

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS



AGENDA ITEM SUMMARY

Meeting Date: July 16, 2013

Consent

Regular

Workshop

Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) Authorize the Mayor to sign a Cooperation Agreement (CA) with the United States of America for the rehabilitation of the Delray Beach Segment of the Palm Beach County, Florida Shore Protection Project (DBS) in substantial conformance with Attachment 1;
- B) Authorize the Mayor to sign a Cooperation Agreement (CA) with the United States of America for the rehabilitation of the Jupiter Carlin Segment of the Palm Beach County, Florida Shore Protection Project (JCS) in substantial conformance with Attachment 2;
- C) Authorize the Mayor to sign a Project Partnership Agreement (PPA) with the Department of the Army (DoA) for the remaining authorized period of periodic nourishment of the DBS in substantial conformance with Attachment 3;
- D) Approve an Interlocal Agreement with the City of Delray Beach (CITY) for the construction of the beach nourishment project through June 1, 2023;
- E) Approve a Budget Transfer in the amount of \$2,000,000 from the General Fund Contingency Reserves to the Beach Improvement Fund for the County's required projected contribution of the 2013-14 DBS construction costs; and
- F) Budget Amendment in the Beach Improvement Fund of \$2,000,000 to recognize the transfer.

Continued on Page 3

Attachments:

- 1. DBS CA
- 2. JCS CA
- 3. PPA
- 4. Interlocal Agreement
- 5. Budget Transfer (0001)
- 6. Budget Amendment (3652)
- 7. CITY request to the Mayor
- 8. Transmittal Letter from DoA to CITY

Recommended by: _____

Department Director

Date

7-11-13

Approved by: _____

County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<u>\$2,000,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$2,000,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No <u>X</u>		
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

B. Recommended Sources of Funds/Summary of Fiscal Impact:
General Fund Contingency Reserves

C. Department Fiscal Review: *JP*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

<p>_____ <i>[Signature]</i> OFMB</p>	<p>_____ <i>[Signature]</i> Contract Development and Control</p>
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B. Legal Sufficiency:
_____ *[Signature]*
Assistant County Attorney

At the time of our review the contract documents were in draft form.

C. Other Department Review:

Department Director

Continued from Page 1:

Summary: Hurricane Sandy impacted the Palm Beach County coastline on October 29, 2012, causing substantial damage to the federally authorized Jupiter Carlin (JCS) and Delray Beach (DBS) Shore Protection projects. Rehabilitation funding appropriated by Congress allows the Corps of Engineers (COE) to replace sand lost during the storm at 100% cost to the federal government, which is estimated to be \$4 million for the JCS and \$1.7 million for the DBS. The Cooperation Agreements set the terms and responsibilities of both the COE and the County.

The Project Partnership Agreement for the DBS allows for the remainder of the design beach fill template to be filled by the COE at a cost share of 56% Federal, 44% non-Federal share. Sufficient funding for the Federal share, estimated to be \$2.53 million, has been authorized for this work by Congress. The estimated non-Federal share is \$2 million, of which \$1 million is anticipated to be eligible for reimbursement by the State. A letter sent by the DoA with additional information was received on April 26, 2013. The Interlocal Agreement with the CITY allows for cooperative management of the local responsibilities associated with the project. Districts 1 and 4 (SF)

Background and Justification: In 1962, Congress authorized the DoA to partially reimburse non-Federal interests for periodic restoration of authorized shore protection projects as funding becomes available. Since 1973, Palm Beach County has been the non-Federal Sponsor for the DBS (R92-1283D), though an Intergovernmental Agreement (IA) in 1973 (R94-1357D) provided for the CITY to build and manage the DBS, thereafter seeking reimbursement of the costs from the County, State and Federal governments. The CITY has requested the County to replace the IA and contribute the non-Federal share of future authorized periodic nourishment of the DBS as required by the PPA. The CITY proposes to manage and fund all permit required monitoring and reporting associated with the DBS that is not addressed in the PPA or CA. Both parties will seek eligible reimbursement from the State, which has historically been fifty percent of the non-Federal share of project costs.

ATTACHMENT 1

COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and
PALM BEACH COUNTY
for
REHABILITATION OF THE DELRAY SEGMENT OF THE
PALM BEACH COUNTY, FLORIDA, SHORE PROTECTION PROJECT

THIS AGREEMENT, entered into this _____ day of _____, 2013, by and between the Department of the Army (hereinafter referred to as the "Government") represented by the District Engineer, Jacksonville District, U.S. Army Corps of Engineers, and Palm Beach County, Florida (hereinafter referred to as the "Public Sponsor"), represented by the Mayor of its Board of County Commissioners.

WITNESSETH THAT:

WHEREAS, the Public Sponsor constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP) authorized by Sections 101 and 102 of the River and Harbor Act of 1962, Public Law 87-874, as modified by Section 156 of the Water Resources Development Act of 1976, Public Law 94-587, and Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, and governed by the Project Partnership Agreement dated _____ and entitled Project Partnership Agreement Between the Department of the Army and Palm Beach County, Florida for Periodic Nourishment of the Delray Beach Segment of the Palm Beach County, Florida Shore Protection Project which remains in full effect;

WHEREAS, pursuant to 33 U.S.C. 701 n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

WHEREAS, via written correspondence, the Public Sponsor has requested the Government to repair or restore the HSPP which was damaged by wind, wave, or water action of an other than an ordinary nature, in accordance with 33 U.S.C. 701 n, and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Agreement;

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean providing a single beach fill placement of approximately 150,000 cubic yards of fill, extending from Florida Department of Environmental Protection monument

R175 to R188, as generally described in a report entitled Project Information Report Rehabilitation Effort for the Palm Beach County Hurricane/Shore Protection Project Delray Segment prepared by the District Engineer, U.S. Army Engineer District Jacksonville, dated February, 2013 and approved by the Director of Contingency Operations, Homeland Security on March 28, 2013;

