

Meeting Date  
**September 19, 2017**



AGENDA	
Section	Consent
Item No.	<i>II.A.1</i>

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	Brevard County Federal Shore Protection Project North and South Reaches (D2, D3, D5)
DEPT/OFFICE:	Natural Resources Management Department
Requested Action:	

It is requested that the Board authorize the Chairman to execute the following agreements, subject to approval by the County Attorney of final documents substantially in the form of the attached: 1) Cooperative Agreement Between the United States of America and Brevard County Florida for Rehabilitation of the Brevard County, Florida Shore Protection Project, South Reach; 2) Memorandum of Agreement Among the Bureau of Ocean Energy Management (BOEM) and the U.S. Army Corps of Engineers and Brevard County Board of County Commissioners, Regarding the Use of Outer Continental Shelf Sand Resources for Shore Protection and Restoration; and 3) Authorize the County Attorney or Chairman to affirm, or recertify, the real estate requirements necessary for construction of the North Reach and South Reach.

**Fiscal Impact: No County funds, to leverage approximately \$18.4 million in federally funded beach renourishment.**

**Summary Explanation & Background:**

On April 20, 2000, Brevard County executed a Project Cooperation Agreement with the U.S. Army Corps of Engineers for initial construction and periodic renourishment of the North and South Reaches of the BCSPP over the 50 year life of the Project. The BCSPP successfully protected all upland property within the project area during Hurricane Matthew, but suffered significant beach erosion. The County worked with the U.S. Army Corps of Engineers to quantify beach erosion within the BCSPP area. As a result of that assessment, the Army Corps approved renourishment of both reaches using 100% Federal funds. The North Reach, including Cocoa Beach and Cape Canaveral, will receive about 750,000 cubic yards of sand with an estimated cost of \$12 million. The South Reach, which covers 3.8 miles of shoreline in Indialantic and Melbourne Beach, will be renourished with roughly 275,000 cubic yards of sand for an estimated cost of \$6.4 million.

The Army Corps plans to renourish both reaches between December 1, 2017 and May 1, 2018. In order to meet this schedule, multiple agreements must be executed with the Army Corps to utilize Flood Control and Coastal Emergency funding and a three party memorandum of agreement must be executed with the Army Corps and BOEM to allow use of the offshore sand. Preliminary drafts of these agreements are attached for consideration by the Board. Any changes to these documents will be approved by the County Attorney's Office prior to execution by the Chairman.

The County has previously obtained and certified all the necessary easements and real estate agreements necessary to construct and maintain these projects for fifty years. The Army Corps is expected to request recertification of lands from the County Attorney or Chairman on very short notice before the bids are opened October 23. The format has not been provided yet, but may mirror prior certification of lands for these projects.

**Fiscal Impact: FY 16-17 No Fiscal Impact.**  
**FY 17-18 No County funds, to leverage approximately \$18.4 million in federally funded renourishment.**

**Name:** Virginia Barker (x52435) or Mike McGarry (x52696) Natural Resources Management Department, 633-2016

Clerk to the Board instruction: Final documents for execution will be provided as soon as available.

Exhibits Attached: 1) Cooperative Agreement Between the United States of America and Brevard County Florida for Rehabilitation of Phase I of the Brevard County, Florida Shore Protection Project, South Reach; 2) Memorandum of Agreement Among the BOEM of the Department of the Interior and the Corps of Engineers of the Department of the Army and Board of County Commissioners Brevard County, Florida, Regarding the Use of Outer Continental Shelf Sand Resources for Shore Protection and Restoration in Brevard County Florida.

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	County Manager	Department Director / Extension						
Frank Abbate <i>[Signature]</i>	Assistant County Manager	Virginia Barker/52435 <i>[Signature]</i>						
	John Denninghoff <i>[Signature]</i>							



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

September 20, 2017

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Department Director Attn: Mike McGarry

RE: Item II.A.1., Cooperative Agreement Between the United States of America Department of The Army and Memorandum of Agreement Among the Bureau of Ocean Energy Management (BOEM) and the U.S. Army Corps of Engineers (USACE) for Federal Shore Protection Project North and South Reaches

The Board of County Commissioners, in regular session on September 19, 2017, executed and approved the Cooperative Agreement between the United States of America Department of The Army for rehabilitation of the Brevard County, Florida Shore Protection Project – South Reach; approved the Memorandum of Agreement Among the BOEM and USACE for the use of the Outer Continental Shelf Sand Resources of the Federal Shore Protection Project; and authorized the County Attorney to affirm, or recertify, the real estate requirement necessary for the construction of the North and South Reaches. Enclosed is a copy of the Cooperation Agreement.

**By copy of this memorandum, the fully-executed Cooperation Agreement was provided to you at the Board meeting.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*for Donna Scott*  
Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Contracts Administration  
Finance  
Budget

COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
BREVARD COUNTY, FLORIDA  
for  
REHABILITATION OF THE BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT, SOUTH  
REACH

THIS AGREEMENT, entered into this 21<sup>st</sup> day of September, 2017, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Commander, Jacksonville District, U.S. Army Corps of Engineers, and Brevard County, Florida, (hereinafter referred to as the "Public Sponsor"), represented by its Chairman of the Board of Brevard County Commissioners.

**WITNESSETH THAT:**

WHEREAS, the Government constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP), authorized by the Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, and governed by the Project Cooperation Agreement dated April 20, 2000, and as amended August 8, 2013 and August 31, 2016, entitled Project Cooperation Agreement between the Department of the Army and Brevard County, Florida for Construction of the Brevard 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. 701n, 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 restoration of the Project to pre-storm conditions by providing a single placement of approximately 277,300 cubic yards of material from Florida Department of Environmental Protection monument R-119 to R-137.5, as generally described in a report entitled Project Information Report for the Rehabilitation Effort Brevard County, Florida Shore Protection Project North and South Reaches and with an Addendum Report for Economic Justification associated with the Project Information Report for the Rehabilitation Effort Brevard County, Florida Shore Protection Project North and

South Reaches prepared by the District Commander, U.S. Army Engineer District Jacksonville, dated March, 2017 and approved by the Acting Director of Contingency Operations, Homeland Security and Northwestern Division/Pacific Ocean Division RIT Leader on June 8, 2017;

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 be 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 XIA. 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 Project 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 \$6,400,000 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 [K3]" 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 Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander 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 X 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:

Program Manager  
Beaches, Boating & Waterways  
Natural Resources Management Department  
Brevard County  
2725 Judge Jamieson Way; A-219  
Viera, FL 32940

If to the Government:

District Commander  
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 Commander.

