



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

7/25/2023

Subject:

Brevard County Shore Protection Project, Agreements for Restoration of the South Reach and Mid Reach Project Areas.

Fiscal Impact:

No county funds are required to cost-share an estimated \$69,141,600 in federally funded beach renourishment.

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) Cooperative Agreement Between the United States of America and Brevard County Florida for Rehabilitation of the Brevard County, Florida Shore Protection Project, Mid-Reach Segment; 3) 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.

Summary Explanation and 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 Brevard County Shore Protection Project over the 50-year life of the Project. On August 31, 2016, Brevard County entered into a Project Partnership Agreement with the Army Corps adding the Mid Reach segment to the Brevard County Shore Protection Project. The Project successfully protected upland property within the project area during Hurricanes Ian and Nicole but suffered significant beach erosion. The County worked with the U.S. Army Corps of Engineers to quantify storm-related beach erosion within the area and seek emergency restoration funds. As a result of that assessment, the Army Corps is in the final stages of approving renourishment of both the South Reach and Mid Reach using 100% federal funds. Current estimates for the work are \$20,559,400 for the 3.8 mile South Reach and \$48,582,200 for the 7.8 mile Mid Reach. No County funds are required by the Army Corps to complete this beach construction.

Subject to final approval by Army Corps leadership, the Corps tentatively plans to renourish the South and Mid Reaches between November 2023 and May 1, 2025. To meet this schedule, two 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 the use of the offshore sand. Preliminary drafts of these agreements are attached for consideration by the Board. Approval of these drafts before final copies are available is essential to meet the Army Corp's goal of advertising the construction project in August 2023. Final copies for review and execution cannot be provided until the federal review/approval processes are complete. Final documents will be approved by the County Attorney's Office prior to execution by the Chairman. The Board previously approved the execution of similar draft documents on September 19, 2017 and July 9, 2019.

Clerk to the Board Instructions:

If final documents are provided by the federal government prior to the BOCC meeting date, attachments will be updated to allow execution at the meeting. If not, Mike McGarry (Mike.McGarry@brevardfl.gov <<mailto:Mike.McGarry@brevardfl.gov>>; 321-537-1779) or Leslie Snyder (Leslie.snyder@brevardfl.gov <<mailto:Leslie.snyder@brevardfl.gov>>) with Natural Resources will coordinate the final document execution and attestation.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 26, 2023

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.3., Brevard County Shore Protection, Agreements for Restoration of the South Reach and Mid Reach Project Areas

The Board of County Commissioners, in regular session on July 25, 2023, approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida, Shore Protection Project, South Reach, subject to approval by the County Attorney; approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida Shore Protection Project, Mid-Reach segment, subject to approval by the County Attorney; and approved the Memorandum of Agreement among the bureau of Ocean Energy Management (BOEM), the U.S. Army Corp of Engineers, and Brevard County Board of County Commissioners regarding the use of outer continental shelf sand resources for the shore protection and restoration, upon approval by the County Attorney.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

cc: Contracts Administration
County Attorney
County Manager

**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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A xxxx

Title I. Explanatory Recitals

- A.** Pursuant to the authority of and in accordance with Section 101(b)(7) of the Water Resources Development Act of 1996 (P.L. 104-303) as amended by Section 3045(a) of the Water Resources Development Act of 2007 (P.L. 110-114), the Department of the Army, acting through the United States Army Corps of Engineers, Jacksonville District (USACE), with the cooperation of the Brevard County Board of County Commissioners, a political subdivision of the State of Florida, represented by the Chair of the Board of County Commissioners (the "County"), is endeavoring to conduct the emergency renourishment of the North, Mid, and South Reaches of the Brevard County, Florida Shore Protection Project.
- B.** USACE and the County are undertaking the Brevard County Shore Protection Project, in furtherance of the aforementioned goal to renourish the North, Mid, and South Reaches of the Brevard County, Florida shoreline (herein referred to as the "Project").
- C.** Prior to a notice-to-proceed for Project construction, USACE and the County 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 or "Agreement") with USACE and the County (collectively with DOI or BOEM, the "Parties") providing for the use of up to 2,900,000 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 use of the Canaveral Shoals II Borrow Area

("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 OCS sand resources 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. CSII Borrow Area Coordinates

Point	Latitude	Longitude	Easting	Northing
1	28.418717	80.448451	833,454.9	1,485,342.9
3	28.411554	80.431310	838,976.9	1,482,764.3
5	28.392439	80.439102	836,504.3	1,475,802.4
7	28.396557	80.452666	832,136.4	1,477,279.8
8	28.403957	80.458609	830,213.8	1,479,961.6
10	28.415809	80.454180	831,618.0	1,484,277.4

Note: Longitude and Latitude in Geographic Coordinate System NAD 1983. Easting and Northing in Florida State Plane Coordinate System (ft) NAD 1983

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 USACE or the County 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. Pursuant to 30 CFR 583.330, failure to comply with any applicable law or any provision, term, or condition of this Agreement may result in termination of the Agreement at the sole discretion of BOEM, referral to an appropriate Federal or State agency with jurisdiction for possible enforcement, or both. Failure to comply in a timely and satisfactory manner with any provision, term or condition of this Agreement may also delay or prevent BOEM's approval of future requests for use of OCS sand by the parties to this Agreement.

The MOA may be terminated by BOEM consistent with provisions in 30 CFR 583.350. If USACE or the County violates any provisions of this MOA, BOEM may, by written notice, suspend the MOA and order any further operations of USACE, the County, or its contractors under this Agreement to cease, except such operations as may be necessary to remedy any violations. If USACE or the County fails to remedy violations within thirty (30) days after receipt of suspension notice, BOEM may, by written notice, terminate this MOA. In the event that BOEM suspends or terminates the MOA, neither USACE nor the County will be entitled to compensation as a result of expenses or lost revenues resulting from the suspension or termination.

C. USACE enters into this MOA in compliance with the requirements of Sections 8(k)(2)(A)(i) and 8(k)(2)(D) of the OCSLA. 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 USACE's or the County's ability to complete the Project or abrogate or diminish either Parties' authority or responsibilities under applicable law, including but not limited to the Clean Air Act (CAA) (42 U.S.C. § 7401 *et seq.*), Clean Water Act (CWA) (33 U.S.C. § 1251 *et seq.*), Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 *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.*), Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703–712), National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*), National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*), Water Resources Development Act (WRDA) of 1996 (P.L. 104-303, §101(b)) and the WRDA of 2007 (P.L. 110-114).

Title III. Description of the Authorized Activity

This MOA is intended to facilitate nourishment of the North, Mid, and South Reaches of the Brevard County Shore Protection Project in Brevard County, Florida. This MOA authorizes USACE to dredge up to 2,900,000 cubic yards of OCS sand resources from the CS-II Borrow Area for placement along 21.8 miles of shoreline from Florida Department of Environmental Protection (FDEP) Range Monument R-01 and R-54.5 (Brevard North Reach), R-75.4 and R-118.3 (Brevard Mid-Reach), and from R-118.3 to R-141 (Brevard South Reach) (see **Attachment 1**).

Title IV. Provisions

A. BOEM authorizes the use of OCS sand resources from the CS-II Borrow Area for the Project. 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. 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 20th of April 2000, and any subsequent amendments thereto and the Project Partnership Agreement between the Department of the Army and Brevard County, Florida, for Construction of the Brevard County, Florida Shore Protection Project, Mid-Reach Segment entered into on 31st of August 2016, 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 Division
Attention: Jeffrey Reidenauer, Ph.D.
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-MMD
Sterling, Virginia 20166

All electronic notifications, submissions, and deliverables to BOEM should be sent to dredgeinfo@boem.gov.

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

Jacksonville District
U.S. Army Corps of Engineers

Attn: Mr. Christopher Ren, Project Manager
701 San Marco Blvd
Jacksonville, FL 32207
(904) 570-4519
christopher.ren@usace.army.mil

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

Attn: Mr. Michael McGarry
Beach Management Coordinator
Brevard County, Natural Resource Management Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940-6605
321-372-5194
Mike.McGarry@brevardfl.gov

C. This MOA applies only to the extraction, transportation, and placement of OCS sand resources as described above and in the Construction Solicitation and Specifications Plan required in Title IV D. This MOA will terminate or expire (a) upon USACE sending written notice that it has obtained sufficient OCS sand resources to complete the Project, up to 2,900,000 cubic yards, or (b) three (3) years from the date of execution of this MOA, whichever occurs first. Upon request by USACE, the Parties may agree in writing 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 related to 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

USACE will include this MOA as a reference document in the advertised "Construction Solicitation and Specifications Plan" (hereinafter referred to as the "Plan"). USACE will ensure that all operations at the CS-II Borrow Area 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 and any project design criteria, relevant terms and conditions or reasonable and prudent measures of the latest Biological Opinions applicable to the activities authorized in this MOA. USACE will send BOEM a copy of the Plan and any modification to the Plan, when publicly available.