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XII. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Public Sponsor, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on all solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the HSPP.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 0 percent of Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of Rehabilitation Effort costs under this Agreement unless the

expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the HSPP, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to continue participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program and the Local Cooperation Agreement cited above.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project and the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$1,699,334 and the Public Sponsor's share (cash and services in kind) of Rehabilitation Effort costs is currently estimated to be \$0. In order to meet the Public Sponsor's cash payment

requirements, the Public Sponsor must provide a cash contribution estimated to be \$0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED Jacksonville" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of the total project costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V - CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0 for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI - OPERATION AND MAINTENANCE

A. The Public Sponsor maintains responsibility for operating and maintaining the HSPP at all times. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the HSPP, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and the HSPP. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands

necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the HSPP or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the HSPP in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

Mayor
Board of County Commissioners of
Palm Beach County, Florida
301 N. Olive Avenue
West Palm Beach, Florida 33401

If to the Government:

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

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

PALM BEACH COUNTY

BY: _____


BY: _____

Colonel Alan M. Dodd
District Engineer
Jacksonville District
District

Steven L. Abrams
Mayor
Board of County Commissioners

DATE: _____

DATE: _____


6-19-03
**APPROVED AS TO TERMS
AND CONDITIONS.**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

ASSISTANT COUNTY ATTORNEY DATE

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 section 1352, Title 31, U.S. Code. 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.

DATED this _____ day of _____, 2013

Steven L. Abrams
Mayor
Board of County Commissioners
Palm Beach County, Florida

ATTACHMENT 2

COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and
PALM BEACH COUNTY
for
REHABILITATION OF THE JUPITER/CARLIN SEGMENT OF THE
PALM BEACH COUNTY, FLORIDA, SHORE PROTECTION PROJECT

THIS AGREEMENT, entered into this _____ day of _____, 2013, by and between the Department of the Army (hereinafter referred to as the "Government") represented by the District Engineer, Jacksonville District, U.S. Army Corps of Engineers, and Palm Beach County, Florida (hereinafter referred to as the "Public Sponsor"), represented by the Mayor of its Board of County Commissioners.

WITNESSETH THAT:

WHEREAS, the Public Sponsor constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP) authorized by Sections 101 and 102 of the River and Harbor Act of 1962, Public Law 87-874, as modified by Section 156 of the Water Resources Development Act of 1976, Public Law 94-587, and Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, and governed by the Project Cooperation Agreement dated March 21, 1995 and entitled Project Cooperation Agreement Between the Department of the Army and Palm Beach County, Florida for Construction of the Jupiter/Carlin Segment of the Palm Beach County, Florida Shore Protection Project which remains in full effect;

WHEREAS, pursuant to 33 U.S.C. 701 n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

WHEREAS, via written correspondence, the Public Sponsor has requested the Government to repair or restore the HSPP which was damaged by wind, wave, or water action of an other than an ordinary nature, in accordance with 33 U.S.C. 701 n, and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Agreement;

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean providing a single beach fill placement of approximately 87,000 cubic yards of fill, extending from Florida Department of Environmental Protection monument

R13 to R19, as generally described in a report entitled Project Information Report Rehabilitation Effort for the Palm Beach County Hurricane/Shore Protection Project Jupiter Carlin Segment, Florida prepared by the District Engineer, U.S. Army Engineer District Jacksonville, dated February 8, 2013 and approved by the Director of Contingency Operations, Homeland Security on March 29, 2013;

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XII. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Public Sponsor, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on all solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the HSPP.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 0 percent of Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of Rehabilitation Effort costs under this Agreement unless the

expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the HSPP, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to continue participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program and the Local Cooperation Agreement cited above.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project and the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$4,011,116 and the Public Sponsor's share (cash and services in kind) of Rehabilitation Effort costs is currently estimated to be \$0. In order to meet the Public Sponsor's cash payment

requirements, the Public Sponsor must provide a cash contribution estimated to be \$0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED Jacksonville" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of the total project costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V - CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0 for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI - OPERATION AND MAINTENANCE

A. The Public Sponsor maintains responsibility for operating and maintaining the HSPP at all times. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the HSPP, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and the HSPP. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands

necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the HSPP or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the HSPP in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

Mayor
Board of County Commissioners of
Palm Beach County, Florida
301 N. Olive Avenue
West Palm Beach, Florida 33401

If to the Government:

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

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: _____
Colonel Alan M. Dodd
District Engineer
Jacksonville District
District

DATE: _____

PALM BEACH COUNTY

BY: _____
Steven L. Abrams
Mayor
Board of County Commissioners

DATE: _____


6-19-13
**APPROVED AS TO TERMS
AND CONDITIONS.**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

ASSISTANT COUNTY ATTORNEY DATE

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 section 1352, Title 31, U.S. Code. 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.

DATED this _____ day of _____, 2013

Steven L. Abrams
Mayor
Board of County Commissioners
Palm Beach County, Florida

ATTACHMENT 3

'Will Be swapped out

4/22/13 BWM
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
PALM BEACH COUNTY, FLORIDA
FOR PERIODIC NOURISHMENT OF THE
DELRAY BEACH SEGMENT
OF THE
PALM BEACH COUNTY, FLORIDA
SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this ____ day of _____, 2013, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and Palm Beach County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chair of its Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the shore protection project at Palm Beach County from Martin County line to Lake Worth Inlet and from South Lake Worth Inlet to Broward County line, Florida at Palm Beach County, Florida (hereinafter the "Authorized Project") was authorized by Section 101 of the River and Harbor Act of 1962, Public Law 87-874;

WHEREAS, Section 102 of the Rivers and Harbors Act of 1962, Public Law 87-874 authorizes the Secretary to reimburse non-Federal interests for work they perform on beach erosion projects authorized in Section 101 of said Act provided the work performed is approved by the Government and that such reimbursement shall be subject to appropriations and shall not take precedence over other pending projects of higher priority for improvements;