THE DEPARTMENT OF THE ARMY

BY: Jason A Kirk

Jason A. Kirk, P.E.  
Colonel, District Commander  
Jacksonville District

BREVARD COUNTY, FLORIDA

BY: Curt Smith

Curt Smith, Chairman  
Board of County Commissioners  
As approved by the Board on

Date: 9-19-17

FEID No. 59-6000523

Attest: Scott Ellis

Scott Ellis, Clerk

DATE: 21 SEP 2017

DATE: September 19, 2017.

**CERTIFICATION REGARDING LOBBYING**

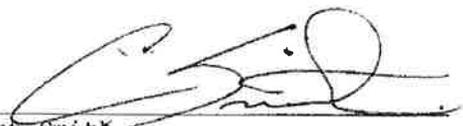
The undersigned certifies, to the best of his or her knowledge and belief that:

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

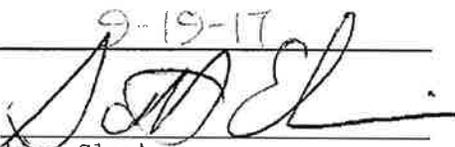
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this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

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

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

  
Curt Smith  
Chairman  
Board of Brevard County Commissioners

DATE: 9-19-17

Attest:   
Scott Ellis, Clerk

Approved by Board 19, 2017

**CERTIFICATE OF AUTHORITY**

I, Scott L. Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Brevard County, Florida in connection with the Rehabilitation of the Brevard County, Florida South Reach 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, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
19 day of September 2017.



\_\_\_\_\_  
Scott L. Knox  
County Attorney

**MEMORANDUM OF AGREEMENT  
AMONG THE BUREAU OF OCEAN ENERGY MANAGEMENT  
OF THE DEPARTMENT OF THE INTERIOR  
AND THE  
CORPS OF ENGINEERS  
OF THE DEPARTMENT OF THE ARMY  
AND  
BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES  
FOR SHORE PROTECTION AND RESTORATION  
IN BREVARD COUNTY, FLORIDA**

**BOEM Negotiated Agreement No. OCS-A 0516**

**Title I. Explanatory Recitals**

- A. Pursuant to the authority and in accordance with the requirements of Water Resources Development Act of 1996 (P.L. 104-303, §101(b)) the Department of the Army, acting through the United States Army Corps of Engineers (USACE), with the cooperation of the Brevard County Board of County Commissioners, Florida, a political subdivision of the State of Florida (the "County"), is endeavoring to renourish the beach along the Brevard County shoreline.
- B. USACE and the County have undertaken the Brevard County, Florida Shore Protection Project in furtherance of the aforementioned goal (herein referred to as the "Project").
- C. Prior to the notice-to-proceed regarding Project construction, the County and USACE will have procured lands, easements, and rights-of-way (collectively, "Land Rights") as necessary from upland landowners, other property rights holders, public entities, and other persons and entities of appropriate scope and duration to facilitate the Project.
- D. USACE, which is acting as the project manager for the Project, now seeks to obtain sand in a manner that minimizes costs and leverages Federal resources.

**Title II. Purpose and Authority**

- A. The Department of the Interior (DOI), acting through the Bureau of Ocean Energy Management (BOEM) enters into this Memorandum of Agreement (MOA) with the County and USACE (collectively with DOI or BOEM, the "Parties") providing for the use of up to 1,700,000 cubic yards of Outer Continental Shelf sand resources ("OCS sand resources") for the Project under the authority of Section 8(k)(2) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1337(k)(2)). The term "OCS sand resources" means the sediment deposits found on or below the surface of the seabed on the Outer Continental Shelf (OCS), as defined in Section 2(a) of the OCSLA (43 U.S.C. § 1331(a)). This MOA authorizes the County or USACE, as appropriate, to use OCS sand resources from Canaveral Shoals II (hereinafter called CS II), as designated and delineated in Table 1 and on the attached maps (**Attachment 1**), in accordance with the terms of this

MOA. After removal of the sand resources from the OCS and placement of those resources as specified in this MOA, BOEM has no jurisdiction over those sand resources unless they return to the OCS.

**Table 1. CS II Borrow Area Coordinates.**

<b>Latitude</b>	<b>Longitude</b>
28° 25' 07.38"	80° 26' 54.42"
28° 24' 41.60"	80° 25' 52.72"
28° 23' 32.78"	80° 26' 20.77"
28° 23' 47.61"	80° 27' 9.60"
28° 24' 14.25"	80° 27' 30.99"
28° 24' 56.91"	80° 27' 15.05"

Note: Longitude and latitude (degrees, minutes, seconds) are in geographic coordinate system WGS 1984.

**B.** BOEM, under the authority delegated by the Secretary of the Interior, is authorized, pursuant to Section 8(k)(2) of the OCSLA (43 U.S.C. § 1337(k)(2)) to enter into this MOA concerning the potential use of OCS sand resources.

BOEM has determined that the Project meets the requirements of Section 8(k)(2)(A)(i) of the OCSLA. Therefore, in accordance with Section 8(k)(2), and subject to the terms and conditions contained herein, BOEM hereby authorizes the use of OCS sand resources from the CS II Borrow Area identified in Table 1 for the construction undertaken in furtherance of the Project. The Parties acknowledge that under the terms of Section 8(k)(2)(B), BOEM will not assess any fee against the County or USACE for the use of the OCS sand resources described herein.

Nothing in this MOA is intended to abrogate or diminish the Secretary of the Interior's authority under the OCSLA to oversee and regulate the removal of OCS sand resources.

**C.** USACE, which is undertaking this Project pursuant to authority granted to it in accordance with Water Resources Development Act of 1996, enters into this MOA in compliance with requirements of Sections 8(k)(2)(A)(i) and 8(k)(2)(D) of the OCSLA. This Project is largely funded by Flood Control and Coastal Emergency funding associated with Hurricane Matthew. The County enters into this MOA in compliance with the requirements of Section 8(k)(2)(A)(i) of the OCSLA.

Nothing in this MOA is intended to impede or hinder the County's or USACE's ability to complete the Project or abrogate or diminish either Parties' authority or responsibilities under applicable law, including but not limited to the Water Resources Development Act of 1996; National Environmental Policy Act (NEPA) (42 U.S.C. §4321 *et seq.*), Endangered Species Act (ESA) (16 U.S.C. §1531 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §801 *et seq.*), Marine Mammal Protection Act (MMPA) (16 U.S.C. §1361 *et seq.*), National Historic Preservation Act (NHPA) (54 U.S.C. §300101 *et seq.*), Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§703-712), or the Coastal Zone Management Act (CZMA) (16 U.S.C. §1451 *et seq.*).

### **Title III. Project Description**

The Project is authorized under the Water Resources Development Act of 1996, as a beach erosion project, to provide storm damage protection to structures that would otherwise be threatened by chronic shoreline retreat and storm-induced erosion and to maintain an area suitable for recreation and wildlife habitat in developed beach areas. The USACE may use up to 1,700,000 cubic yards of OCS sand resources to renourish the beach. The OCS sand resources must be extracted from the CS II Borrow Area (see **Attachment 1**).