The dredging method for removing sand from the CS-II Borrow Area will be consistent with those evaluated in all applicable NEPA documents and approved in the authorizing documents, as well as the project permits.

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. BOEM will deliver these comments in a timely fashion to not unnecessarily delay USACE's construction contract or schedule.

If dredging, bottom disturbing activities, and/or conveyance methods are not wholly consistent with those evaluated in relevant NEPA documents prepared by USACE and BOEM for this Project, those included in the environmental and cultural resource consultations, and those authorized by relevant project permits, 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.

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

Prior to the commencement of construction, USACE will electronically provide BOEM with a summary of the construction schedule consistent with Paragraph 15 of this MOA. USACE, at the reasonable request of BOEM will allow any authorized Federal inspector to access the site of any operation, when permitted by safety regulations, and will provide BOEM 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. USACE agrees to facilitate access to the site of any operation, where practicable and deemed safe by USACE and their contractor, including, but not limited to, dredges and support equipment, fill areas, or turtle relocation trawlers, for scientists conducting sampling or observations associated with research conducted or funded by BOEM.

2. Environmental Responsibilities and Environmental Compliance

USACE and/or its contractors will commit to avoiding, minimizing, or mitigating adverse effects during construction activities. USACE will prepare and provide to BOEM before commencing construction an Environmental Compliance Matrix (ECM), in coordination with the County and BOEM, to document all environmental requirements and identify roles and responsibilities to ensure compliance prior to, during, and after construction. All environmental commitments in the ECM will be reflected in the Plan.

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 CAA, CZMA, ESA, MSA, NEPA, and NHPA, and any consultations or limitations imposed thereunder. USACE will instruct its contractor(s)

to implement the mitigation terms, conditions, and measures required by the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Florida Department of Environmental Protection (FDEP), 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 the CS-II Borrow Area. 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, but not limited to, observer and dredging reports, and reports required by relevant project permits) unless the reports are required sooner by this MOA or applicable law, the permits, or the consultations. Construction may not commence until the pre-construction requirements have been completed.

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

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

USACE, after receiving notification from its contractor(s), will notify BOEM at dredgeinfo@boem.gov at least 72 hours prior to the commencement of and no later than 24 hours after termination of operations at the CS-II Borrow Area.

4. Other 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 USACE and the County. BOEM's responsibility under this Project is limited to the authorization of access to OCS sand resources from the CS-II Borrow Area as described in this MOA, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken, damages or liabilities, incidents or injuries, or negligence by the other Parties in pursuit of the Project.

To the extent permitted by law, the County, its agent(s), and its contractor(s) will indemnify BOEM for any claims for loss, costs, damages, injuries to persons, or expenses caused by, or resulting from any operation under this MOA. However, the County, or their agent(s) and contractor(s) are not responsible to BOEM for any loss, cost, damage, injury, or expense that directly results from (1) the sole negligence of BOEM, or (2) the County's non-negligent compliance with a BOEM order or directive imposed under this MOA.

The participation of BOEM in this MOA is not intended to place BOEM or its representatives in a position of incurring liability arising from an action of any other Party. Each Party is responsible for any injury or damage caused by negligence of its own employees acting within the scope of their employment/official duty subject to such limitation as may be prescribed by applicable laws.

USACE and the County or their contractor(s) must notify BOEM of any encounter of hazards on the OCS and any OCS sediment placed on the beach that has unsuitable characteristics relative to native sediment characteristics. The specific location where unsuitable sediment was dredged, or where hazards were encountered, within the CS-II Borrow Area must be delineated and said location must be provided to BOEM in shapefile format, with applicable metadata detailing why it is recommended for avoidance, for future planning purposes. Additionally, any encounter of ordnance must be reported to BOEM using the process outlined in Paragraph 10.

5. Dredge Positioning

During all phases of the Project, 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 three (3) meters. The GPS must be installed as close to the draghead or cutterhead as is practicable or will use appropriate instrumentation to accurately represent the position of the dredging operations. During dredging operations, 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, unless there are immediate concerns of safety, navigation risks or emergency situations.

USACE will coordinate with the National Dredging Quality Management (DQM) program in advance of construction commencement to provide appropriate project-specific information, inform them of BOEM's role in the Project and relevant MOA stipulations, and develop a coordination plan to ensure that all DQM-related deliverables in accordance with this MOA are internally reviewed and delivered to BOEM on time and in accordance with BOEM formatting requirements. USACE will provide BOEM, electronically, with all appropriate DQM data acquired during the Project using procedures jointly developed by USACE's National DQM Data Program Support Center and BOEM. USACE will submit the DQM data every two weeks.

6. Dredge Operation

The final, approved Plan (required pursuant to Paragraph 1) will include provisions designed to maximize efficiency and conservation of the resource during the removal of sand from the CS-II Borrow Area. The purpose of these provisions is to avoid "wasting" sediment in the CS-II Borrow Area that could be used to nourish the beach now and in the future. USACE and/or its contractor(s) will conduct all dredging operations in accordance with requirements outlined in the ECM. Any modification to this Plan will be coordinated with BOEM for approval prior to commencement of dredging.

7. Submittal of Production and Volume Information

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

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

8. Local Notice to Mariners

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.

9. Marine Pollution Control and Contingency Plan

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 under this MOA will be compliant with U.S. Coast Guard regulations and the U.S. Environmental Protection Agency's Vessel General Permit, as applicable. USACE will notify BOEM of any noncompliant discharges and remedial actions taken, and USACE will provide copies of reports of the incident and resultant actions electronically.

10. Encounter of Ordnance

The encounter of ordnance is possible on the OCS, and has been documented in the CS-II Borrow Area. It is the responsibility of USACE and its contractor(s) to proactively manage this risk and any resulting situation should the need arise according to USACE EM 385-1-97. If USACE or its contractor(s) encounter any ordnance while conducting dredging activities at Borrow Area CS-II, it will report the discovery within 24 hours to Dr. Jeff Reidenauer, Chief, BOEM Marine Minerals Division, at (703) 787-1851 and dredgeinfo@boem.gov.

11. Bathymetric Surveys

USACE will provide BOEM with pre- and post-dredging bathymetric surveys of the CS-II Borrow Area, at a minimum. USACE or its contractor(s) will conduct a pre-dredging survey of the CS-II Borrow Area within 60 days prior to the commencement of dredging and will provide the data to BOEM for review via dredgeinfo@boem.gov, allowing for a minimum (seven) 7 working days for BOEM to provide concurrence before USACE or its contractor(s) commences dredging. A qualified hydrographic surveyor, independent from the dredging/construction contractor, will conduct and oversee the survey, and must approve the survey results before transmitting them to BOEM. USACE or its contractor(s) will conduct post-dredging survey of the CS-II Borrow Area within 60 days after the completion of dredging. Given available funding, BOEM recommends that USACE conduct additional bathymetric surveys of the CS-II Borrow Area both 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 the use of OCS sand resources. USACE or its contractor(s) will perform surveys, error analysis, and reporting 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 in the manual and can be found on the Coast Survey Document Library website (https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/HSSD_2021.pdf).

For bathymetric surveys, 100 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 limits of the CS-II Borrow Area as defined in this MOA.

USACE or its contractor(s) will collect all data 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 must be reoccupied during the post-dredging surveys. USACE or its contractor(s) will conduct surveys using kinematic GPS referenced to a GPS base station occupying an established monument (NAVD 88 vertical control) within 24 kilometers (15 miles) of the survey area, a National Geodetic Survey real-time network, or a water-level gauge deployed within the vicinity of the CS-II Borrow Area and referenced to an established monument (NAVD 88 vertical control), unless alternative methods are approved by BOEM. Pre- and post-dredging surveys must 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. USACE or its contractor(s) will also conduct and implement other best practices typically employed to identify potential error or quantify uncertainty, such as daily bar-checks.

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 USACE or its contractor(s) to conduct a new survey at the pre-dredge and/or post-dredge phase.