WHEREAS, the Government and Non-Federal Sponsor entered into an agreement dated January 23, 1973, providing for Federal participation, subject to the terms of the agreement, in the costs incurred by the Non-Federal Sponsor for initial construction of the Authorized Project, and the future periodic nourishment of the Authorized Project for a period not to exceed 10 years following completion of the initial construction;

WHEREAS, construction of the Delray Beach Segment, a separable element of the Authorized Project, was initiated and completed in 1973 by Palm Beach County, Florida, as authorized by Section 102 of the River and Harbor Act of 1962, Public Law 87-874;

WHEREAS, Section 156 of the Water Resources Development Act of 1976, Public Law 94-587, as amended by Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, authorizes the Secretary of the Army to extend participation in shore protection projects, as he deems necessary, for a period not to exceed fifty years from the date of *initial construction*;

WHEREAS, on March 1, 1991, the Acting Assistant Secretary of the Army (Civil Works) approved extension of the period of Federal participation in the Delray Beach

Segment of the Authorized Project for an additional 35 years, in accordance with Section 934 of the Water Resources Development Act of 1986, Public Law 99-662;

WHEREAS, the Government and Non-Federal Sponsor subsequently entered into an agreement dated September 23, 1992, providing for the extension of Federal participation in the Delray Beach Segment of the Authorized Project for a period of 50 years beginning from the date of initiation of construction;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") to provide for Federal construction of the Delray Beach Segment of the Authorized Project for the remaining authorized period of *periodic nourishment* (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103(c)(5) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the *Project*;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, (codified as amended at 42 U.S.C. § 1962d-5b) and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (codified at 33 U.S.C. § 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the *Project* in accordance with the terms of this Agreement;

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the project;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the *periodic nourishment* of ,as generally described in the Panama City Beaches, Florida, General Reevaluation Report and Environmental Assessment, Beach Erosion Control and Storm Damage Reduction Project, dated September 1994, and approved by Chief, Planning Division, Directorate of Civil works on May 29, 1996 (hereinafter the GRR).

B. The term "*initial construction*" shall mean the placement of suitable beach fill material , as generally described in the GRR referenced in paragraph A above.

C. The term "*periodic nourishment*" shall mean the placement of suitable beach material within the areas of *initial construction* or any *functional portion* of the *initial construction*, as generally described in the GRR referenced in paragraph A. of this Article.

D. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to *periodic nourishment* of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during *periodic nourishment*; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the *Project* Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.C.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to *initial construction* of the *Project* under the 1973 Agreement; any costs due to *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3 of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

E. The term "*financial obligations for periodic nourishment*" shall mean financial obligations of the Government, other than obligations pertaining to the provision of lands, easements, rights-of-way, *relocations*, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in *total project costs*.

F. The term "*non-Federal proportionate share*" shall mean the ratio of the non-Federal Sponsor's total cash contribution required under Article II.C.2. of this Agreement to total *financial obligations for periodic nourishment*, as projected by the Government.

G. The term "*authorized periodic nourishment period*" shall mean the authorized duration for Federal participation in *periodic nourishment*, which is a period of 50 years from the date of initiation of *initial construction* of the *Project* in 1973.

H. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

I. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility, when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally

equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

J. The term "*functional portion*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Jacksonville District (hereinafter "District Engineer") in writing, although the remainder of the *Project* is not complete.

K. The term "*betterment*" shall mean a difference in the construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

L. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

M. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall construct the *Project* (including *periodic nourishment* at such times during the *authorized periodic nourishment period* as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations,

award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. As of the effective date of this Agreement, \$_____ of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. The Government shall assign all costs in *total project costs*, including all contributions provided by the Non-Federal Sponsor, to hurricane and storm damage reduction, to recreation, or to privately owned shores where use of such shores is limited to private interests.

C. For each iteration of *periodic nourishment*, the Non-Federal Sponsor shall contribute 35 percent of *total project costs* assigned by the Government to hurricane and storm damage reduction, plus 50 percent of *total project costs* assigned by the Government to recreation plus 100 percent of *total project costs* assigned by the Government to privately owned shores (where use of such shores is limited to private interests) in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for such iteration of *periodic nourishment*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of *total costs of periodic nourishment* for such iteration of *periodic nourishment* if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to such iteration of *periodic nourishment* will be less than such required share: (a) the value of the contributions provided by a non-Federal interest pursuant to the terms of a design agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph H.1. of this Article, as determined in accordance with Article IV of this Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of the Non-Federal Sponsor's required share of *total costs of periodic nourishment* for such iteration of *periodic nourishment* if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to such iteration of *periodic nourishment* has exceeded such

required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph H.2. of this Article; (b) the value of the contributions provided by a non-Federal interest pursuant to the terms of a design agreement; (c) the value of the Non-Federal Sponsor's contributions under paragraph H.1. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for such iteration of *periodic nourishment*, perform any remaining *relocations* necessary for such iteration of *periodic nourishment*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for such iteration of *periodic nourishment* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

D. When the District Engineer determines that an iteration of *periodic nourishment*, or a *functional portion* of an iteration of *periodic nourishment*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for such iteration of *periodic nourishment* that have not been provided previously. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for such iteration of *periodic nourishment* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that such iteration of *periodic nourishment* is complete, the Government shall furnish the Non-Federal Sponsor with all final as-built drawings for such iteration of *periodic nourishment*. In the event all final as-built drawings for such iteration of *periodic nourishment* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace such iteration of *periodic nourishment*, or the *functional portion* of an iteration of *periodic nourishment* as the case may be, in accordance with Article VIII of this Agreement.

F. Upon conclusion of each iteration of *periodic nourishment*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the *Project*.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government

elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

I. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *Project*.

J. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs in accordance with Section 402 of Public Law 99-662, as amended.

K. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

L. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

M. The Non-Federal Sponsor shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

N. For so long as the *Project* remains authorized, the Non-Federal Sponsor shall ensure

conditions of public ownership and public use of the shores upon which the amount of Federal participation is based.

O. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

P. In the event the *Project* is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds and Article II.A. of this Agreement, shall place suitable beach and dune fill material within the area of the completed *initial construction*, as *periodic nourishment* of the *Project*. The costs of such placement shall be included in *total project costs* and shared in accordance with Article II.C. of this Agreement. Nothing in this paragraph shall relieve the Non-Federal Sponsor of its obligations under Article VIII of this Agreement. Further, nothing in this paragraph shall preclude the Government from using Public Law 84-99 to accomplish any emergency repair and restoration work of the *Project*.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for *periodic nourishment*, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to issuance of the solicitation for each contract for each iteration of *periodic nourishment* or prior to the Government incurring any *financial obligations for periodic nourishment* of a portion of the *Project*, as applicable, using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for *periodic nourishment*, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* that are necessary for *periodic nourishment* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to issuance of the solicitation for each contract for each iteration of *periodic nourishment* or prior to the Government incurring any *financial obligations for periodic nourishment* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of

plans and specifications for, and perform or ensure the performance of all *relocations* required for the *periodic nourishment*, operation, and maintenance of the *Project* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with *periodic nourishment*, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to issuance of the solicitation for each Government contract for each iteration of *periodic nourishment* or prior to the Government incurring any *financial obligations for periodic nourishment* of a portion of the *Project*, using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for *periodic nourishment*, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for *periodic nourishment*; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for *periodic nourishment*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for *periodic nourishment*. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or

performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to carry out the *Project*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for *initial construction, periodic nourishment*, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its

determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of the Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of the Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of the Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of the Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs

shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.L. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.E. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.L. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, allowability of such costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly during each iteration of *periodic nourishment*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. During each iteration of *periodic nourishment*, the Project Coordination Team shall generally oversee the *Project*, including matters related to plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C.

3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of each iteration of *periodic nourishment* or *functional portions* thereof; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the *Project*, including issuance of permits; and other related matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *Project*, has the discretion to accept, reject, or modify, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, and the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$ the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$ _____; the *non-Federal proportionate share* is projected to be percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$ _____. These amounts and percentage are estimates subject to adjustment by the Government, after

consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 1, 2013, and by each quarterly anniversary thereafter during each iteration of *periodic nourishment*, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming *fiscal year*; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide contribution of funds required by Article II.C. and Article XVII.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for *periodic nourishment* or commencement of construction using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet (a) the projected *non-Federal proportionate share of financial obligations for periodic nourishment* to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for periodic nourishment* through the first *fiscal year*; and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement through the first *fiscal year*. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Jacksonville" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. For the second and subsequent *fiscal years* of *periodic nourishment*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make *financial obligations for periodic nourishment* of the *Project* or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement, of the funds the Government determines to be required from the Non-Federal

Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for periodic nourishment* to be incurred in that *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for periodic nourishment* for that *fiscal year*; and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred in that *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for periodic nourishment* as *financial obligations for periodic nourishment* are incurred; and (b) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.C.2. of this Agreement as those financial obligations are incurred. If at any time during the authorized *periodic nourishment* period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the *non-Federal proportionate share of projected financial obligations for periodic nourishment* for the current *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of each iteration of *periodic nourishment* or termination of this Agreement during the authorized *periodic nourishment* period, and upon resolution of all claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for such iteration of *periodic nourishment* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for such iteration of *periodic nourishment* from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting for such iteration of *periodic nourishment* to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, for such iteration of *periodic nourishment* shall determine *total project costs* for that iteration of *periodic nourishment* and the costs of any data recovery activities associated with historic preservation for that iteration of *periodic nourishment*. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, for such iteration of

periodic nourishment show that the Non-Federal Sponsor's total required shares of *total project costs* for that iteration of *periodic nourishment* and the costs of any data recovery activities associated with historic preservation for that iteration of *periodic nourishment* exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Jacksonville" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, for such iteration of *periodic nourishment* show that the total contributions provided by the Non-Federal Sponsor for *total project costs* for that iteration of *periodic nourishment* and the costs of any data recovery activities associated with historic preservation for that iteration of *periodic nourishment* exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H.2. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, for each iteration of *periodic nourishment*, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work performed or provided during the applicable period from

being conducted in a timely manner, the Government shall conduct an interim accounting of additional work performed or provided during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work performed or provided during the applicable period to complete the final accounting of additional work performed or provided during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work incurred during the applicable period and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work incurred during the applicable period exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Jacksonville" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work performed or provided during the applicable period exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate,

and replace each iteration of *periodic nourishment*, or *functional portion* of an iteration of periodic nourishment, as applicable, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

1. At least twice annually and after storm events, the Non-Federal Sponsor shall perform surveillance of the beach, at no cost to the Government, to determine losses of nourishment material from the *Project* design section and advance nourishment section and provide the results of such surveillance to the Government.

2. The Non-Federal Sponsor shall grade and reshape the beach and dune profile using material within the *Project* area and maintain other *Project* features associated with the beach and dune.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from *periodic nourishment*, operation, maintenance, repair, replacement and rehabilitation of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section

33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall 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; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, 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.