### **Title IV. Provisions**

**A.** BOEM authorizes the use of OCS sand resources from the CS II Borrow Area for the Project. The USACE or its contractor(s) may only extract, transport, and place such OCS sand resources from the borrow area in accordance with the terms and conditions set forth below and in accordance with the Florida Department of Environmental Protection (FDEP) - Consolidated Joint Coastal Permit (JCP) and Sovereign Submerged Lands Authorization Permits No. 0137212-016-JC and No. 0134869-009-JC or other applicable permits. Except as provided above, the Parties agree that all other aspects of the Project's execution and completion remain as described in the Project Cooperation Agreement between the Department of the Army and Brevard County, Florida for Construction of the Brevard County, Florida Shore Protection Project entered into on 20 April 2000, and any subsequent amendments thereto.

**B.** All written notifications, requests, submissions, and deliverables, unless otherwise stated, should be sent to BOEM at:

Chief, Marine Minerals Branch  
Attention: Jeffrey Reidenauer, Ph.D.  
Bureau of Ocean Energy Management  
45600 Woodland Road  
VAM-LD  
Sterling, Virginia 20166

All electronic notifications, submissions, and deliverables to BOEM should be sent to [dredgeinfo@boem.gov](mailto:dredgeinfo@boem.gov).

All written notifications, requests, submissions, and deliverables to the USACE should be sent to:

Programs and Project Management  
Attention: Elizabeth Fiocchi  
U.S. Army Corps of Engineers  
701 San Marco Boulevard  
Jacksonville, Florida 32207

All written notifications, requests, submissions, and deliverables to Brevard County should be sent to:

Beach Management Coordinator  
Brevard County, Natural Resources Management Department  
2725 Judge Fran Jamieson Way, A-219  
Viera, Florida 32940-6605  
Attention: Mike McGarry

C. This MOA applies only to the extraction, transportation, and placement of OCS sand resources as described above. This MOA will terminate or expire (1) upon USACE sending written notice that it has obtained sufficient OCS sand resources to complete the Project, up to 1,700,000 cubic yards, or (2) three (3) years from the date of execution of this MOA, whichever occurs first. Upon request by USACE, the Parties may agree to extend the terms of this MOA as necessary to provide USACE and its contractor(s) with additional time to complete the Project. The Parties acknowledge that there may be a need for future OCS sand resources for periodic maintenance, augmentation or construction purposes. BOEM, USACE, and the County may enter into subsequent agreements, for the use of additional OCS sand resources for the Project, consistent with each Party's responsibilities under applicable law.

D. BOEM, USACE, and the County recognize that planning and coordination among the Parties will ensure that responsibilities under the OCSLA, other applicable Federal laws, and this Congressionally-authorized Project are carried out and accommodated in an efficient and timely manner so that the Project schedule will not be unnecessarily delayed or compromised. All Parties recognize that BOEM, as a Bureau in the DOI, has certain responsibilities for the orderly, timely, and efficient recovery of OCS minerals using the best available technology while ensuring environmental stewardship and compliance. Moreover, the Parties further recognize that USACE has certain stewardship and environmental compliance responsibilities that are separate and distinct from the responsibilities of BOEM. To these ends, and with respect to the Project, BOEM, USACE, and the County agree to the following terms:

#### **1. Plans and Performance Requirements**

The USACE will include this MOA as a reference document in the advertised "Construction Solicitation and Specifications Plan" (hereinafter referred to as the "Plan"). The USACE will ensure that all operations at CS II are conducted in accordance with the final approved Plan and all terms and conditions in this MOA, as well as all applicable statutes, regulations, orders and any guidelines or directives specified or referenced herein. The USACE will send BOEM a copy of the plans and its modification when publically available.

The dredging method for removing sand from CS II will be consistent with those evaluated in all applicable NEPA documents and approved in the authorizing documents, as well as project permits. The USACE will allow BOEM to review and comment on modifications to the Plan that may affect the borrow area or pipeline corridors on the OCS, including the use of submerged or floated pipelines to directly convey sediment from the borrow area to the placement site. Said comments will be delivered in a timely fashion so as to not unnecessarily delay the USACE's construction contract or schedule.

If dredging and/or conveyance methods are not wholly consistent with those evaluated in relevant NEPA documents prepared by BOEM for this Project, and environmental and cultural resource consultations, and those authorized by the Joint Coastal Permits (JCPs), additional

environmental review may be necessary. If the additional NEPA, consultations, or permit modifications would impact or otherwise supplement the provisions of the MOA, an amendment may be required.

Prior to the commencement of construction, the USACE must electronically provide BOEM with a summary of the construction schedule consistent with Paragraph 15. The USACE, at the reasonable request of BOEM or the Bureau of Safety and Environmental Enforcement (BSEE), must allow access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and must provide BOEM or BSEE any documents and records that are pertinent to occupational or public health, safety, environmental protection, conservation of natural resources, or other use of the OCS as may be requested.

## **2. Environmental Responsibilities and Environmental Compliance**

The USACE is the lead agency on behalf of the Federal Government to ensure the Project complies with applicable environmental laws, including but not limited to the ESA, MSA, MBTA, NHPA, and CZMA, and any consultations or limitations imposed thereunder. Brevard County is responsible for compliance, with the specific conditions of the JCPs, as authorized by the CZMA.

The USACE will serve as the lead Federal agency for ESA Section 7 consultation concerning protected species under the purview of the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The USACE will instruct its contractor(s) to implement the mitigation terms, conditions, and measures required by the USFWS, NMFS, Florida DEP, and BOEM pursuant to applicable Federal and State laws and regulations prior to commencement of activities authorized under this MOA, including extraction, transportation and placement of sand resources from CS II. The required mitigation terms, conditions, and measures are reflected in the relevant Biological Opinions, Conservation Recommendations, Consistency Determinations, and JCPs. Electronic copies of all relevant correspondence, monitoring data, and reports related to the activities covered by this MOA, will be provided electronically to BOEM within 14 days of issuance (including observer, FDEP, and dredging reports). The County is responsible for compliance with the Specific Conditions of the JCP. Construction may not commence until the pre-construction requirements have been completed.

## **3. Pre-Construction Notification of Activity in or near the Borrow Area**

The USACE will invite BOEM to attend a pre-construction meeting that describes the USACE's and/or its contractors' or agents' plan and schedule to construct the Project.

The USACE will notify BOEM electronically at least 72 hours prior to the commencement, and within 24 hours after termination, of operations at CS II. BOEM will electronically notify the USACE in a timely manner of any OCS activity within the jurisdiction of the DOI that may adversely affect the USACE's ability to use OCS sand for the Project.

