

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BROWARD COUNTY, FLORIDA
CONCERNING THE PROVISION OF FUNDS
PURSUANT TO SECTION 2106 OF THE WATER RESOURCES REFORM AND
DEVELOPMENT ACT OF 2014, AS AMENDED

This MEMORANDUM OF AGREEMENT (hereinafter "MOA") is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Jacksonville District (hereinafter the "District Commander"), and Broward County (hereinafter the "Non-Federal Sponsor") for Port Everglades (hereinafter the "Port"), represented by and through its Board of County Commissioners signing by and through its Mayor.

WITNESSETH, THAT:

WHEREAS, Section 2106 of the Water Resources Reform and Development Act of 2014, as amended (33 U.S.C. 2238c) (hereinafter "Section 2106"), authorizes the Secretary of the Army, subject to the availability of funds, to provide funds to donor ports and energy transfer ports to be used for expanded uses, as that term is defined in Section 210(f)(4) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2238(f)(4));

WHEREAS, the Port qualifies as a donor port;

WHEREAS, funds have been appropriated in fiscal year 2022 to carry out Section 2106 and may be appropriated in subsequent fiscal years; and

WHEREAS, the Non-Federal Sponsor will use the funds provided under this MOA to carry out one or more of the following expanded uses that benefits commercial navigation at a harbor accessible to a Federal navigation channel: 1) maintenance dredging of a berth; 2) an in-water improvement for the seismic reinforcement or repair or replacement of a wharf or other berthing structure; or 3) an activity to maintain slope stability at a berth.

NOW, THEREFORE, the Parties agree as follows:

1. Following apportionment of funds provided under Section 2106 and receipt of work allowances; the Government shall provide to the Non-Federal Sponsor the Port's share of such funds. For fiscal year 2022 the Port's share is \$213,840.
2. The Non-Federal Sponsor shall use funds provided under this MOA to carry out one or more of the following expanded uses that benefits commercial navigation at a harbor accessible to a Federal navigation channel: 1) maintenance dredging of a berth; 2) an in-water improvement for the seismic reinforcement or repair or replacement of a wharf or other berthing structure; or 3) an activity to maintain slope stability at a berth. Funds provided under this MOA may also be used for engineering, design, construction, and supervision and administration, including hydrographic surveys; dredged material testing and monitoring; permitting; and environmental documentation necessary to carry out the work.

3. The Non-Federal Sponsor shall obtain all applicable licenses and permits necessary to carry out such work and provide written documentation of such compliance to the Government before initiating the work. The Non-Federal Sponsor shall coordinate with appropriate regulatory agencies on the handling of all materials under this MOA.

4. In carrying out its obligations under this MOA, the Non-Federal Sponsor shall comply with requirements of Federal laws and implementing regulations, if applicable, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

5. By September 30th of each year, the Non-Federal Sponsor shall submit to the Government a report detailing the use of the funds and the benefits achieved with such funds, with a final report submitted no later than thirty days after completion of all work using the funds.

6. In the exercise of their respective roles and responsibilities under this MOA, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

7. No funds provided pursuant to this MOA shall be used for any cleanup or response of any hazardous, toxic, and radioactive wastes, which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

8. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner, transporter, arranger, and operator of any activities carried out under this MOA for purposes of any liability under CERCLA and any other regulated material in accordance with applicable laws and regulations.

9. The Government may conduct, or arrange for the conduct of, audits of the costs for work carried out under this MOA. Government audits shall be conducted in accordance with applicable Government cost principles and regulations.

10. 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Port Director
Port Everglades Department of Broward County
1850 Eller Drive
Fort Lauderdale, Florida 33316

If to the Government:

District Commander
U.S. Army Corps of Engineers, Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

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.

11. This MOA may be amended only by written, mutual agreement of the parties.

12. Upon not less than thirty calendar days written notice to the other party, either party may elect to terminate this MOA. In the event of termination, the parties shall conclude their activities under this MOA. Termination has no effect on any obligation previously incurred under this MOA.

IN WITNESS WHEREOF, the parties have executed this MOA, which shall be effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

BROWARD COUNTY, FLORIDA

BY: _____
James L. Booth
Colonel, U.S. Army
District Commander

BY: _____
Lamar Fisher
Mayor

DATE: _____

DATE: _____

ATTEST:

Broward County Administrator, as
Ex officio Clerk of the Broward County
Board of County Commissioners

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 302
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404

By:  519123
Carlos Rodriguez-Carbarrocas
Senior County Attorney

CERTIFICATE OF AUTHORITY

I, Andrew J. Meyers, do hereby certify that I am the principal legal officer for Broward County, that Broward County is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and Broward County in connection with the provision of funds pursuant to Section 2106 of the Water Resources Reform and Development Act of 2014, as amended, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of Broward County acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

Andrew J. Meyers
County Attorney