

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BROWARD COUNTY, FLORIDA
FOR DUNE DESIGN AND CONSTRUCTION
DURING REHABILITATION OF SEGMENT III OF THE
BROWARD, FLORIDA
SHORE PROTECTION PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA"), entered into this _____ day of _____, 2020, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as "Government"), represented by the District Commander for the Jacksonville District, U.S. Army Corps of Engineers (hereinafter the "District Commander"), and BROWARD COUNTY, FLORIDA, (hereinafter referred to as the "Local Sponsor"), represented by the County Administrator.

WITNESSETH, THAT:

WHEREAS, initial construction and periodic nourishment for Segment III of the Broward County, Florida Shore Protection Project at Broward County, Florida (hereinafter the "Project") is a separable element of the Broward County, Florida Beach Erosion Control and Storm Damage Reduction Project that was authorized by Section 301 of the River and Harbor Act of 1965, Public Law 89-298;

WHEREAS, the Local Sponsor and the Government entered into a Project Cooperation Agreement Between the Department of the Army and Broward County, Florida for Construction of Segment III of the Broward, Florida Shore Protection Project, dated September 29, 2004, which remains in full effect;

WHEREAS, the Local Sponsor and the Government entered into a Cooperation Agreement Between the United States of America and Broward County, Florida for Rehabilitation of a Federal Hurricane Shore Protection Project, dated _____, 2020, pursuant to which the Government is scheduled to rehabilitate the Project during 2021 and 2022 ("Rehabilitation Effort");

WHEREAS, under the Cooperation Agreement, the Local Sponsor may request the Government accomplish betterments by constructing a Rehabilitation Effort feature in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort and the Local Sponsor shall be solely responsible for any increase in costs resulting from the betterments;

WHEREAS, the Local Sponsor considers it to be in its own interest to contribute funds voluntarily (hereinafter the “Additional Work Funds”) to be used by the Government to fund fully all costs associated with the design and construction of dunes between Florida Department of Environmental Protection (FDEP) Range Monuments R-85.7 and R-86.2 and R-86.5 and R-91.6 during the Rehabilitation Effort (hereinafter the “Dune Design and Construction Work”).

NOW, THEREFORE, the Government and Local Sponsor agree as follows:

1. The Non-Federal Sponsor shall provide to the Government Additional Work Funds currently estimated at \$1,040,000.00, to fund all the costs of such Dune Design and Construction Work.
2. Within 60 calendar days of the effective date of this MOA, the Local Sponsor shall provide the Additional Work Funds to the Government by delivering a check payable to “FAO, USAED Jacksonville (K3)” to the District Commander or providing an electronic funds transfer of such funds in accordance with procedures established by the Government.
3. In the event that the Local Sponsor contributes more or less than the amount listed in paragraph 1 above, the Government shall apply whatever funds are contributed by the Local Sponsor to the Government pursuant to this MOA; however, the Government shall not obligate any Additional Work Funds before they are received and available.
4. The Government shall not commence any Dune Design and Construction Work until the Local Sponsor has complied with all applicable environmental laws and regulations and obtained all requisite permits, including, but not limited to, Section 401 of the Clean Water Act (33 U.S.C. 1341).
5. The Local Sponsor must provide to the Government authorization for entry to all lands, easements, and rights-of-way that the Government determines to be required for the Dune Design and Construction Work, prior to the advertisement of the construction contract.
6. The Government shall use all Additional Work Funds for Dune Design and Construction Work, except with regard to excess Additional Work Funds which are addressed in paragraph 10 of this MOA. The Local Sponsor shall bear all costs of such work, including any environmental compliance costs associated with the Dune Design and Construction Work. Upon conclusion of the Dune Design and Construction Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Local Sponsor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Local Sponsor’s responsibility to pay for all costs associated with such work, including contract claims or any other liability that may become known after the final accounting.
7. The Government shall provide the Local Sponsor with quarterly accountings of obligations of the Additional Work Funds for the Dune Design and Construction Work. The

first such accounting shall be provided within thirty (30) calendar days after the final day of the first complete Government fiscal year quarter following receipt of the Additional Work Funds, and subsequent accountings shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Dune Design and Construction Work. Upon conclusion of the Dune Design and Construction Work with resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Local Sponsor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Local Sponsor's responsibility to pay for all costs associated with the beach placement for Dune Design and Construction Work, including contract claims or any other liability that may become known after the final accounting.

8. Unless directed in law, the Government shall not reimburse the Local Sponsor for Additional Work Funds expended by the Government.

9. The Government shall not credit the Local Sponsor for the Additional Work Funds so as to reduce the cash contribution that otherwise would be required of the Local Sponsor pursuant to the Project Cooperation Agreement Between the Department of the Army and Broward County, Florida for Construction of Segment III of the Broward, Florida Shore Protection Project entered into by the Government and Local Sponsor governing the construction of the Project.

10. Should the final accounting show that the costs of the Dune Design and Construction Work exceed the amount provided by the Local Sponsor, the Local Sponsor shall provide the additional required funding in accordance with paragraph 2 of this MOA within thirty (30) calendar days of written notice of the final accounting. Should the final accounting show that the costs of the Dune Design and Construction Work is less than the amount provided by the Local Sponsor, the Government shall refund the excess to the Local Sponsor within thirty (30) calendar days of the written notice of the final accounting subject to the terms of paragraph 11 below.

11. No credit or repayment is authorized, nor shall be provided, for any Additional Work Funds obligated by the Government.

12. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the Project in the future; and nothing herein shall represent, or give rise to, obligations of the United States.

13. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

14. The Local Sponsor shall hold and save the Government free from all damages arising from the Dune Design and Construction Work, except for damages due to the fault or negligence of the Government or its contractors.

15. In the exercise of their respective rights and obligations under this MOA, the Local Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

16. In the exercise of their respective rights and obligations under this MOA, the Government and the Local Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

17. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by first-class, registered, or certified mail, as follows:

If to the Public Sponsor:

County Administrator
Broward County
115 South Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301

If to the Government:

District Commander
Jacksonville District
701 San Marco Blvd.
Jacksonville, Florida 32207

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

18. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

19. This MOA may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this MOA, which shall become effective upon the date it is signed by the Government.

THE DEPARTMENT OF THE ARMY
FLORIDA

BROWARD COUNTY,

BY: _____

Colonel Andrew D. Kelly, Jr.
District Commander
Jacksonville District

DATE: _____

BY:_____.

Bertha W. Henry
County Administrator

DATE: _____.

CERTIFICATE OF AUTHORITY

I, Andrew J. Meyers, do hereby certify that I am the principal legal officer of Broward County, Florida, that Broward County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Broward County, Florida in connection with construction of the Dune Design and Construction Work, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Broward County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 2020.

Andrew J. Meyers
County Attorney
Broward County, Florida

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Bertha W. Henry
County Administrator
Broward County, Florida

DATE: _____