## **4. Dredge Positioning**

During all phases of the Project, the USACE will ensure that the dredge and any bottom-disturbing equipment is outfitted with an onboard global positioning system (GPS) capable of

maintaining and recording location within an accuracy range of no more than plus or minus 3 meters. The GPS must be installed as close to the hydraulic dredge as is practicable or must use appropriate instrumentation to accurately represent the position of the hydraulic dredge. During dredging operations, the USACE will immediately notify BOEM electronically if dredging occurs outside of the approved borrow area. Such notification will be made as soon as possible after the time USACE becomes aware of dredging outside of the approved borrow area.

Anchoring, spudding, or other bottom disturbing activities are not authorized outside of the approved borrow area on the OCS, except for immediate concerns of safety, navigation risks or emergency situations.

The USACE will provide BOEM, electronically, with all appropriate Dredging Quality Management (DQM) data acquired during the Project using procedures jointly developed by the USACE's National Dredging Quality Management (DQM) Data Program Support Center and BOEM. The USACE will submit the DQM data, including draghead, cutterhead, or other hydraulic or mechanical dredging device depth every two weeks. A summary DQM dataset will be submitted within 90 days of completion of the Project. If available, the USACE will also submit Automatic Identification System (AIS) data for vessels qualifying under the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea.

## **5. Dredge Operation**

Dredging will occur preferentially in naturally accreting areas of CS II and dredging will be avoided in erosional areas of the shoal to the extent possible. If a hopper dredge is used, dredging will be performed so that the hopper dredge excavates material using relatively shallow, uniform passes to an overall cut depth not to exceed that permitted under the Florida JCP Final Order addressing sand compatibility requirements. The USACE will use the methods necessary to maintain the relative profile and shape of the sand shoal complex to the extent practicable, as determined by the USACE, to avoid creating deep depressions or pits.

## **6. Submittal of Production and Volume Information**

The USACE, in cooperation with the dredge operator, must submit to BOEM a summary of the dredge track lines, outlining any deviations from the original Plan every two weeks. A color-coded plot of the draghead, cutterhead, or other hydraulic or mechanical dredging device will be submitted, showing any horizontal or vertical dredge violations. The dredge track lines must show dredge status: hotelling, dredging, transiting, or unloading. This map will be provided in PDF format.

At least every two weeks, the USACE will electronically provide a report of the construction progress including estimated volumetric production rates to BOEM. The project completion report, as described below, will also include production and volume information, including Daily Operational Reports.

## **7. Local Notice to Mariners**

The USACE will require its contractor(s) for the Project to place a notice in the U.S. Coast Guard Local Notice to Mariners regarding the timeframe and location of dredging and construction operations in advance of commencement of dredging.

## **8. Marine Pollution Control and Contingency Plan**

The USACE will require its contractor(s) and subcontractor(s) to prepare for and take all necessary precautions to prevent discharges of oil and releases of waste or hazardous materials that may impair water quality. In the event of such an occurrence, notification and response will be in accordance with applicable requirements of 40 C.F.R. Part 300. All dredging and support operations must be compliant with U.S. Coast Guard regulations and the U.S. Environmental Protection Agency's Vessel General Permit, as applicable. The USACE will notify BOEM of any noncompliant discharges and remedial actions taken, and will provide copies of reports of the incident and resultant actions electronically.

## **9. Encounter of Ordnance**

If any ordnance is encountered while conducting dredging activities at CS II, the USACE will report the discovery within 24 hours to Dr. Jeff Reidenauer, Chief, BOEM Marine Minerals Branch, at (703) 787-1851 and [dredgeinfo@boem.gov](mailto:dredgeinfo@boem.gov).

## **10. Bathymetric Surveys**

The Corps will provide BOEM with pre- and post-dredging bathymetric surveys of the Borrow Area. The pre-dredging survey of the Borrow Area will be conducted within 60 days prior to the commencement of dredging and the data will be provided to BOEM for review via [dredgeinfo@boem.gov](mailto:dredgeinfo@boem.gov), allowing for a minimum of 7 working days for BOEM to provide concurrence prior to the commencement of dredging. A qualified hydrographic surveyor, independent from the dredging/construction contractor, must conduct and oversee the survey, and must approve the survey results before transmitting them to BOEM. The post-dredging survey of the Borrow Area will be conducted within 60 days after the completion of dredging. BOEM recommends that the Corps conduct additional bathymetric surveys of the Borrow Area one (1) and three (3) years after the completion of dredging to document borrow area evolution and provide information to inform future decisions and consultations regarding use of OCS sand resources. Surveys, error analysis, and reporting will be performed in accordance with the most recent edition of the National Oceanic and Atmospheric Administration's (NOAA's) Office of Coast Survey Hydrographic Survey Field Procedure Manual. Survey standards and requirements are specified and can be found on the Coast Survey Document Library (<https://www.nauticalcharts.noaa.gov/hsd/specs/specs.htm>).

For bathymetric surveys, one hundred percent coverage using multi-beam bathymetric survey methods is required. All bathymetric data will be roll, pitch, heave, and tide corrected using best practices. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor. Survey lines of the specific dredge area will be established at intervals necessary to provide 100 percent

coverage. All survey lines will extend at least 100 meters (328 feet) beyond the edge of the Borrow Area limits as defined in this MOA.

All data will be collected in such a manner that post-dredging bathymetric surveys are compatible with the pre-dredging bathymetric survey data to enable the latter to be subtracted from the former to calculate the volume of sand removed, the shape of the excavation, and the nature of post-dredging bathymetric change. Pre-dredge bathymetric survey transects will be reoccupied during the post-dredging surveys. Surveys will be conducted using kinematic GPS referenced to a GPS base station occupying an established (NAVD 88 vertical control) monument within 15 kilometers (9 miles) of the survey area, a National Geodetic Survey real-time network, or a water-level gauge deployed within the vicinity of the Borrow Area and referenced to an established monument (NAVD 88 vertical control), unless alternative methods are approved by BOEM. Pre- and post-dredging surveys will be referenced to the same water-level gauge, tide gauge, real-time network, benchmark, or BOEM-approved method. An uncertainty or error analysis will be conducted on the bathymetric dataset based on calculated differences of measured elevations (depths) at all transect crossings (also note that other best practices typically employed to identify potential error or quantify uncertainty, such as daily bar-checks, will be conducted and documented). A methods and results of the uncertainty analysis report, field notes, and metadata must be submitted to BOEM with the processed bathymetric data products.

If data accuracy, coverage, quality, or other parameters for either pre- or post-dredging surveys are not sufficient to provide for accurate comparisons between the pre-dredge and post-dredge surveys (e.g., do not meet specifications and standards discussed or referenced above), BOEM may require that a new survey (at the pre-dredge and/or post-dredge phase) be conducted.