The delivery format for bathymetry data submission is an ASCII file (e.g., .xyz, .txt, .csv, .dat) containing x, y, z data and a digital elevation model in a format agreed upon between BOEM and USACE in writing. The file name(s) of bathymetric data submissions should be unambiguous and as a recommendation should include the survey ID (e.g., USACE survey number) and/or borrow area name, bin spacing, acronym for vertical datum, units, and date of survey completion (example file name: SURVEYID_BorrowArea_3x3AVG_NAVD88_ft_MMDDYYYY.xyz). The horizontal data will be provided in the NAD 83 Florida State Plane East, U.S. survey feet. Vertical data will be provided in the NAVD 88, U.S. survey feet unless otherwise specified. USACE or its contractor(s) must submit a methods section and results of the uncertainty analysis, field notes, and metadata record (FGDC-endorsed geographic metadata standard, e.g., ISO 19115-2, XML encoding specifications ISO 19139) to BOEM with the processed bathymetric data products. 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 any previously identified side scan sonar targets or newly identified bathymetric anomaly targets will be included and identified on an index map.

12. Avoidance of Archaeological and Benthic Habitat Resources

Offshore Prehistoric or Historic Resources

The USACE or its contractor must avoid the following anomalies (listed in **Table 3**) during dredging operations by a radius of at least 300 feet around the target coordinates:

Table 3. 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
USACE - 006 (M35)	Canaveral Shoals II	51	125	836039/1482530	300	Cultural Resource
USACE - 007 (M47)	Canaveral Shoals II	61	165	837485/1480862	300	Cultural Resource
USACE - 008 (M57)	Canaveral Shoals II	147	140	831766/1482563	300	Cultural Resource
USACE - 009 (M61)	Canaveral Shoals II	52	100	832730/1481664	300	Cultural Resource
USACE - 0010 (C2-C13)	Canaveral Shoals II	36	110	837259/ 1480480	300	Cultural Resource

The following targets (listed in **Table 4**) are acoustic receivers, which are operational instruments used in a BOEM scientific study. These receivers are co-located with the above listed cultural resource targets and do not require additional avoidance measures. BOEM provides these coordinates for situational awareness.

Table 4. Acoustic Receivers Present in CSII Borrow Area

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Note
DRE 1	Canaveral Shoals II	836097/1482615	Acoustic Receiver
DRE 2	Canaveral Shoals II	837220/1480453	Acoustic Receiver
DRE 10	Canaveral Shoals II	831729/1482569	Acoustic Receiver
DRE 11	Canaveral Shoals II	832825/1481734	Acoustic Receiver

If the Parties or their contractor(s) discover any previously unknown historic or archeological resources while accomplishing the Project, USACE will serve as lead agency under NHPA Section 106. 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. In the event that the Parties and/or dredge operators discover any archaeological resources while conducting dredging operations in the CS-II Borrow Area or in the vicinity of pump-out operations, USACE will immediately and electronically report the discovery to the Marine Minerals Division Chief at BOEM. USACE 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 if further action is required and how best to protect the resource. BOEM will work with USACE consistent with the provisions in 30 CFR 583.350.

Nearshore and Onshore Prehistoric or Historic Resources

The USACE or its contractor must maintain avoidance buffers around three targets in the nearshore area within the vicinity of the pump-out location for the Mid-Reach stockpile area that will be located at Spessard Holland Park. See **Table 2** for target location and avoidance buffers.

Table 2. Anomalies to be avoided During Dredge Pump-out Operations

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Minimum Avoidance Radius (ft)	Note
USACE-003	Nearshore pumpout	801516/ 1353423	250	Cultural Resource
USACE-004	Nearshore pumpout	801063/ 1353396	175	Cultural Resource
USACE-005 (M02)	Nearshore pumpout	804128/ 1355184	150	Cultural Resource

If USACE discovers any previously unknown historic or archeological resources while accomplishing the activity on Brevard County beaches, USACE will serve as lead agency under NHPA Section 106 and notify BOEM of any finding. 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.

13. Project Completion Report

Consistent with Paragraph 15, USACE will submit a project completion report to BOEM within 120 days following completion of the activities authorized under this MOA. USACE will send this report and supporting materials electronically. The report will contain, at a minimum, the following information:

- the names and titles of the project managers overseeing the effort (for USACE, the engineering firm (if applicable), and the contractor), including contact information (phone numbers, mailing addresses, and email addresses);
- a narrative including the location, construction costs, and description of the Project, the final, as-built features, boundaries, and acreage, including the restored beach width and length;
- 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);
- notation that USACE has confirmed that BOEM has received the full set of DQM data, in ASCII files, containing the x, y, z coordinates and time stamp of the cutterhead or drag arm locations;
- a narrative discussing major construction sequences and activities, and, if applicable, any significant problems encountered and solutions implemented;
- a table showing the major types of construction equipment used and the nature of their use by phase of the Project construction (e.g., dredge, booster pumps, bulldozer, etc.);
- 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 monitoring associated with the Project;
- a table listing significant construction dates beginning with bid opening and ending with final acceptance of the Project by USACE;
- digital appendices containing the as-built Project footprint (.shp /.gdb), and bathymetric survey data outlined in Section 11 above;
- metadata appropriate to geospatial deliverables; and
- any additional pertinent Project photo or video documentation in high-resolution format.

14. Reporting Compliance

USACE will designate in advance of construction a single point of contact (and preferably a back-up contact) who is responsible for facilitation of compliance with all MOA requirements. USACE will provide this contact information 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 alleged failure will be corrected as soon as possible and/or resolved jointly among BOEM, USACE and the 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, 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

and (2) provide such information to the requesting agency as expeditiously as possible. USACE and BOEM agree to 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 subject Project 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 that information or reports provided pursuant to this MOA be treated as confidential, will prominently mark the information and report as "Confidential" along with the basis for the claim of confidentiality. Any cover correspondence submitted with the information or report will likewise note the claim of confidentiality. 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 may be shared without waiving the confidential nature of the material.

The Parties further agree that they will notify the other Parties as soon as possible, 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 requests 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 within seven (7) days. In the case of (1) a substantial disagreement between BOEM and USACE or between BOEM and the County with respect to any aspect of 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 state the area(s) of disagreement or alleged breach in writing and present such statement to the other Parties for consideration. If dispute resolution is not successful within thirty (30) days and if appropriate under 30 CFR § 583.330 and 30 CFR § 583.350, BOEM may suspend or terminate the Agreement, refer the matter to appropriate Federal or State agency for enforcement, or both.

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.

1

All rights in the CS-II Borrow Area not expressly granted to USACE and the 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. If any party to this MOA makes a request for a separate negotiated agreement for the use of OCS sand resources in the CS-II Borrow Area, then it must share the request with all the parties to this MOA, and BOEM will consider comments on the request from the other parties.

Nothing herein is intended to conflict with current USACE, State, 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 after 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.

[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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, 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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, 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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

Date: _____

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, 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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, 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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, 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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A XXXX

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army Corps of Engineers
Jacksonville District

Date: _____

Date: _____

Brevard County Board of County Commissioners
By:

Rita Pritchett, Chair

As approved by the Board on: _____

Attest: _____
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

Heather Balser, Assistant County Attorney

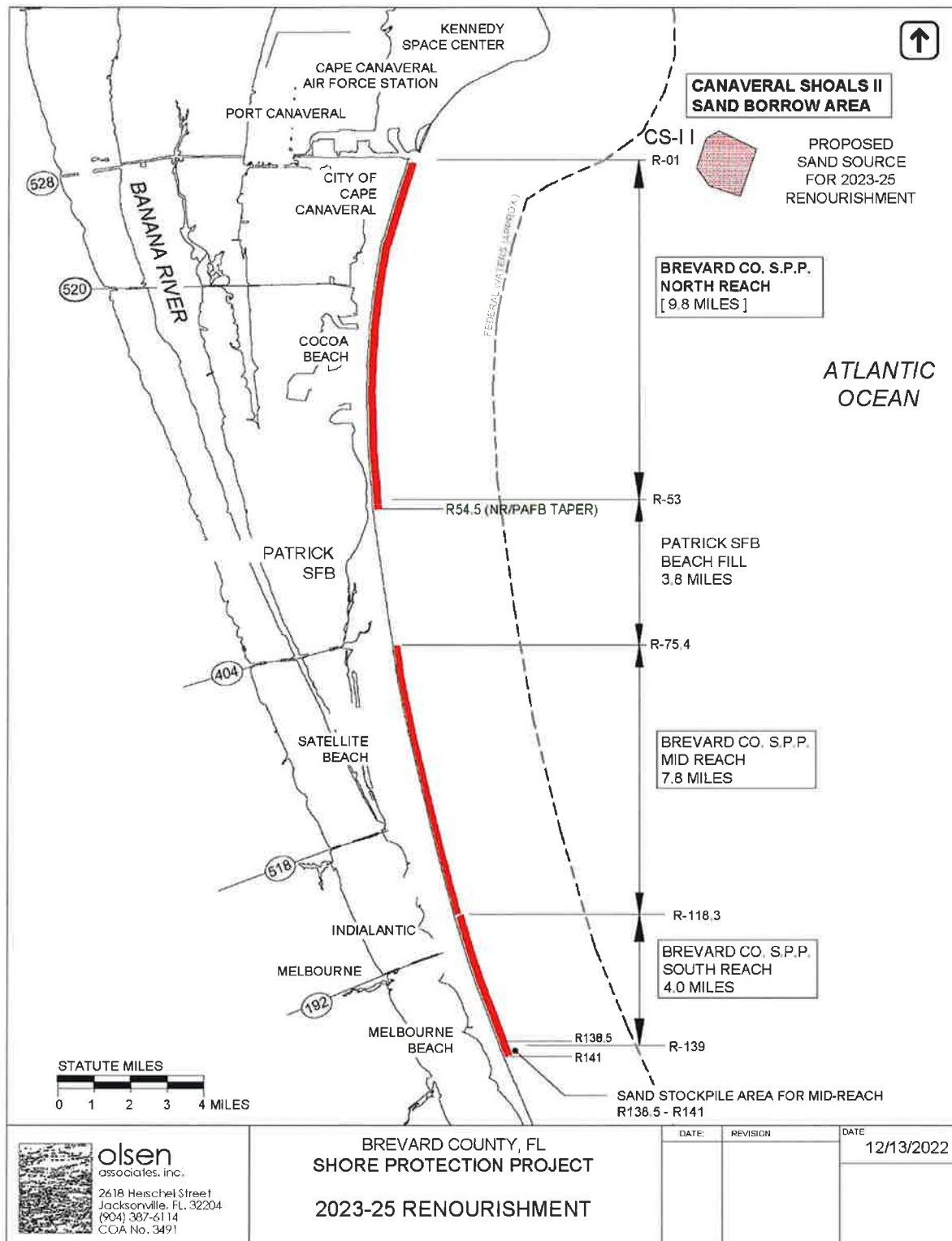
[This page intentionally left blank]

DRAFT

|

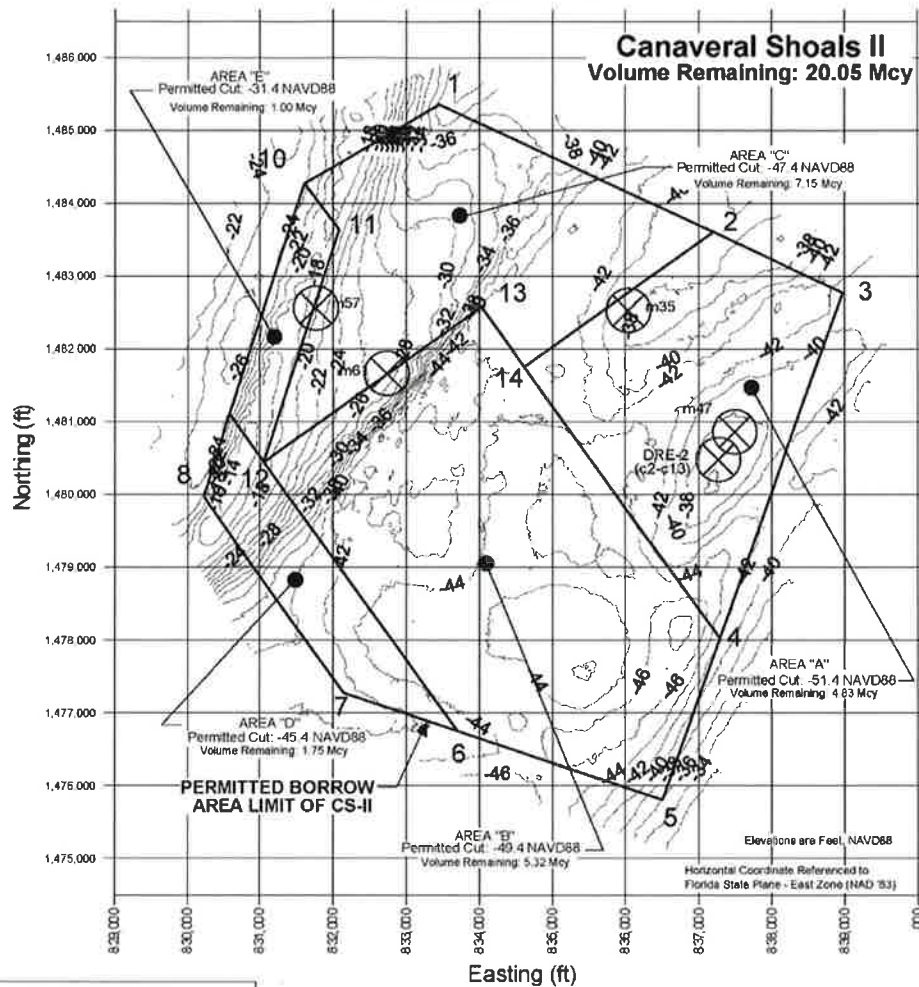
Attachment 1
Borrow Area Map and Placement Site

DRAFT



Project Location and Placement Area

May 15-16, 2018, Bathymetric Survey

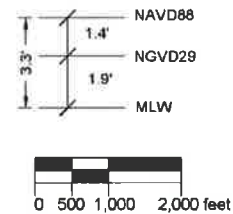


Limits of Dredging Areas		
ID	Easting (ft, NAD83)	Northing (ft, NAD83)
1	833,454.9	1,485,342.9
2	837,202.5	1,483,592.9
3	838,976.9	1,482,764.3
4	837,292.8	1,478,022.5
5	836,504.3	1,475,802.4
6	833,703.4	1,476,749.8
7	832,136.4	1,477,279.8
8	830,213.8	1,479,961.6
9	830,584.4	1,481,100.7
10	831,618.0	1,484,277.4
11	832,087.5	1,483,622.7
12	831,053.9	1,480,445.9
13	834,027.6	1,482,577.6
14	834,624.6	1,481,744.8

Magnetic Anomalies - Avoidance Areas		
ID	Easting (ft, NAD83)	Northing (ft, NAD83)
m35	836,039	1,482,530
m47	837,485	1,480,862
m57	831,766	1,482,563
m63	832,730	1,481,664
DRE 2 (c2-c13)	837,259	1,480,480

Maintain 300 FT Avoidance Radius About Each Point

PERMIT DRAWINGS. NOT FOR CONSTRUCTION



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

BREVARD COUNTY
MID REACH SHORE PROTECTION PROJECT
CANAVERAL SHOALS BORROW AREA II

DATE	REVISION	06/21/2019
	DRAWN BY:	ML
	SHEET	

Canaveral Shoals II Borrow Area_[BLB1]

[This page intentionally left blank]



July 26, 2023

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.3., Brevard County Shore Protection, Agreements for Restoration of the South Reach and Mid Reach Project Areas

The Board of County Commissioners, in regular session on July 25, 2023, approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida, Shore Protection Project, South Reach, subject to approval by the County Attorney; approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida Shore Protection Project, Mid-Reach segment, subject to approval by the County Attorney; and approved the Memorandum of Agreement among the bureau of Ocean Energy Management (BOEM), the U.S. Army Corp of Engineers, and Brevard County Board of County Commissioners regarding the use of outer continental shelf sand resources for the shore protection and restoration, upon approval by the County Attorney.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

cc: Contracts Administration
County Attorney
County Manager

**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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A 0554

Title I. Explanatory Recitals

- A.** Pursuant to the authority of and in accordance with Section 101(b)(7) of the Water Resources Development Act of 1996 (P.L. 104-303) as amended by Section 3045(a) of the Water Resources Development Act of 2007 (P.L. 110-114), and Section 5 of the Flood Control Act of 1941 (P.L. 84-99) as amended, the Department of the Army, acting through the United States Army Corps of Engineers, Jacksonville District (USACE), with the cooperation of the Brevard County Board of County Commissioners, a political subdivision of the State of Florida (the "County"), is endeavoring to conduct the emergency rehabilitation of the North, Mid, and South Reaches of the Brevard County, Florida Shore Protection Project.
- B.** USACE and the County are undertaking the Brevard County, Florida Shore Protection Project, in furtherance of the goal to rehabilitate the North, Mid, and South Reaches of the Brevard County, Florida shoreline (herein referred to as the "Project").
- C.** Prior to a notice-to-proceed for Project construction, USACE and the County 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 or "Agreement") with USACE and the County (collectively with DOI or BOEM, the "Parties") providing for the use of up to 2,900,000 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 use of the Canaveral Shoals II Borrow