B. In the exercise of its rights and obligations under this Agreement, neither party

shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.C.2. and Article XVII.D. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.C.2. and Article XVII.D. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. or Article VI.D. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available

for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.C.2. and Article XVII.D. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.B.3. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601 – 9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for *periodic nourishment*, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for *periodic nourishment*, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate *periodic nourishment* of the *Project*, or, if already in *periodic nourishment*, whether to continue

with work on the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for *periodic nourishment*, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with *periodic nourishment* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

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

If to the Non-Federal Sponsor:

Chairman
Board of County Commissioners of Palm Beach County, Florida
301 North Olive Avenue
West Palm Beach, Florida 33401

If to the Government:

District Engineer
Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4970

Jacksonville, Florida 32232-0019

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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

ARTICLE XVI - CONFIDENTIALITY

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.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing in accordance with the provisions of this Agreement. Further, any costs of archeological data recovery activities on lands not subject to Federal cost sharing (undeveloped private lands and privately owned shores that do not provide public benefits) that exceed the one percent limit shall not be included in *total project costs* but shall be paid by the Non-Federal Sponsor.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XIX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Acting Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY
COMMISSIONERS

BY: _____
Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

BY: _____
Chairman

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, [NAME], do hereby certify that I am the principal legal officer of Palm Beach County, Florida, and that Palm Beach County, Florida, acting by and through its Board of County Commissioners, is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the Department of the Army and Palm Beach County, Florida for the Periodic Nourishment of the Delray Beach Segment of the Palm Beach County, Florida Shore Protection Project, 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 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Agreement on behalf of Palm Beach County, Florida has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this ____ day
of
_____ of 200__.

TITLE ORGANIZATION
NAME

DATE: _____

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 Section 1352, Title 31, U.S. Code. 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.

Chairman
Palm Beach County Board of County
Commissioners

DATE: _____

ATTACHMENT 4

Will Be Swapped out

INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF DELRAY BEACH

THIS AGREEMENT is made and entered into on the ____ day of ____, 2013 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, (the "COUNTY"), and the CITY OF DELRAY BEACH, a municipal corporation in the State of Florida, (the "CITY"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, hereinafter referred to collectively as the "parties".

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the CITY is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the CITY and COUNTY intend to make the most efficient use of their powers by cooperating with each other in the maintenance and repair of the Delray Beach Segment of the Palm Beach County, Florida Shore Protection Project (PROJECT) which includes the area described in attached Exhibit "A", within the municipal limits of the City of Delray Beach, Florida; and

WHEREAS, the Department of the Army (Federal Government) and Palm Beach County, acting as the Non-Federal Sponsor, entered into an agreement dated January 23, 1973 pursuant to Section 102 of the Rivers and Harbors Act of 1962, Public Law 87-874, providing for Federal participation in the costs incurred for construction of the PROJECT; and

WHEREAS, the CITY and COUNTY entered into an Intergovernmental Agreement on

February 27, 1973, as amended by Addendum Agreement dated August 16, 1977, and supplemented by agreements dated November 8, 1983 and October 13, 1992, and October 4, 1994 which provide for joint funding of the PROJECT; and

WHEREAS, in 1973 the CITY completed the first beach restoration PROJECT for the City of Delray Beach municipal beach. Thereafter, the CITY performed maintenance nourishments in 1978, 1984, 1992 and 2013; and

WHEREAS, the Federal Government and ~~Palm Beach County~~ COUNTY entered into an agreement dated September 23, 1992 pursuant to Section 102 of the Rivers and Harbors Act of 1962, Public Law 87-874 that includes the extension of Federal participation in the PROJECT for a period of 50 years beginning from the date of initiation of construction; and

WHEREAS, The COUNTY and the Federal Government will soon enter into the Project Partnership Agreement (PPA) (attached hereto as Exhibit "B") to provide for Federal construction of the PROJECT for the remaining authorized period of periodic nourishment as set forth in the PPA.

WHEREAS, the CITY and the COUNTY previously entered into an Interlocal Agreement on October 4, 1994 (R94-1357D) to provide a mechanism for construction, monitoring and funding the PROJECT, and this Agreement replaces said Interlocal Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is to provide a mechanism for construction, monitoring and funding of the PROJECT; and to set forth the terms, conditions and obligations of each of the respective parties hereto. The parties agree that this Agreement is contingent on the COUNTY entering into the PPA attached hereto as Exhibit "B", which provides that the Federal Government will construct all iterations of the PROJECT during the term of the PPA and will cost-share with the COUNTY for the PROJECT expenses. The parties acknowledge that partial funding from the Federal Government appears to be available for the current iteration of periodic nourishment for the PROJECT proposed to commence on ? . The parties agree that if the Federal Government does not appropriate funds for the PROJECT as intended under the PPA, the parties may amend this Agreement to provide for an alternative mechanism to construct and fund the PROJECT, as needed.

2. The PROJECT. The PROJECT consists of the restoration of the City of Delray Beach municipal beach, which is more particularly as described in Exhibit "A".

3. Term. The term of this Agreement shall be from June 1, 2013 up to and through June 1, 2023 unless otherwise terminated as provided herein.

Comment [SBF1]: Retroactive or will we change this to upon execution of the parties?

4. Funding. The parties agree that given the extensive scope of the PROJECT, the timely availability of funding is of critical concern. ~~Partial funding for the PROJECT is currently available by appropriation from the Federal government.~~

5. COUNTY Obligations.

A. ~~The COUNTY shall enter into a Project Partnership Agreement (PPA) (into the PPA attached hereto as Exhibit "B", which provides for) with the Federal Government to provide for Federal construction of the Delray Beach Segment of the Authorized PROJECT for the remaining authorized period of periodic nourishment as described in the PPA.~~

B. ~~The COUNTY shall enter into thea Cooperation Agreement (CA)(attached hereto as Exhibit "C") with the Federal Government to provide for PROJECT rehabilitation in accordance with 33 U.S.C. 701n.~~

C. ~~The COUNTY shall serve as cooperating agency pursuant to the non-federal sponsor under the PPCA and public sponsor under the CA and assume the responsibility for local cooperation in the PROJECT.~~