The delivery format for bathymetry data submission is an ASCII file containing x, y, z data and a digital elevation model in a format agreed upon between BOEM and USACE in writing. The horizontal data will be provided in the NAD83 Florida State Plane East, U.S. survey feet. Vertical data will be provided in the NAVD 88, U.S. survey feet unless otherwise specified. An 8.5 x 11 inch plan view plot of the pre- and post-construction data will be provided showing the survey vessel navigation tracks, as well as contour lines at appropriate elevation intervals. A plot of the digital elevation model will also be provided. These plots will be provided in Adobe PDF format. Images and descriptions of side scan sonar or bathymetric anomaly targets will be included and identified on an index map.

## **11. Archaeological Resources**

### *Onshore Prehistoric or Historic Resources*

If the USACE discovers any previously unknown historic or archeological resources while accomplishing the activity on Brevard County beaches, the USACE will notify BOEM of any finding. The USACE will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

*Offshore Prehistoric or Historic Resources*

The following five anomalies (listed in **Table 2**) must be avoided during dredging operations by at least 300 feet:

**Table 2. Anomalies to be avoided During Dredging Operations**

Target	Area/Block	Amplitude (gammas)	Duration (ft)	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Minimum Avoidance Radius (ft)	Note
m57	Canaveral Shoals II	147	140	831766/1482563	300	Cultural Resource
m35	Canaveral Shoals II	51	125	836039/1482530	300	Cultural Resource
DRE 2	Canaveral Shoals II	NA	NA	837220/1480453	300	Acoustic Receiver
m47	Canaveral Shoals II	61	165	837485/1480862	300	Cultural Resource
m61	Canaveral Shoals II	52	100	832730/1481664	300	Cultural Resource

Targets identified as a “Cultural Resource” are potentially significant historical resources (e.g., debris related to space program). The target identified as an “Acoustic Receiver” is an operational scientific instrument used in a BOEM scientific study. In the event that the

Parties and/or dredge operators discover any archaeological resources prior to dredging operations in CS II or in the vicinity of pump-out operations, the USACE will report the discovery to the Chief, Marine Minerals Branch, BOEM electronically in a timely manner. The Corps Planning Division will coordinate with BOEM on the measures needed to evaluate, avoid, protect, and, if needed, mitigate adverse impacts from an unanticipated discovery. If investigations determine that the resource is significant, the Parties will together determine how best to protect it.

If the Parties and/or dredge operators discover any archaeological resources while conducting dredging operations, the USACE will require that dredge and/or pump-out operations be halted immediately and avoid the resource per the requirements of the USACE specifications for unanticipated finds. The USACE will then immediately report the discovery to Chief, Marine Minerals Branch, BOEM electronically. The Corps Planning Division will coordinate with BOEM on the measures needed to evaluate, avoid, protect, and, if needed, mitigate adverse impacts from an unanticipated discovery. If investigations determine that the resource is significant, the Parties will together determine the necessary further action required and how to best protect the resource.

## **12. Responsibilities**

BOEM does not warrant that the OCS sand resources used in this Project are suitable for the purpose for which they are intended by the USACE and the County. BOEM's responsibility under this Project is limited to the authorization of access to OCS sand resources from CS II, as described in this MOA, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken by the other Parties in pursuit of the Project.

## **13. Project Completion Report**

Consistent with Paragraph 15, a project completion report will be submitted by the USACE to BOEM within 120 days following completion of the activities authorized under this MOA. This report and supporting materials should be sent in writing and electronically. The report will contain, at a minimum, the following information:

- the names and titles of the project managers overseeing the effort (for the USACE, the engineering firm (if applicable), and the contractor), including contact information (phone numbers, mailing addresses, and email addresses);
- the location and description of the project, including the final total volume of material extracted from the borrow area and the volume of material actually placed on the beach or shoreline (including a description of the volume calculation method used to determine these volumes);
- DQM data, in ASCII files, containing the x, y, z and time stamp of the cutterhead or drag arm locations;
- a narrative describing the final, as-built features, boundaries, and acreage, including the restored beach width and length;
- a narrative discussing the construction sequences and activities, and, if applicable, any problems encountered and solutions;
- a list and description of any construction change orders issued, if applicable;
- a list and description of any safety-related issues or accidents reported during the life of the project;
- a narrative and any appropriate tables describing any environmental surveys or efforts associated with the project and costs associated with these surveys or efforts;
- a table listing significant construction dates beginning with bid opening and ending with final acceptance of the project by the USACE;
- a table, an example of which is illustrated below, showing the various key project cost elements;

	Cost Incurred as of Construction Completion (\$)
Construction	
Engineering and Design	
Pre- and Post-Dredging Bathymetric Surveys	
Compilation of Project Completion Report	
Total	

- a table showing the various phases of the project construction, the types of construction equipment used, the nature of their use;
- digital appendices containing the as-built surveys, beach-fill cross-sections, and survey data; and
- any additional pertinent comments.

#### **14. Reporting Compliance**

The USACE will designate in advance of construction a single point of contact (and preferably a back-up contact) responsible for facilitation of compliance with all MOA requirements. The contact information will be provided to BOEM, electronically, at least 30 days in advance of dredging and construction operations.

The Parties will attempt to reasonably comply with the provisions of this MOA. Should there be an allegation of a failure to comply, the allegation will be corrected as soon as possible and/or resolved jointly among BOEM, USACE and County, including through the dispute resolution process identified in Paragraph 16.

#### **15. Sharing of Information**

Consistent with the purpose stipulated by the Parties in Title II, and to the extent allowed by law, policy and regulation, the USACE, the County, and BOEM agree to: (1) share all information needed for or generated from the Project, including the sharing of implementation and other applicable schedules; (2) provide such information to the requesting agency as expeditiously as possible; and (3) work to ensure that all required completion report information is received.

The Parties to this MOA acknowledge that information and reports required by and/or exchanged pursuant to the Project that is the subject of this MOA may include confidential business information, proprietary information, or other sensitive information that should be protected from disclosure.

Any Party, contractor or agent of one of the Parties requesting information or reports provided pursuant to this MOA be treated as confidential, will prominently mark the information and report as “Confidential” along with the bases for the claim of confidentiality. Any covering correspondence submitted with the information or report will likewise note the claim of confidentiality being asserted. To the extent practicable, a Party to this MOA may only request information that has been marked as “Confidential” and is in the possession of another Party to

this MOA if the information is needed by the requesting Party to carry out their obligations under this MOA or if the information is necessary for the requesting Party to fulfill their obligations under the law. The Party in possession of the information requested may work with the requesting party to determine if the information can be shared without waiving the confidential nature of the material.