Area ("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 OCS sand resources 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

Point	Latitude	Longitude	Easting	Northing
1	28.418717	80.448451	833,454.9	1,485,342.9
3	28.411554	80.431310	838,976.9	1,482,764.3
5	28.392439	80.439102	836,504.3	1,475,802.4
7	28.396557	80.452666	832,136.4	1,477,279.8
8	28.403957	80.458609	830,213.8	1,479,961.6
10	28.415809	80.454180	831,618.0	1,484,277.4

Note: Longitude and Latitude in Geographic Coordinate System NAD 1983. Easting and Northing in Florida State Plane Coordinate System (ft) NAD 1983

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 USACE or the County 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. Pursuant to 30 CFR 583.330, failure to comply with any applicable law or any provision, term, or condition of this Agreement may result in termination of the Agreement at the sole discretion of BOEM, referral to an appropriate Federal or State agency with jurisdiction for possible enforcement, or both. Failure to comply in a timely and satisfactory manner with any provision, term or condition of this Agreement may also delay or prevent BOEM's approval of future requests for use of OCS sand by the parties to this Agreement.

The MOA may be terminated by BOEM consistent with provisions in 30 CFR 583.350. If USACE or the County violates any provisions of this MOA, BOEM may, by written notice, suspend the MOA and order any further operations of USACE, the County, or its contractors under this Agreement to cease, except such operations as may be necessary to remedy any violations. If USACE or the County fails to remedy violations within thirty (30) days after receipt of suspension notice, BOEM may, by written notice, terminate this MOA. In the event that BOEM suspends or terminates the MOA, neither USACE nor the County will be entitled to compensation as a result of expenses or lost revenues resulting from the suspension or termination.

C. USACE enters into this MOA in compliance with the requirements of Sections 8(k)(2)(A)(i) and 8(k)(2)(D) of the OCSLA. 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 USACE's or the County's ability to complete the Project or abrogate or diminish either Parties' authority or responsibilities under applicable law, including but not limited to the Clean Air Act (CAA) (42 U.S.C. § 7401 *et seq.*), Clean Water Act (CWA) (33 U.S.C. § 1251 *et seq.*), Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 *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.*), Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703–712), National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*), National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*), Water Resources Development Act (WRDA) of 1996 (P.L. 104-303, §101(b)) and the WRDA of 2007 (P.L. 110-114).

Title III. Description of the Authorized Activity

This MOA is intended to facilitate rehabilitation of the North, Mid, and South Reaches of the Brevard County Shore Protection Project in Brevard County, Florida. This MOA authorizes USACE to dredge up to 2,900,000 cubic yards of OCS sand resources from the CS-II Borrow Area for placement along 21.8 miles of shoreline between Florida Department of Environmental Protection (FDEP) Range Monuments R-001 and R-54.5 (Brevard North Reach), between R-75.4 and R-118.3 (Brevard Mid-Reach), and between R-118.3 to R-141 (Brevard South Reach) (see **Attachment 1**).

Title IV. Provisions

A. BOEM authorizes the use of OCS sand resources from the CS-II Borrow Area for the Project. 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. 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 April 20, 2000, and any subsequent amendments thereto and the Project Partnership Agreement between the Department of the Army and Brevard County, Florida, for Construction of the Brevard County, Florida Shore Protection Project, Mid-Reach Segment entered into on August 31, 2016, 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 Division
Attention: Jeffrey Reidenauer, Ph.D.
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-MMD
Sterling, Virginia 20166

All electronic notifications, submissions, and deliverables to BOEM should be sent to dredgeinfo@boem.gov.

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

Jacksonville District
U.S. Army Corps of Engineers
Attn: Mr. Christopher Ren, Project Manager
701 San Marco Blvd
Jacksonville, FL 32207
(904) 570-4519
christopher.ren@usace.army.mil

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

Attn: Mr. Michael McGarry
Beach Management Coordinator
Brevard County, Natural Resource Management Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940-6605
321-372-5194
Mike.McGarry@brevardfl.gov

C. This MOA applies only to the extraction, transportation, and placement of OCS sand resources as described above and in the Construction Solicitation and Specifications Plan required in Title IV D. This MOA will terminate or expire (a) upon USACE sending written notice that it has obtained sufficient OCS sand resources, up to 2,900,000 cubic yards, to complete the Project, or (b) three (3) years from the date of execution of this MOA, whichever occurs first. Upon request by USACE, the Parties may agree in writing 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 related to 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

USACE will include this MOA as a reference document in the advertised "Construction Solicitation and Specifications Plan" (hereinafter referred to as the "Plan"). USACE will provide a copy of the Plan to BOEM for review at least fourteen calendar days prior to construction contract advertisement to allow sufficient time for BOEM to review and verify that all leasing provisions, including

environmental compliance requirements (Title IV Provision D.2) are incorporated into the Plan, as applicable. USACE will ensure that all operations at the CS-II Borrow Area are conducted in accordance with the final BOEM 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 and any project design criteria, relevant terms and conditions or reasonable and prudent measures of the latest Biological Opinions applicable to the activities authorized in this MOA. USACE will send BOEM a copy of the Plan and any modification to the Plan, when publicly available.

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. BOEM will deliver these comments in a timely fashion to not unnecessarily delay USACE's construction contract or schedule.

If dredging, bottom disturbing activities, and/or conveyance methods are not wholly consistent with those evaluated in relevant NEPA documents prepared by USACE and BOEM for this Project, those included in the environmental and cultural resource consultations, and those authorized by relevant project permits, additional environmental review may be necessary prior to activities proceeding. If the additional NEPA, consultations, or permit modifications would impact or otherwise supplement the provisions of the MOA, an amendment to the MOA may be required.

If BOEM is aware of any OCS activity within the jurisdiction of the DOI that may adversely affect USACE's ability to use OCS sand resources for the Project, BOEM will electronically notify USACE in a timely manner.

Prior to the commencement of construction, USACE will electronically provide BOEM with a summary of the construction schedule consistent with Paragraph 15 of this MOA. USACE, at the reasonable request of BOEM, will allow any authorized Federal inspector to access the site of any operation, when permitted by safety regulations, and will provide BOEM 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. USACE agrees to facilitate access to the site of any operation, where practicable and deemed safe by USACE and their contractor, including, but not limited to, dredges and support equipment, fill areas, or turtle relocation trawlers, for scientists conducting sampling or observations associated with research conducted or funded by BOEM.

2. Environmental Responsibilities and Environmental Compliance

USACE and/or its contractors will commit to avoiding, minimizing, or mitigating adverse effects during construction activities. USACE will prepare and provide to BOEM before commencing construction an Environmental Compliance Matrix (ECM), in coordination with the County and BOEM, to document all environmental requirements and identify roles and responsibilities to ensure compliance prior to, during, and after construction. All environmental commitments in the ECM will be reflected in the Plan.

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 CAA, CZMA, ESA, MSA, NEPA, and NHPA, and any consultations or limitations imposed thereunder. USACE will instruct its contractor(s) to implement the mitigation terms, conditions, and measures required by the U.S. Fish

and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Florida Department of Environmental Protection (FDEP), 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 the CS-II Borrow Area. 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, but not limited to, observer and dredging reports, and reports required by relevant project permits) unless the reports are required sooner by this MOA or applicable law, the permits, or the consultations. Construction may not commence until the pre-construction requirements have been completed.

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

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

USACE, after receiving notification from its contractor(s), will notify BOEM at dredgeinfo@boem.gov at least 72 hours prior to the commencement of and no later than 24 hours after termination of operations at the CS-II Borrow Area.

4. Other 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 USACE and the County. BOEM's responsibility under this Project is limited to the authorization of access to OCS sand resources from the CS-II Borrow Area as described in this MOA, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken, damages or liabilities, incidents or injuries, or negligence by the other Parties in pursuit of the Project.