D. ~~The COUNTY shall appropriate funds and be responsible for the non-Federal costs as detailed in the PPCA and CA in order that the funds are available to pay for expenses associated with the PROJECT. Notwithstanding any other provision herein, the COUNTY's obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Board of County Commissioners.~~

E. ~~The COUNTY shall reimburse the CITY for any expenses incurred by the CITY that are in turn eligible for cost share under the terms of the PPCA or CA.~~

6. CITY Obligations.

A. ~~The CITY shall establish and maintain a dedicated funding source for implementation of PROJECT related expenses not addressed in the PCA or CA.~~

~~The CITY shall maintain adequate records to justify all charges, expenses, and costs incurred PROJECT for at least three (3) years after completion of the PROJECT or termination of the Agreement, whichever occurs last. The COUNTY shall have access to all books, records and documents related to the PROJECT as required in this paragraph for the purpose of inspection or audit during normal business hours.~~

B. ~~The CITY shall cooperate with the COUNTY and shall take whatever steps are necessary to ensure that the COUNTY is able to timely and satisfactorily comply with all terms and conditions of the PPA and CA, assure that the requirements and standards contained in the agreement between the COUNTY and the Federal Government are complied with and maintained.~~

C. ~~The CITY shall obtain all state and federal permits necessary for the PROJECT unless notified in writing by the Director of Palm Beach County Department of Environmental~~

Resources Management that the Federal Government will handle permitting for an iteration of the PROJECT and shall fully comply with any permits obtained by the CITY, including but not limited to completing all monitoring, surveys and reporting, provide monitoring services for the PROJECT, as required by any Dredge and fill permit(s) from the Florida Department of Environmental Protection. Submerged Lands Easement(s) from the Florida Bureau of State Lands or applicable federal permit.

7. Joint Responsibilities. The CITY and the COUNTY shall endeavor to be joint applicants for State funding for the PROJECT. The COUNTY will support CITY's funding requests in the same manner as if the request came from the COUNTY, and the CITY will support the COUNTY's funding requests in the same manner as if the request came from the CITY.

8. Party Representatives. The COUNTY's representative/contract monitor during the term of this Agreement shall be the Director of the Palm Beach County Department of Environmental Resources Management, whose telephone number is (561) 233-2400. The CITY's representative/contract monitor during the term of this Agreement shall be Mr. Paul Dorling, whose telephone number is (561) 243-7040.

9. Notices. All formal notices between the parties shall be hand-delivered or sent by certified mail, return receipt requested, to the following recipients:

All notices required under this Agreement shall be forwarded, in writing, to:

Chairperson

Board of County Commissioners
Palm Beach County
301 N. Olive Avenue
West Palm Beach, FL 33401

City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444

And

With a copy to:

Director

Palm Beach County Department of
Environmental Resources Management
2300 N. Jog Road, 4th Floor
West Palm Beach, FL 33411

City Attorney
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL 33444

With a copy to:

Palm Beach County County-Attorney's Office

~~Palm Beach County~~
Address: ERM Attorney
301 N. Olive Ave., 6th Floor
West Palm Beach, FL 33401

All notices required by this Agreement shall be considered delivered upon receipt. Should any

Party change its address, written notice of such new address shall promptly be sent to the other Party.

10. Funding Contingency. The County's performance and obligations under this Agreement and any amendment hereto are contingent upon an annual appropriation by the Board of County Commissioners. The City's performance and obligations under this Agreement and any amendment hereto are contingent upon an annual appropriation by the City Council.

11. Termination for convenience. Either party may terminate this Agreement for convenience by giving 2 (?) days prior written notice to the other party. If the CITY terminates this Agreement for convenience, the CITY shall compensate the COUNTY for all costs incurred by the COUNTY as a result of such termination.

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12. Default and Opportunity to Cure. If a Party fails to fulfill its obligations under this Agreement in a timely and proper manner, the Party not in default shall have the right to terminate this Agreement and/or to bring an action for breach by giving written notice of any deficiency and its intent to terminate and/or to bring an action for breach. The Party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting Party fails to correct the deficiency within such time and unless otherwise agreed by the Parties, the Party not in default may terminate this Agreement and/or bring an action for breach.

13. Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the CITY shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out of the CITY's negligence in connection with this Agreement, and the COUNTY shall indemnify, defend and hold harmless the CITY against any actions, claims or damages arising out of the COUNTY's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

14. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28, Florida Statutes.

15. Maintenance of Records. The parties shall maintain, in accordance with generally-accepted governmental auditing standards, all financial and nonfinancial records and reports directly or indirectly related to the negotiation or performance of this Agreement or any amendment hereto, including supporting documentation for any service rates, expenses, research or reports. The parties shall have the right to examine in accordance with generally-accepted governmental auditing standards all records directly or indirectly related to this Agreement or any amendment hereto. Such examination may be made only upon reasonable notice, time and place. In the event the parties should become involved in a legal dispute with a third party arising from performance under this Agreement or any amendment hereto, the parties shall extend the period of

maintenance for all records relating to this Agreement or any amendment hereto until the final disposition of the legal dispute, and all such records shall be made readily available to the other party.

16. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.

17. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.

18. Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

19. Equal Opportunity. The COUNTY and the CITY agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity, or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.

20. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

21. Waiver of Breach. The failure to insist on strict performance of or the waiver of any covenant, condition, or provision of this Agreement by any party shall not relieve the other party from performing any other obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

22. Legal actions; remedies. Any and all legal actions to enforce this Agreement and any amendment hereto shall be brought in Palm Beach County, Florida. This Agreement and any amendment hereto shall be governed by the laws of the State of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the City.

23. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

24. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

25. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

26. Palm Beach County Office of the Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of any party contracting with the COUNTY and its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

27. Entirety of Agreement. The CITY and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

- ~~1. Default and Opportunity to Cure. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement.~~
- ~~2. Delegation. Nothing contained herein shall be deemed to authorize the delegation~~

of the constitutional *OT* statutory duties of state, county, or city officers.