The Parties further agree that they will immediately and timely notify the other Parties in writing of any request by any person seeking the release or disclosure of information marked "Confidential" in whole or in part, including, but not limited to, requests pursuant to Court orders, discovery, subpoenas, or other compulsory process, or public access request under applicable Federal or State law. Notification will be considered timely if it provides the Parties or individuals claiming the information or report is confidential a reasonable opportunity to seek a Court order to prevent release or disclosure. Any disputes regarding requests for information or the confidential nature of the information requested will be resolved according to applicable law and through the dispute resolution process identified in Paragraph 16. If the Party or individual claiming the information or report is confidential fails to obtain a timely Court order preventing the release or disclosure of the information, the Party in possession of the information will release it to the extent required by applicable law.

#### **16. Resolution of Disputes**

The Parties agree to make every attempt to settle any disputes regarding this MOA at the lowest operational level. In the case of a (1) substantial disagreement between BOEM and USACE or between BOEM and the County with respect to any aspect of the BOEM's authorization of the use of OCS sand resources in accordance with the terms and conditions as specified or (2) any alleged breach by a Party of the terms and conditions as specified herein, the undersigned will designate a senior management official in their respective agencies to state the area(s) of disagreement or alleged breach in writing and present such statement to the other Parties for consideration. If resolution is not reached within 60 days, the undersigned may request the active participation of the District Commander, Jacksonville District of the USACE, the Chief of the Office of Strategic Resources of BOEM, and the County Administrator or designee.

#### **17. Miscellaneous**

This MOA will not affect any pre-existing or independent relationships or obligations among DOI, USACE, and the County, including any other relationships or obligations between BOEM and USACE, or any other units of such Departments.

All rights in the CS II Borrow Area not expressly granted to USACE and County are hereby reserved to BOEM. BOEM reserves the right to authorize other uses in the CS II Borrow Area that will not unreasonably interfere with activities authorized under this MOA. BOEM will allow USACE and the County to review and comment on any proposed authorizations for the use of OCS sand resources in the CS II Borrow Area while this MOA is in effect.

Nothing herein is intended to conflict with current USACE, County, or BOEM statutes or regulations. If the terms of this MOA are inconsistent with existing statutes or regulations of any of the Parties entering into this MOA, then those portions of this agreement which are

determined to be inconsistent will be invalid, but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect. At the first opportunity for review of the MOA once such inconsistency is identified, all necessary changes will be accomplished either by an amendment to this MOA or by entering into a new MOA, whichever is deemed expedient to the interest of the Parties.

This agreement may be executed in two (2) or more counterparts, each of which will be deemed an original. The signatures to this agreement may be executed on separate pages, and when attached to this agreement will constitute one complete document.

*[The remainder of this page was intentionally left blank. Signature Pages to follow.]*

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT  
OF THE DEPARTMENT OF THE INTERIOR  
AND THE  
CORPS OF ENGINEERS  
OF THE DEPARTMENT OF THE ARMY  
AND  
BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES  
FOR SHORE PROTECTION AND RESTORATION  
IN BREVARD COUNTY, FLORIDA**

**BOEM Negotiated Agreement No. OCS-A 0516**

**Signatory Page**

\_\_\_\_\_  
L. Renee Orr  
Chief, Strategic Resources Office  
Bureau of Ocean Energy Management  
Department of the Interior

\_\_\_\_\_  
Jason A. Kirk  
Colonel, Corps of Engineers  
Corps of Engineers  
Jacksonville District

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

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

Brevard County Board Of County Commissioners

By:

  
\_\_\_\_\_

Curt Smith, Chairman

As approved by the Board on: 9/19/17

Attest:   
\_\_\_\_\_

Scott Ellis, Clerk

Reviewed for legal form and content by:

  
\_\_\_\_\_

Christine Valliere, Assistant County Attorney

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT  
OF THE DEPARTMENT OF THE INTERIOR  
AND THE  
CORPS OF ENGINEERS  
OF THE DEPARTMENT OF THE ARMY  
AND  
BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES  
FOR SHORE PROTECTION AND RESTORATION  
IN BREVARD COUNTY, FLORIDA**

**BOEM Negotiated Agreement No. OCS-A 0516**

**Signatory Page**

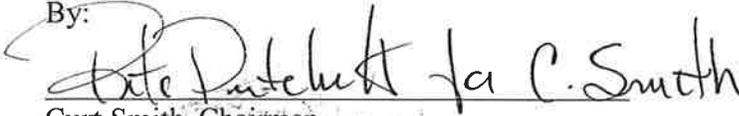
\_\_\_\_\_  
L. Renee Orr  
Chief, Strategic Resources Office  
Bureau of Ocean Energy Management  
Department of the Interior

\_\_\_\_\_  
Jason A. Kirk  
Colonel, Corps of Engineers  
Corps of Engineers  
Jacksonville District

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

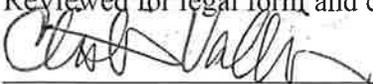
Date: \_\_\_\_\_

Brevard County Board Of County Commissioners

By:   
Curt Smith, Chairman

As approved by the Board on: 9/19/17

Attest:   
Scott Ellis, Clerk

Reviewed for legal form and content by:  
  
Christine Valliere, Assistant County Attorney

**MEMORANDUM OF AGREEMENT  
AMONG  
THE BUREAU OF OCEAN ENERGY MANAGEMENT  
OF THE DEPARTMENT OF THE INTERIOR  
AND THE  
CORPS OF ENGINEERS  
OF THE DEPARTMENT OF THE ARMY  
AND  
BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES  
FOR SHORE PROTECTION AND RESTORATION  
IN BREVARD COUNTY, FLORIDA**

**BOEM Negotiated Agreement No. OCS-A 0516**

**Signatory Page**

\_\_\_\_\_  
L. Renee Orr  
Chief, Strategic Resources Office  
Bureau of Ocean Energy Management  
Department of the Interior

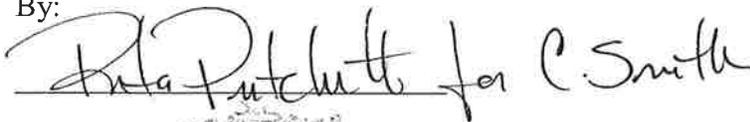
\_\_\_\_\_  
Jason A. Kirk  
Colonel, Corps of Engineers  
Corps of Engineers  
Jacksonville District

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

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

Brevard County Board Of County Commissioners

By:

  
\_\_\_\_\_

Curt Smith, Chairman

As approved by the Board on: 9/19/17

Attest:   
\_\_\_\_\_

Scott Ellis, Clerk

Reviewed for legal form and content by:

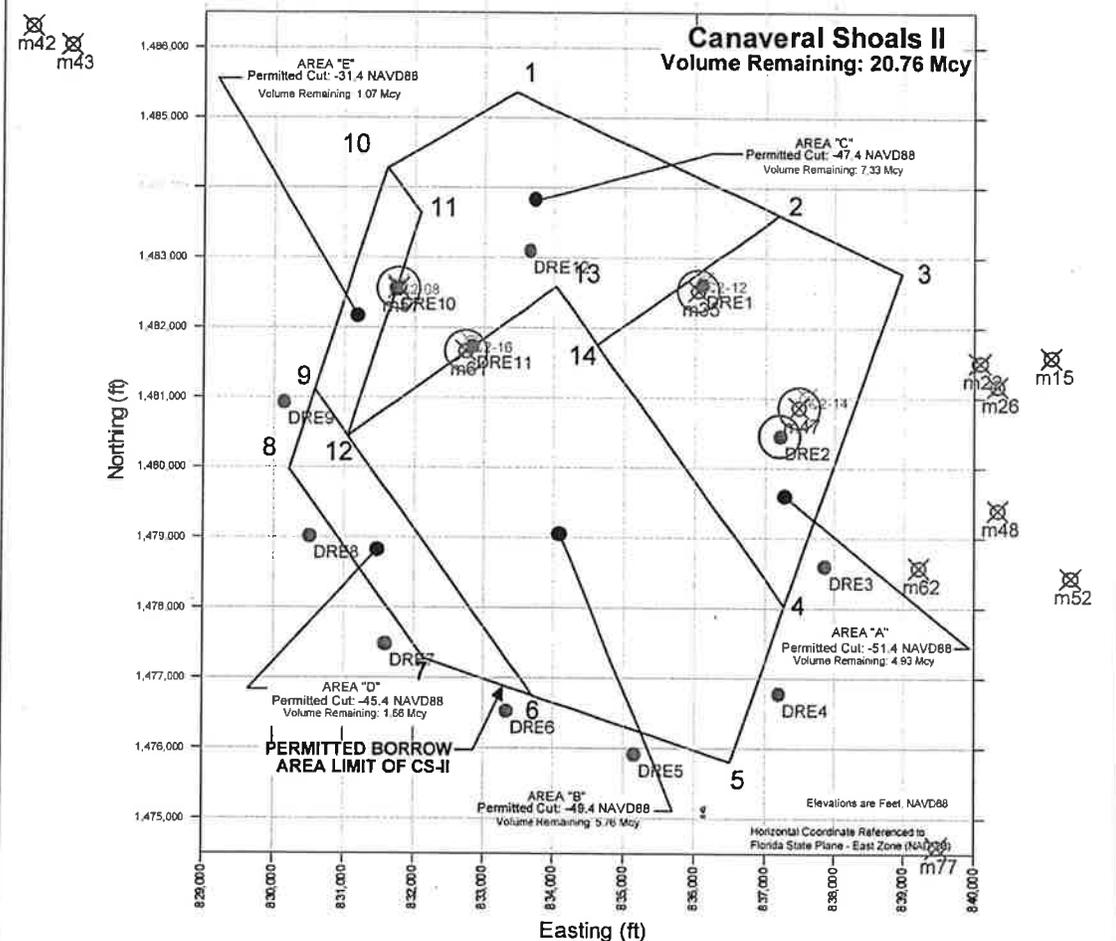
  
\_\_\_\_\_

Christine Valliere, Assistant County Attorney

This page intentionally left blank

**Attachment 1**  
**CS II Borrow Area Map and Placement Sites**

May 2014, Post-Construction Bathymetric Survey



Acoustic Receiver Locations

Station Name	Easting (FT)	Northing (FT)	Latitude (Deg)	Longitude (Deg)
DRE1	836,097.2	1,482,614.7	28.41118	-80.44027
DRE2	837,219.6	1,480,452.9	28.40522	-80.43681
DRE3	837,858.4	1,478,597.9	28.40011	-80.43485
DRE4	837,198.2	1,476,780.5	28.39512	-80.43693
DRE5	835,141.2	1,475,916.4	28.39277	-80.44334
DRE6	833,325.0	1,476,529.8	28.39448	-80.44898
DRE7	831,594.1	1,477,485.5	28.39713	-80.45435
DRE8	830,510.1	1,479,018.6	28.40136	-80.45770
DRE9	830,141.5	1,480,933.1	28.40663	-80.45882
DRE10	831,728.6	1,482,569.2	28.41111	-80.45386
DRE11	832,825.4	1,481,734.3	28.40880	-80.45016
DRE12	833,642.2	1,483,097.9	28.41254	-80.44788

