In the event any work is subcontracted, the County shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
17. The County warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the County to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the County any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.
18. The County covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
19. This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
20. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Contract, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.
21. The County recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.
22. This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.
23.
  - A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.
  - B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at 850-487-0915.
24. This Contract is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the Department.

25. The Contractor shall not subcontract, assign, or transfer any work under this Contract.
26. To the extent required by law, the County will be self-insured against, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of his employees connected with the work of this project. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the County shall provide adequate insurance satisfactory to the Department, for the protection of his employees not otherwise protected.
27. The County, as an independent contractor and not an agent, representative, or employee of the Department, agrees to carry adequate liability and other appropriate forms of insurance. The Department shall have no liability except as specifically provided in this Contract.
28. The purchase of non-expendable equipment costing \$1,000 or more is not authorized under the terms of this Contract.
29. The Department may at any time, by written order designated to be a change order, make any change in the work within the general scope of this Contract (e.g., specifications, time, method or manner of performance, requirements, etc.). All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change order which causes an increase or decrease in the County's cost or time shall require formal amendment to this Contract.
30.
  - A. The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the County knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract.
  - B. The County agrees that it will enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program. The County further agrees to provide to the Department, within thirty (30) days of the effective date of this amendment, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen", which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
  - C. The County further agrees that it will require each subcontractor that performs work under this Contract to enroll and participate in the E-Verify Program within ninety days of the effective date of this Contract or within ninety (90) days of the effective date of the contract between the County and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.
  - D. The County further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Department or other authorized state entity consistent with the terms of the Memorandum of Understanding.
  - E. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this Contract and the Department may treat a failure to comply as a material breach of the Contract.
31. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.

- 32. The County shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Contract. The County acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations.
- 33. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Rule 60A-1.032(1), Florida Administrative Code, this Contract shall be exempt from the one percent (1%) transaction fee.
- 34. This Contract represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, the day and year last written below.

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Chairman or Authorized Signatory\*

By: *[Signature]*  
Director, Division of Recreation and Parks or designee

Date: \_\_\_\_\_

Date: 5-3-11

FEID No.: 59-6000825

*[Signature]*  
Paul E. Crawford, DEP Contract Manager

*[Signature]*  
DEP Contracts Administrator

Approved as to form and legality:

Approved as to form and legality:

\_\_\_\_\_  
County Attorney

*[Signature]*  
DEP Attorney

ATTEST:

\_\_\_\_\_  
County Clerk

\*For contracts with governmental boards/commissions: If someone other than the Chairman signs this Contract, a resolution, statement or other document authorizing that person to sign the Contract on behalf of the County must accompany the Contract.

List of attachments/exhibits included as part of this Contract:

Type	Letter/Number	Description (include number of pages)
Attachment	A	Scope of Services (3 Pages)

**ATTACHMENT A  
SCOPE OF SERVICES  
ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES**

The County shall be responsible for providing lifeguard services for Anastasia State Park for the area 0.5 miles south of the beach entrance ramp to 3.5 miles north of the beach entrance ramp. The County will set up lifeguard stands as shown on the map appearing on page 3 of Attachment A, traditionally the primary use area. One stand will be placed just south of the beach entrance ramp, a second and third stand, if needed, will be placed north of the beach entrance ramp. The County lifeguards may need to adjust the placement of the stands based on their experience with the tides and the number of visitors using the area.

The County shall recruit, train, employ, and staff Anastasia State Park with a lifeguard service that is consistent with the standards established by the United States Lifesaving Association and St. Johns County. The County shall equip all lifeguard towers and patrol vehicles with rescue, medical, and communications equipment as specified by the minimum equipment standards promulgated by the United States Lifesaving Association.

Four lifeguards will be assigned to Anastasia State Park for the operating hours of 10:00 a.m. to 6:00 p.m. local prevailing time. An individual lifeguard shall not be scheduled for, nor work, more than forty (40) hours in a workweek. The following schedule shall be followed by the County.

Position	Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total
Lifeguard III	10	10	10	10	10	10	10	70
Tower	8	8	8	8	8	8	8	56
Tower	8						8	16
Rotator	8						8	16
Totals	34	18	18	18	18	18	34	158

Position titles: Lifeguard III = Zone Supervisor; Tower = Lifeguard; Rotator = Lifeguard

**Daily Operation:**

Weekends & Holidays

- 1 Mobile Patrol: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beachfront staff.
- 2 Tower Guards: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.
- 1 Foot Patrol: Lifeguard on foot patrol assigned south of the ramp, just north of the Pope Road parking area. Because this is generally regarded as a no swimming area, an elevated station would be neither prudent nor wise in this location. However, the history of both rescue activity and injuries to beach patrons warrants a stronger preventive role. A lifeguard assigned to foot patrol would serve to 1) educate individuals oblivious to or unaware of the signs that are currently posted, 2) participate in active prevention of swimmers and bathers prior to their engaging or drifting into potential dangers, and 3) respond to potential problems prior to the activation of 911.

Weekdays (excluding holidays)

- 1 Mobile Patrol: A mobile patrol and response vehicle complete with adequate rescue and medical gear to treat both minor and major emergencies. Vehicle will be on continuous patrol within the visual and/or communication range of beachfront staff.
- 1 Tower Guard: Elevated lifeguard tower(s) to be stationed north of the ramp, adjacent to and east of the existing parking lot.