To the extent permitted by law, the County, its agent(s), and its contractor(s) will indemnify BOEM for any claims for loss, costs, damages, injuries to persons, or expenses caused by, or resulting from any operation under this MOA. However, the County, or its agent(s) and contractor(s) are not responsible to BOEM for any loss, cost, damage, injury, or expense that directly results from (1) the sole negligence of BOEM, or (2) the County's non-negligent compliance with a BOEM order or directive imposed under this MOA.

The participation of BOEM in this MOA is not intended to place BOEM or its representatives in a position of incurring liability arising from an action of any other Party or their agents, contractors, or employees. Each Party is responsible for any injury or damage caused by negligence of its agents, contractors, or employees acting within the scope of their employment/official duty subject to such limitation as may be prescribed by applicable laws.

USACE and the County or their contractor(s) must notify BOEM of any encounter of hazards on the OCS and any OCS sediment placed on the beach that has unsuitable characteristics relative to native sediment characteristics (e.g., grain size, color, composition). The specific location where unsuitable sediment was dredged, or where hazards were encountered, within the CS-II Borrow Area must be delineated and said location must be provided to BOEM in shapefile format, with applicable metadata detailing why it is recommended for avoidance, for future planning purposes. Additionally, any encounter of ordnance must be reported to BOEM using the process outlined in Paragraph 10.

5. Dredge Positioning

During all phases of the Project, 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 three (3) meters. The GPS must be installed as close to the draghead or cutterhead as is practicable or will use appropriate instrumentation to accurately represent the position of the dredging operations. During dredging operations, 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 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, unless there are immediate concerns of safety, navigation risks or emergency situations.

USACE will coordinate with the National Dredging Quality Management (DQM) program in advance of construction commencement to provide appropriate project-specific information, inform them of BOEM's role in the Project and relevant MOA stipulations, and develop a coordination plan to ensure that all DQM-related deliverables in accordance with this MOA are internally reviewed and delivered to BOEM on time and in accordance with BOEM formatting requirements. USACE will provide BOEM, electronically, with all appropriate DQM data acquired during the Project using procedures jointly developed by USACE's National DQM Data Program Support Center and BOEM. USACE will submit the DQM data every two weeks.

6. Dredge Operation

The final, approved Plan (required pursuant to Paragraph 1) will include provisions designed to maximize efficiency and conservation of the resource during the removal of sand from the CS-II Borrow Area. The purpose of these provisions is to avoid "wasting" sediment in the CS-II Borrow Area that could be used to nourish the beach now and in the future. USACE and/or its contractor(s) will conduct all dredging operations in accordance with requirements outlined in the ECM. Any modification to this Plan will be submitted to BOEM for approval prior to commencement of dredging.

7. Submittal of Production and Volume Information

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

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

8. Local Notice to Mariners

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.

9. Marine Pollution Control and Contingency Plan

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 under this MOA will be compliant with U.S. Coast Guard regulations and the U.S. Environmental Protection Agency's Vessel General Permit, as applicable. USACE will notify BOEM of any noncompliant discharges and remedial actions taken, and USACE will provide copies of reports of the incident and resultant actions electronically.

10. Encounter of Ordnance

The encounter of ordnance is possible on the OCS and ordnance has been documented in the CS-II Borrow Area. It is the responsibility of USACE and its contractor(s) to proactively manage this risk and any resulting situation should the need arise according to USACE EM 385-1-97. If USACE or its contractor(s) encounter any ordnance while conducting dredging activities at Borrow Area CS-II, it will report the discovery within 24 hours to Dr. Jeff Reidenauer, Chief, BOEM Marine Minerals Division, at (703) 787-1851 and dredgeinfo@boem.gov.

11. Bathymetric Surveys

USACE will provide BOEM with pre- and post-dredging bathymetric surveys of the CS-II Borrow Area, at a minimum. USACE or its contractor(s) will conduct a pre-dredging survey of the CS-II Borrow Area within 60 days prior to the commencement of dredging and will provide the data to BOEM for review via dredgeinfo@boem.gov, allowing for a minimum (seven) 7 working days for BOEM to provide concurrence before USACE or its contractor(s) commences dredging. A qualified hydrographic surveyor, independent from the dredging/construction contractor, will conduct and oversee the survey, and must approve the survey results before transmitting them to BOEM. USACE or its contractor(s) will conduct post-dredging survey of the CS-II Borrow Area within 60 days after the completion of dredging. Given available funding, BOEM recommends that USACE conduct additional bathymetric surveys of the CS-II Borrow Area both 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 the use of OCS sand resources. USACE or its contractor(s) will perform surveys, error analysis, and reporting 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 in the manual and can be found on the Coast Survey Document Library website (https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/HSSD_2021.pdf).

For bathymetric surveys, 100 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 limits of the CS-II Borrow Area as defined in this MOA.

USACE or its contractor(s) will collect all data 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 must be reoccupied during the post-dredging surveys. USACE or its contractor(s) will conduct surveys using kinematic GPS referenced to a GPS base station occupying an established monument (NAVD 88 vertical control) within 24 kilometers (15 miles) of the survey area, a National Geodetic Survey real-time network, or a water-level gauge deployed within the vicinity of the CS-II Borrow Area and referenced to an established monument (NAVD 88 vertical control), unless alternative methods are approved by BOEM. Pre- and post-dredging surveys must 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. USACE or its contractor(s) will also conduct and implement other best practices typically employed to identify potential error or quantify uncertainty, such as daily bar-checks.

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 USACE or its contractor(s) to conduct a new survey at the pre-dredge and/or post-dredge phase.

The delivery format for bathymetry data submission is an ASCII file (e.g., .xyz, .txt, .csv, .dat) containing x, y, z data and a digital elevation model in a format agreed upon between BOEM and USACE in writing. The file name(s) of bathymetric data submissions should be unambiguous and as a recommendation should include the survey ID (e.g., USACE survey number) and/or borrow area name, bin spacing, acronym for vertical datum, units, and date of survey completion (example file name: SURVEYID_BorrowArea_3x3AVG_NAVD88_ft_MMDDYYYY.xyz). The horizontal data will be provided in the NAD 83 Florida State Plane East, U.S. survey feet. Vertical data will be provided in the NAVD 88, U.S. survey feet unless otherwise specified. USACE or its contractor(s) must submit a methods section and results of the uncertainty analysis, field notes, and metadata record (FGDC-endorsed geographic metadata standard, e.g., ISO 19115-2, XML encoding specifications ISO 19139) to BOEM with the processed bathymetric data products. 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 any previously identified side scan sonar targets or newly identified bathymetric anomaly targets will be included and identified on an index map.

12. Avoidance of Archaeological and Other Resources

Offshore Prehistoric or Historic Resources

The USACE or its contractor must avoid the following anomalies (listed in Table 2) during dredging operations by a radius of at least 300 feet around the target coordinates:

Table 2. Anomalies to be Avoided During Dredging Operations

Target	Area/Block	Amplitude (gammas)	Duration (ft)	FL State Plane East Coordinates NAD 1983 US Survey ft	Minimum Avoidance Radius (ft)	Note
USACE - 006 (M35)	Canaveral Shoals II	51	125	836039/1482530	300	Space Debris
USACE - 007 (M47)	Canaveral Shoals II	61	165	837485/1480862	300	Space Debris
USACE - 008 (M57)	Canaveral Shoals II	147	140	831766/1482563	300	Space Debris
USACE - 009 (M61)	Canaveral Shoals II	52	100	832730/1481664	300	Space Debris
USACE - 0010 (C2-C13)	Canaveral Shoals II	36	110	837259/1480480	300	Space Debris

The following targets (listed in Table 3) are acoustic receivers, which are operational instruments used in a BOEM scientific study. These receivers are co-located with the above listed cultural resource targets and do not require additional avoidance measures. BOEM provides these coordinates for situational awareness.

Table 3. Acoustic Receivers Present in CS-II Borrow Area

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Note
DRE 1	Canaveral Shoals II	836097/1482615	Acoustic Receiver
DRE 2	Canaveral Shoals II	837220/1480453	Acoustic Receiver
DRE 10	Canaveral Shoals II	831729/1482569	Acoustic Receiver
DRE 11	Canaveral Shoals II	832825/1481734	Acoustic Receiver

If the Parties or their contractor(s) discover any previously unknown historic or archeological resources while accomplishing the Project, USACE will serve as lead agency under NHPA Section 106. 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. In the event that the Parties and/or dredge operators discover any archaeological resources while conducting dredging operations in the CS-II Borrow Area or in the vicinity of pump-out operations, USACE will immediately and electronically report the discovery to the Marine Minerals Division Chief at BOEM. USACE 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 if further action is required and how best to protect the resource. BOEM will work with USACE consistent with the provisions in 30 CFR 583.350.