PERMIT DRAWINGS. NOT FOR CONSTRUCTION



**olsen**  
associates, inc.  
2618 Herschel Street  
Jacksonville, FL 32204  
(904) 387-6114  
COA No. 3491

BREVARD COUNTY, FL  
SHORE PROTECTION PROJECT - SOUTH REACH

**CANAVERAL SHOALS II  
BORROW AREA**

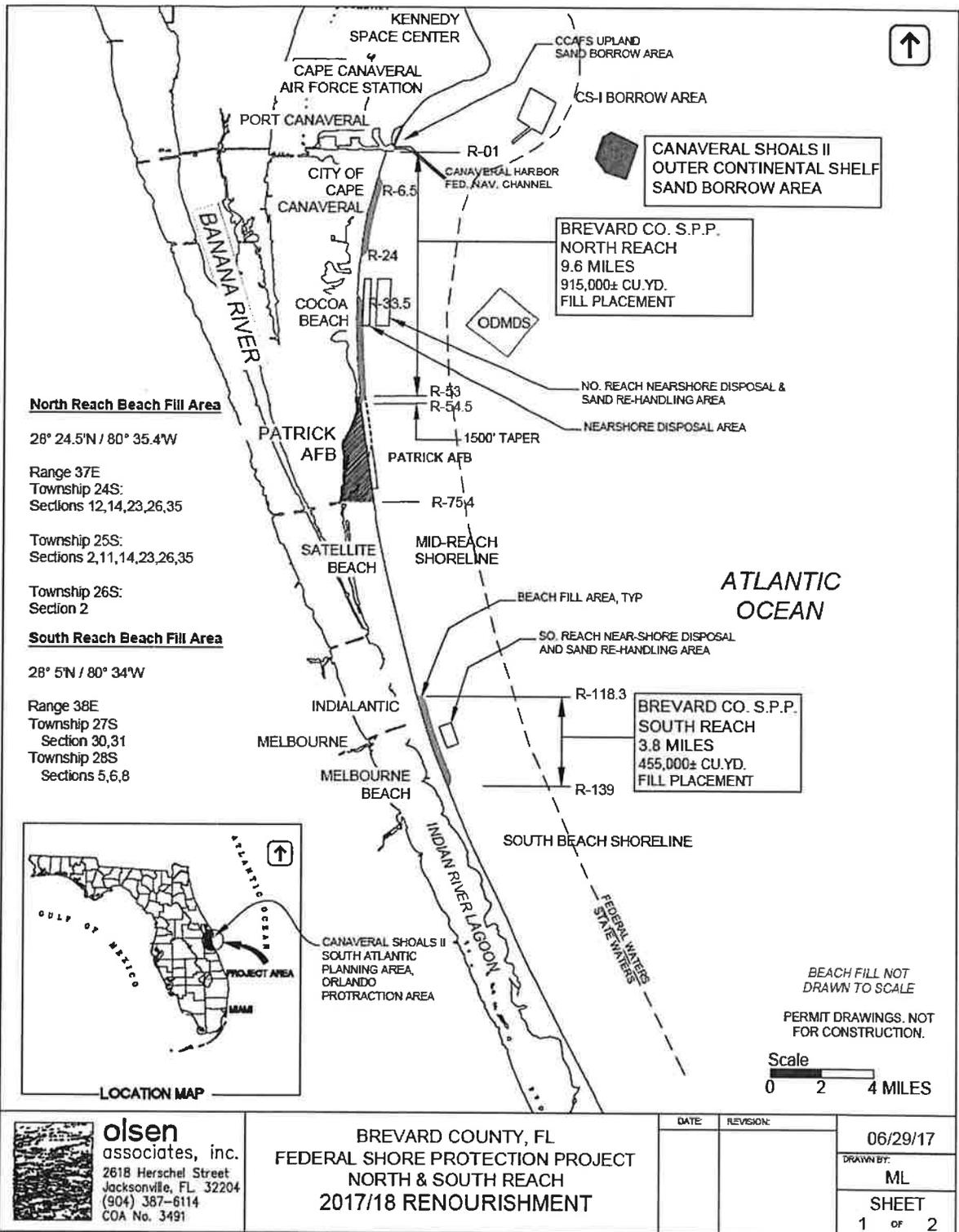
DATE: REVISION:

DATE:  
08/31/17

DRAWN BY:  
ML

SHEET  
1 of X

**Canaveral Shoals II Borrow Area Map**



2:ProjectID and 5:Revision: 2017-18 RENOURISHMENT SHEET 1 of 2, 1 June 2017.dwg


**olsen**  
 associates, inc.  
 2618 Herschel Street  
 Jacksonville, FL 32204  
 (904) 387-6114  
 COA No. 3491

BREVARD COUNTY, FL  
 FEDERAL SHORE PROTECTION PROJECT  
 NORTH & SOUTH REACH  
 2017/18 RENOURISHMENT

DATE	REVISION:
06/29/17	
DRAWN BY:	
ML	
SHEET	
1 OF 2	

**2017 North and South Reaches Beach Renourishment Placement Sites in Brevard County**

This page intentionally left blank

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
BREVARD COUNTY, FLORIDA  
for  
REHABILITATION OF THE BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT, SOUTH  
REACH**

**THIS AGREEMENT**, entered into this 19 day of September, 2017, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Commander, Jacksonville District, U.S. Army Corps of Engineers, and Brevard County, Florida, (hereinafter referred to as the "Public Sponsor"), represented by its Chairman of the Board of Brevard County Commissioners.

**WITNESSETH THAT:**

**WHEREAS**, the Government constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP), authorized by the Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, and governed by the Project Cooperation Agreement dated April 20, 2000, and as amended August 8, 2013 and August 31, 2016, entitled Project Cooperation Agreement between the Department of the Army and Brevard County, Florida for Construction of the Brevard 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. 701n, 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 restoration of the Project to pre-storm conditions by providing a single placement of approximately 277,300 cubic yards of material from Florida Department of Environmental Protection monument R-119 to R-137.5, as generally described in a report entitled Project Information Report for the Rehabilitation Effort Brevard County, Florida Shore Protection Project North and South Reaches and with an Addendum Report for Economic Justification associated with the Project Information Report for the Rehabilitation Effort Brevard County, Florida Shore Protection Project North and

South Reaches prepared by the District Commander, U.S. Army Engineer District Jacksonville, dated March, 2017 and approved by the Acting Director of Contingency Operations, Homeland Security and Northwestern Division/Pacific Ocean Division RIT Leader on June 8, 2017;

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 be 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 XIA. 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 Project 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 \$6,400,000 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 [K3]" 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 Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander 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 X 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:

Program Manager  
Beaches, Boating & Waterways  
Natural Resources Management Department  
Brevard County  
2725 Judge Jamieson Way; A-219  
Viera, FL 32940

If to the Government:

District Commander  
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.

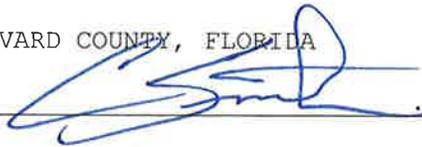
IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

BY: \_\_\_\_\_

Jason A. Kirk, P.E.  
Colonel, District Commander  
Jacksonville District

BREVARD COUNTY, FLORIDA

BY: 

Curt Smith, Chairman  
Board of County Commissioners  
As approved by the Board on  
Date: 9-19-17  
FEID No. 59-6000523

Attest:   
Scott Ellis, Clerk

DATE: \_\_\_\_\_

DATE: September 19, 2017

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:

Program Manager  
Beaches, Boating & Waterways  
Natural Resources Management Department  
Brevard County  
2725 Judge Jamieson Way; A-219  
Viera, FL 32940

If to the Government:

District Commander  
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 Commander.

THE DEPARTMENT OF THE ARMY

BY: Jason A Kirk

Jason A. Kirk, P.E.  
Colonel, District Commander  
Jacksonville District

BREVARD COUNTY, FLORIDA

BY: Curt Smith

Curt Smith, Chairman  
Board of County Commissioners  
As approved by the Board on  
Date: 9-19-17  
FEID No. 59-6000523

Attest: Scott Ellis

Scott Ellis, Clerk

DATE: 21 SEP 2017

DATE: September 19, 2017.

**CERTIFICATION REGARDING LOBBYING**

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

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

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

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

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

  
Curt Smith  
Chairman  
Board of Brevard County Commissioners

DATE: 9-19-17

Attest:   
Scott Ellis, Clerk

Approved by Board 9/19/17

**CERTIFICATE OF AUTHORITY**

I, Scott L. Knox, do hereby certify that I am the principal legal officer of Brevard County, Florida, that Brevard County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Brevard County, Florida in connection with the Rehabilitation of the Brevard County, Florida South Reach 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, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Brevard County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
19 day of September 2017.

  
\_\_\_\_\_  
Scott L. Knox  
County Attorney