**Payment Schedule:**

Performance Period	Payment Amount	Invoice Due Date
Contract Execution – June 30, 2011	\$16,088.34	July 7, 2011
July 1, 2011 – September 5, 2011	\$30,993.26	September 30, 2011
Total:	\$47,081.60	

Each invoice shall include documentation by timesheets or other auditable means, of the total number of hours worked by each individual lifeguard for the billing period.

It is hereby understood and agreed by both parties that the County shall not be expected to provide lifeguard services in situations as described in paragraph 6.A. of the Contract. The County shall submit a report documenting the dates on which lifeguard services were not provided due to the circumstances outlined therein. In addition to the dates, the reason for the County's inability to provide the services must be documented. Said documentation shall be submitted with each invoice.

Any and all equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the County. The above payment schedule includes all personnel and incidental costs associated with the County's performance of the services described herein. No additional compensation shall be provided.

**Reports**

Monthly Reports

The County shall provide monthly reports to the Department's Contract Manager, within five (5) days of completion of each calendar month, which summarizes the activities performed during the month. A copy of the appropriate monthly report will be submitted with each invoice. The report shall include information on the number of citizen assists made and the nature of the assistance, the number of emergency actions taken and the nature of the emergency, and the beach closures occurring during the month and the reason for such closures.

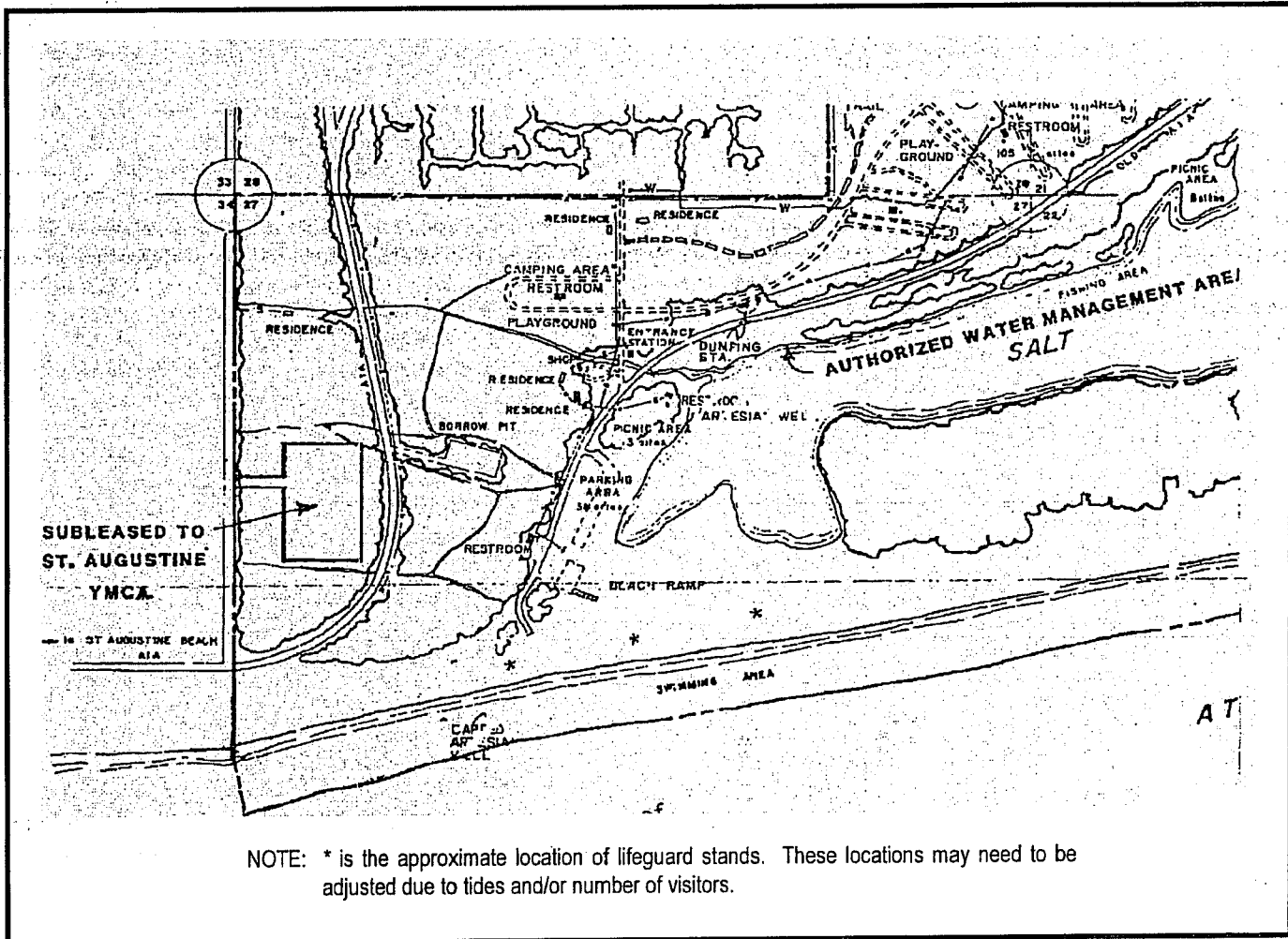
Final Report

The County shall submit a final report to the Department's Contract Manager, documenting all lifeguard services and activities performed during the Contract period. Said documentation shall be submitted with the final invoice specified above.

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ANASTASIA STATE PARK OCEAN LIFEGUARD SERVICES MAP

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