3. ~~Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.~~
4. ~~Liability. The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes.~~
5. ~~Indemnification. Each party shall be liable for its own actions and negligence and, to the extent permitted under Florida law, COUNTY shall indemnify, defend and hold harmless CITY against any actions, claims or damages arising out of COUNTY's negligence in connection with this Agreement, and CITY shall indemnify, defend and hold harmless COUNTY against any actions, claims or damages arising out of CITY's negligence in connection with this Agreement. However, nothing in this paragraph shall be interpreted as a waiver of CITY's or COUNTY's sovereign immunity.~~
6. ~~Insurance. The CITY shall, during the term of this Agreement, and any extensions hereof, maintain in full force and effect general and property insurance, which specifically covers all exposures incident to the intent and responsibilities under this Agreement. Such insurance shall be in an amount to support the CITY's agreement of indemnity. The CITY's insurance shall not be canceled, limited or non-renewed until after thirty (30) days' written notice has been given to the COUNTY. Current certificates of insurance or other document evidencing required coverage must be on file with the COUNTY at all times. CITY expressly understands and agrees that any insurance protection furnished by CITY shall in no way limit its responsibility to indemnify and save harmless COUNTY under the provisions of paragraph 15 of this Agreement.~~
7. ~~Equal Opportunity. The COUNTY and the CITY agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.~~
8. ~~Severability. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.~~
9. ~~Waiver of Breach. It is hereby agreed to by the parties that no waiver of breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same of any other covenant.~~
10. ~~Termination and Revision. Either party may terminate this Agreement by giving thirty (30) days prior written notice. In the event the COUNTY revises its policy relating to the funding of shore protection PROJECTS, either party may request that this Agreement be modified to reflect said change in policy.~~
11. ~~Entirety of Agreement. The CITY and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in the Agreement may be added~~

~~to, modified, superseded, or otherwise altered, except by written instrument
executed by the parties hereto.~~

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the City of Delray Beach has caused this Agreement to be signed in its corporate name by its mayor and its corporate seal to be affixed hereto, attested by its City Clerk, the date and year first above written.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

BY: _____
Steven L. Abrams, Mayor

DATE: _____
(SEAL)

DATE: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

BY: _____
Assistant County Attorney

Robert Robbins, Director
Palm Beach County Dept. of
Environmental Resources Management

DATE: _____

ATTEST:
BY ITS COUNCIL

CITY OF DELRAY BEACH, FLORIDA,

BY: _____
City Clerk

DATE: _____
(SEAL)

BY: _____
, Mayor

DATE: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
City Attorney

DATE: _____

2013 -

BGEX - 061813*1702

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER
FUND 0001 General Fund


ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 9/30/2011	REMAINING BALANCE
<u>Appropriations</u>							
<u>Reserves</u>							
820-9900 9901 Contingency Reserves	20,000,000	18,481,536	0	2,000,000	16,481,536	0	16,481,536
820-9100 9190 Tr to Beach Imprv Fund 3652	0	0	2,000,000	0	<u>2,000,000</u>	0	2,000,000
			2,000,000	2,000,000			

ATTACHMENT 5

Environmental Resources
Management

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates

 6-11-13

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

July 16, 2013
Deputy Clerk to the
Board of County Commissioners

2013-

BGEX - 381 -061813*1706
 BGRV - 381 -061813*601

BOARD OF COUNTY COMMISSIONERS
 PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT
Fund 3652 Beach Improvement Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENCUMBERED / Expended	REMAINING BALANCE
<u>REVENUES</u>							
800-9100 Transfers 8000 Transfer from General Fund 0001	0	0	2,000,000	0	2,000,000	0	2,000,000
TOTAL RECEIPTS & BALANCES	33,157,726	31,617,460	2,000,000	0	33,617,460		
<u>EXPENDITURES</u>							
381-M041 Delray Beach Shore Protect 4630 - Beach/Dune Restore/Renourish	10,194	8,717	2,000,000	0	2,008,717	0	2,008,717
TOTAL APPROPRIATIONS & EXPENDITURES	33,157,726	31,617,460	2,000,000	0	33,617,460		

Environmental Resources
 Management

INITIATING DEPARTMENT/DIVISION
 Administration/Budget Department Approval
 OFMB Department - Posted

Signatures & Dates

 6-19-13

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

July 16, 2013

Deputy Clerk to the
 Board of County Commissioners

Attachment 6

Attachment 7

CITY OF DELRAY BEACH



May 3, 2013

The Honorable Steven L. Abrams
Palm Beach County Commission
301 N. Olive Avenue
West Palm Beach, Fl. 33401

Dear Mayor Abrams,

Recently the Army Corp. of Engineers has been allocated appropriations to mitigate damage to Florida beaches within Palm Beach County impacted by Super storm Sandy. These appropriation awards include 4,460,250 to renourish the beaches of Delray Beach. The City of Delray Beach retains local oversight of the project via an interlocal agreement between Palm Beach County and the City executed in October of 1994. However, Palm Beach County remains the local sponsor with the Army Corp. of Engineers and as such must execute a Project Partnership Agreement.

The dollars allocated for Delray Beach will allow the Army Corp. of Engineers to fund one of two projects, either a smaller project of 150,000 cubic yards the entire length of Delray Beach to replace storm losses at 100% federal cost, or a larger more beneficial project of 500,000 cubic yards with the excess 350,000 cubic yards being subject to cost sharing percentages of a normal Delray Beach renourishment project. This larger project would infuse an additional 350,000 cubic yards over and above storm losses from the north terminus of the latest renourishment project northward to the north City Limits. These cost share percentages applicable to the 350,000 cubic yards have historically been 56.33% Federal Participation and 50% of the non-federal share being covered by State and 50% being covered by Palm Beach County.

The State dollars currently under consideration for Delray Beach in the State budget are limited to monitoring dollars for the smaller project noted above and did not include General construction dollars necessary to construct the larger project option. While we are confident given the Delray Beach Project's high state ranking and the State long standing position to maximize project effectiveness by utilize federal participation dollars that the State construction dollars can be obtained in next year's budget. However, as the City has recently outlaid more than \$5 million dollars to cover

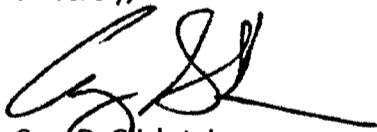
Mayor Steven L. Abrams
Palm Beach County Commission
May 3, 2013
Page 2

the federal share with the latest renourishment project (without a legislatively appropriated financial commitment from the federal government) the City is predisposed to accept the smaller project and its 100% federal cost.

In recent discussions between City Staff and the County it is clear that this a rare opportunity to place additional sand into Palm Beach County at a significantly reduced rate given the federal participation commitment. To that end and to the benefit of both the residents of Delray Beach and Palm Beach County it has been suggested that the City request modification of the interlocal agreement between the City and the Palm Beach County to cover a one-time event and have the County assume the entire Non-Federal Share. The City would seek participation by the State in the next legislative session and if the City is successful in obtaining the state allocation of the non-federal share the City would agree to pass this allocation through to the County.

I respectfully ask the Board of County Commissioners to consider our request, and, if acceptable, direct County Staff to work with the City and bring forward the necessary modifications to the interlocal agreement.

Sincerely,



Cary D. Glickstein
Mayor

CDG/pd/dr

C: City Commission
City Manager
Planning & Zoning

Attachment 8



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

26 APR 2013

Programs and Project Management Division
Water Resource Branch

Mr. Paul Dorling
Project Administrator
City of Delray Beach
100 North West 1st Avenue
Delray Beach, Florida 33444

Dear Mr. Dorling:

Our Flood Control and Coastal Emergencies (FCCE) assistance project for the Delray Beach segment of the Palm Beach County Shore Protection Project continues to move forward. The approved project scope includes restoring the entire project to the full authorized template. Attached are two agreements. The Cooperation Agreement covers our responsibilities under the FCCE program and the Project Partnership Agreement (PPA) covers the Construction General (CG) portion of the project. The PPA allows the U.S. Army Corps of Engineers to construct the project. Request the agreements be reviewed by Monday, 29 April 2013. The review period is extremely shortened due to the requirement to have a construction contract awarded by 30 September 2013. The expeditious review is required to maintain the ambitious schedule.

Per the approved Project Implementation Report, the total estimated volume of sand to be placed is 500,000cy. The estimated volume of sand under the 100% Federal FCCE is 150,000 cubic yards (cy). The additional cost shared volume of sand to re-nourish the authorized template is estimated to be 350,000 cy. The cost of mobilization/demobilization and non-construction costs are shared proportionally between the FCCE volume and the CG volume. The attached table provides the cost apportionment for the project. The cost apportionment for placement of the FCCE volume is \$1,700,804. The CG portion is cost shared at \$2,235,480 (56.3%) Federal and \$1,733,062 (43.7%) non-Federal. If Federal funding should become available, the sponsor's share for the additional work that could occur is estimated at \$2,000,000.

You may also wish to coordinate with the County as we will have to execute a Cooperation Agreement for the FCCE effort and a PPA before work can begin on the full design template. If you have any further questions please do not hesitate to contact the Project Manager, Mr. Tim Murphy, at 904-232-1671.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Hobbie".

David S. Hobbie
Deputy District Engineer
for Programs and Project Management

Enclosures

COST APPORTIONMENT OF HSDR PROJECT

Project Feature	Project Cost	Federal Share	Federal Cost	Non-Federal Share	Non-Federal Cost
Mobilization	\$2,813,543				
FCCE* (30% Proportional Cost)	\$844,063	100.0%	\$844,063	0.0%	\$0
Shore Protection - CG	\$1,969,480	56.33%	\$1,109,408	43.67%	\$860,072
Beach Replenishment	\$2,183,803				
FCCE* (30% Proportional Cost)	\$655,141	100.0%	\$655,141	0.0%	\$0
Shore Protection - CG	\$1,528,662	56.33%	\$861,095	43.67%	\$667,567
Engineering & Design	\$250,000				
FCCE* (30% Proportional Cost)	\$75,000	100.0%	\$75,000	0.0%	\$0
Shore Protection - CG	\$175,000	56.33%	\$98,578	43.67%	\$76,423
Monitoring Costs	\$150,000				
FCCE* (30% Proportional Cost)	\$45,000	100.0%	\$45,000	0.0%	\$0
Shore Protection - CG	\$105,000	56.33%	\$59,147	43.67%	\$45,854
Construction Management	\$250,000				
FCCE* (30% Proportional Cost)	\$75,000	100.0%	\$75,000	0.0%	\$0
Shore Protection - CG	\$175,000	56.33%	\$98,578	43.67%	\$76,423
Real Estate/Administrative	\$22,000				
FCCE* (30% Proportional Cost)	\$6,600	100.0%	\$6,600	0.0%	\$0
Shore Protection - CG	\$15,400	56.33%	\$8,675	43.67%	\$6,725
Total Cost	\$5,669,346				
FCCE* (30% Proportional Cost)	\$1,700,804	100.0%	\$1,700,804	0.0%	\$0
Shore Protection - CG	\$3,968,542	56.33%	\$2,235,480	43.67%	\$1,733,062

* FCCE work is performed under PL 84-99, and is 100% Federal; Distribution of Costs are based on proportional Volumes Between the Emergency FCCE work to bring the project back to pre-storm conditions and the Construction General work to rebuild the Federal project back to design dimensions with advance nourishment.

total yardage	FCCE Yardage
500,000	150,000
	30.0%