Nearshore Prehistoric or Historic Resources

The USACE or its contractor must maintain avoidance buffers around three targets in the nearshore area within the vicinity of the pump-out location for the Mid-Reach stockpile area that will be located offshore Spessard Holland Park. See **Table 4** for target location and avoidance buffers.

Table 4. Anomalies to be Avoided During Dredge Pump-out Operations

Target	Area/Block	FL East State Plane Coordinates NAD 1983 (X / Y Coordinate)	Minimum Avoidance Radius (ft)	Note
USACE-003	Nearshore pumpout	801516/ 1353423	250	Cultural Resource
USACE-004	Nearshore pumpout	801063/ 1353396	175	Cultural Resource
USACE-005 (M02)	Nearshore pumpout	804128/ 1355184	150	Cultural Resource

If USACE discovers any previously unknown historic or archeological resources while accomplishing the activity on Brevard County beaches, USACE will serve as lead agency under NHPA Section 106 and notify BOEM of any finding. 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.

13. Project Completion Report

Consistent with Paragraph 15, USACE will submit a project completion report to BOEM within 120 days following completion of the activities authorized under this MOA. USACE will send this report and supporting materials electronically. The report will contain, at a minimum, the following information:

- the names and titles of the project managers overseeing the effort (for USACE, the engineering firm (if applicable), and the contractor), including contact information (phone numbers, mailing addresses, and email addresses);

- a narrative including the location, construction costs, and description of the Project, the final, as-built features, boundaries, and acreage, including the restored beach width and length;
- 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);
- notation that USACE has confirmed that BOEM has received the full set of DQM data, in ASCII files, containing the x, y, z coordinates and time stamp of the cutterhead or drag arm locations;
- a narrative discussing major construction sequences and activities, and, if applicable, any significant problems encountered and solutions implemented;
- a table showing the major types of construction equipment used and the nature of their use by phase of the Project construction (e.g., dredge, booster pumps, bulldozer, etc.);
- 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 monitoring associated with the Project;
- a table listing significant construction dates beginning with bid opening and ending with final acceptance of the Project by USACE;
- digital appendices containing the as-built Project footprint (.shp /.gdb), and bathymetric survey data outlined in Section 11 above;
- metadata appropriate to geospatial deliverables; and any additional pertinent Project photo or video documentation in high-resolution format.

14. Reporting Compliance

USACE will designate in advance of construction a single point of contact (and preferably a back-up contact) who is responsible for facilitation of compliance with all MOA requirements. USACE will provide this contact information 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 alleged failure will be corrected as soon as possible and/or resolved jointly among BOEM, USACE and the 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, 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 and (2) provide such information to the requesting Party as expeditiously as possible. USACE and BOEM agree to 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 subject Project 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 that information or reports provided pursuant to this MOA be treated as confidential will prominently mark the information and/or report as "Confidential" along with the basis for the claim of confidentiality. Any cover correspondence submitted with the information or report will likewise note the claim of confidentiality. 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 its obligations under this MOA or if the information is necessary for the requesting Party to fulfill its obligations under the law. The Party in possession of the information requested may work with the requesting party to determine if the information may be shared without waiving the confidential nature of the material.

The Parties further agree that they will notify the other Parties as soon as possible, 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 requests 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 within seven (7) days. In the case of (1) a substantial disagreement between BOEM and USACE or between BOEM and the County with respect to any aspect of 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 state the area(s) of disagreement or alleged breach in writing and present such statement to the other Parties for consideration. If dispute resolution is not successful within thirty (30) days and if appropriate under 30 CFR § 583.330 and 30 CFR § 583.350, BOEM may suspend or terminate the Agreement, refer the matter to appropriate Federal or State agency for enforcement, or both.

17. Miscellaneous

This MOA will not affect any pre-existing or independent relationships or obligations among DOI, the Department of the Army, 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 the 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. If any Party to this MOA makes a request for a separate negotiated agreement for the use of OCS sand resources in the CS-II Borrow Area, then it must share the request with all the Parties to this MOA, and BOEM will consider comments on the request from the other Parties.

Nothing herein is intended to conflict with current USACE, State, 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 after 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.

[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, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF SAND RESOURCES
FOR CONSTRUCTION OF THE NORTH, MID, AND SOUTH REACHES OF THE
BREVARD COUNTY, FLORIDA SHORE PROTECTION PROJECT**

BOEM Negotiated Agreement No. OCS-A 0554

Signatory Page

Megan Carr, PhD, CPG
Chief, Office of Strategic Resources
Bureau of Ocean Energy Management
Department of the Interior

James L. Booth
Colonel, U.S. Army
District Commander

Date: _____

Date: _____

Brevard County Board of County Commissioners

By: _____



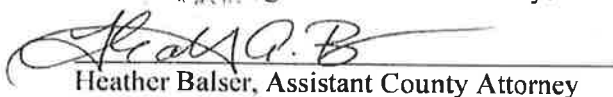
Rita Pritchett, Chair

As approved by the Board on: JUL 25 2023

Attest: _____

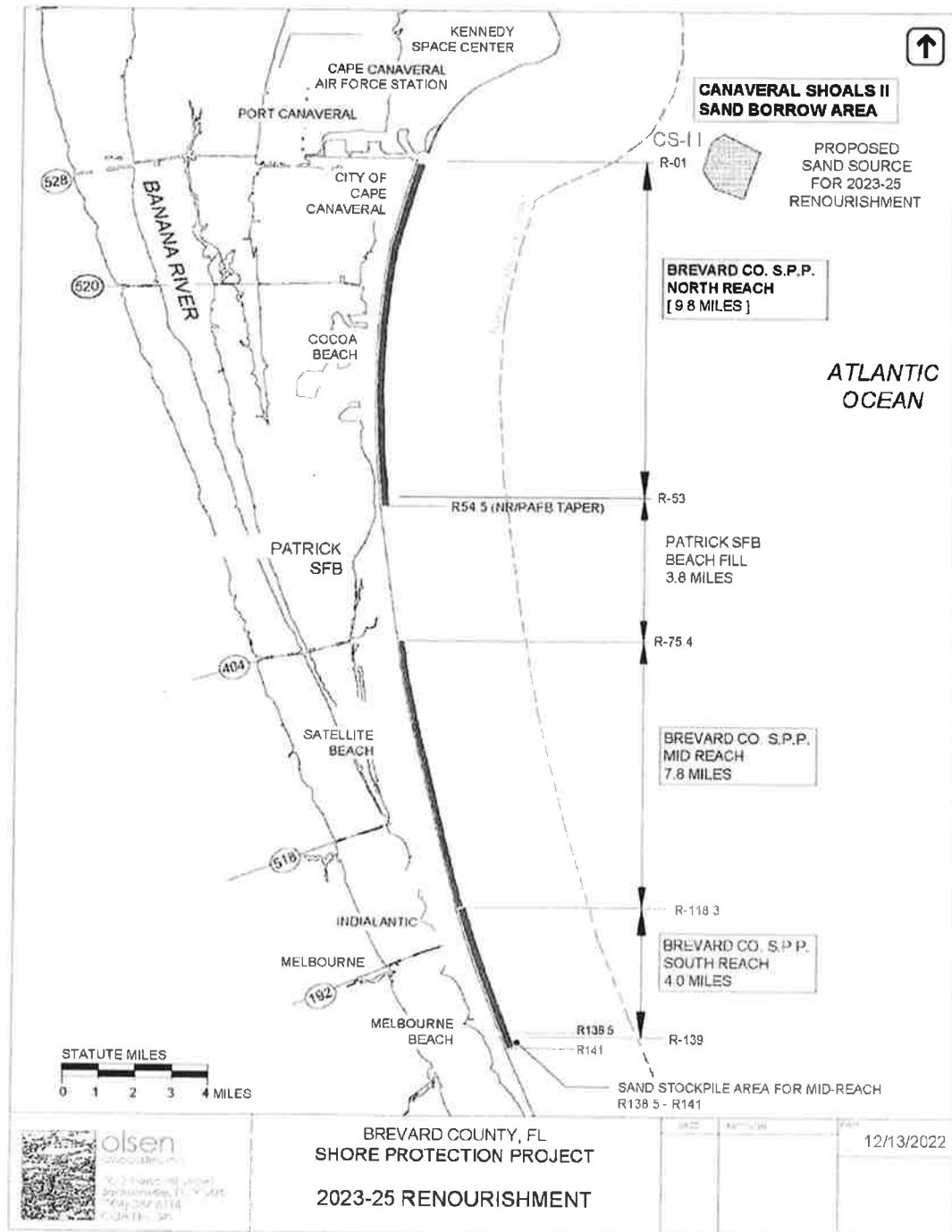
For Rachael M. Sadoff, Clerk

Reviewed for legal form and content by:

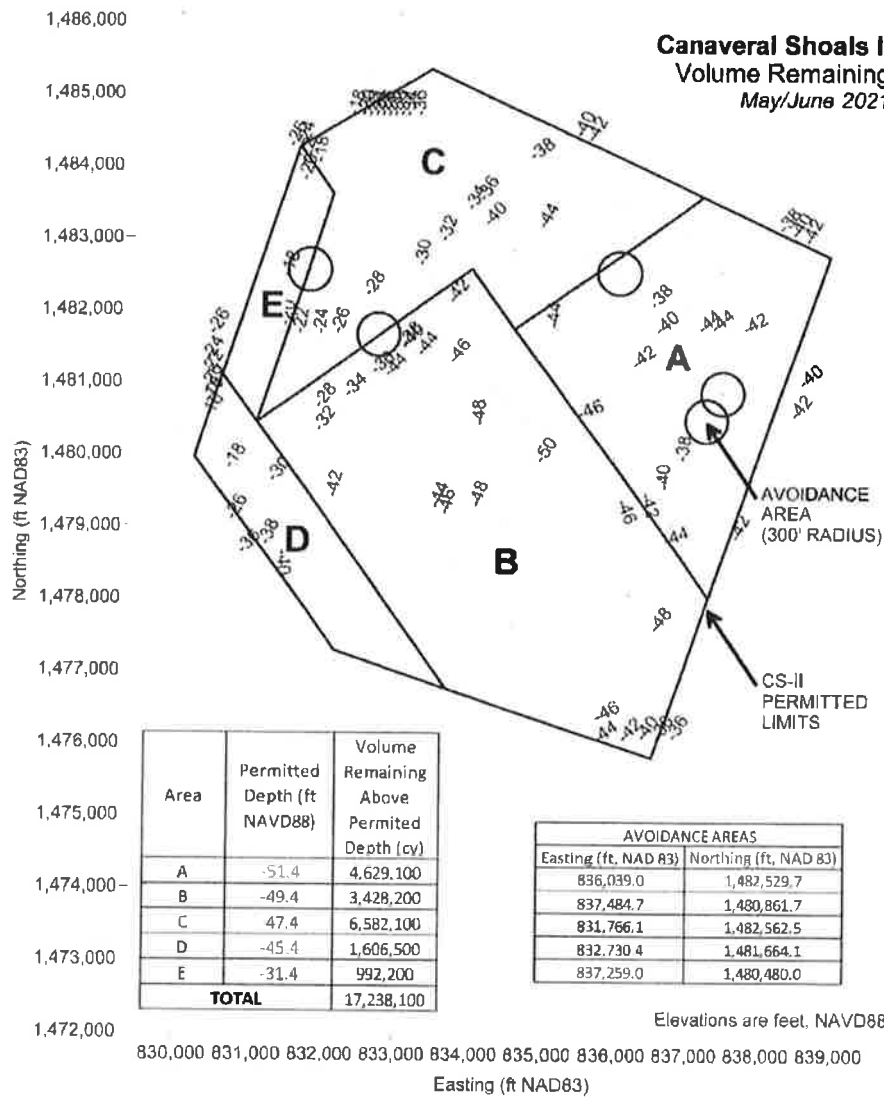

Heather Balser, Assistant County Attorney

[This page intentionally left blank]

Attachment 1
Borrow Area Map and Placement Site



Project Location and Placement Area



Canaveral Shoals II Borrow Area

[This page intentionally left blank]



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY

JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P O BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

Instructions for Non-Federal Sponsor Agreement Execution:

The Non-Federal Sponsor should execute four originals.

- (1) Do not date the first page of the agreement. The date will be filled in upon execution by the U.S. Army Corps of Engineers.
- (2) The representative of the Non-Federal Sponsor identified in the agreement should execute and date the signature page of all four copies of the agreement and all four copies of the Certification Regarding Lobbying.
- (3) The principal legal officer of the Non-Federal Sponsor should execute and date all four copies of the Certificate of Authority after execution of the agreement by Non-Federal Sponsor.
- (4) All four copies of the agreement, Certification Regarding Lobbying and Certificate of Authority should be returned to the U.S. Army Corps of Engineers for execution. Upon execution, the date will be filled in on the first page, and two originals will be sent to the Non-Federal Sponsor.
- (5) FAILURE TO EXECUTE IN THIS MANNER COULD RESULT IN PROJECT DELAYS IF AGREEMENTS HAVE TO BE PROPERLY RE-EXECUTED.
- (6) If you have any questions, please contact Carolyn DeVita Tooley at 904-232-1172.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: United States of America		2. Amount: \$48,582,200	
3. Fund/Account #: NA		4. Department Name: Natural Resources	
5. Contract Description: Cooperative Agreement for Rehabilitation of a Federal Hurricane/Shore Protection Project, Mid Reach			
6. Contract Monitor: Mike McGarry		8. Contract Type:	
7. Dept/Office Director: Virginia Barker		INTERGOVT/FEDERAL	
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGarry, Mike <small>Digitally signed by McGarry, Mike Date: 2023.08.03 08:54:45 -04'00'</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



July 26, 2023

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.3., Brevard County Shore Protection, Agreements for Restoration of the South Reach and Mid Reach Project Areas

The Board of County Commissioners, in regular session on July 25, 2023, approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida, Shore Protection Project, South Reach, subject to approval by the County Attorney; approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida Shore Protection Project, Mid-Reach segment, subject to approval by the County Attorney; and approved the Memorandum of Agreement among the bureau of Ocean Energy Management (BOEM), the U.S. Army Corp of Engineers, and Brevard County Board of County Commissioners regarding the use of outer continental shelf sand resources for the shore protection and restoration, upon approval by the County Attorney.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

cc: Contracts Administration
County Attorney
County Manager

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
BREVARD COUNTY, FLORIDA
FOR
REHABILITATION OF A FEDERAL HURRICANE/SHORE PROTECTION PROJECT**

THIS AGREEMENT, entered into this _____ day of _____, 2023, 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 "Non-Federal Sponsor"), represented by its Chair 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 Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303, as amended by Section 3045(a) of the Water Resources Development Act of 2007, Public Law 110-114, and governed by the Project Partnership Agreement dated August 31, 2016 and amended July 18, 2022, and entitled Project Partnership Agreement Between the Department of Army and Brevard County, Florida for Construction of the Brevard County, Florida Shore Protection Project Mid-Reach Segment which remains in full effect;

WHEREAS, pursuant to 33 U.S.C. 701n, 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean full restoration of the construction template of the Brevard County, Florida, Shore Protection Project Mid-reach Segment by placing

approximately 710,900 cubic yards (cy) of sand between the Florida Department of Environmental Protection monuments R-75.4 to R-119, as generally described in a report entitled Project Information Report for the Rehabilitation Effort for the Brevard County, Florida, Shore Protection Project Mid-Reach Segment prepared by the District Commander, U.S. Army Engineer District Jacksonville, dated June 1, 2023, and approved by the Director of Contingency Operations on July 10, 2023;

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Non-Federal 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 Non-Federal 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 Non-Federal 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 NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Partnership Agreement cited above.

G. The Non-Federal Sponsor may request the Government to accomplish betterments. The Non-Federal 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 Non-Federal Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Non-Federal Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$48,582,200 and the Non-Federal Sponsor's share (cash and services in kind) of Rehabilitation

Effort costs is currently estimated to be \$0. In order to meet the Non-Federal Sponsor's cash payment requirements, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor of the Non-Federal Sponsor's estimated share of the Rehabilitation Effort costs including the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor of the additional contribution the Non-Federal Sponsor will be required to make to meet the Non-Federal Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor a final accounting of the Non-Federal Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Non-Federal Sponsor is less than the Non-Federal Sponsor's required share of total Rehabilitation Effort costs, the Non-Federal 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 Non-Federal Sponsor's required share of the total project costs.

2. In the event total contribution by the Non-Federal Sponsor is more than the Non-Federal 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 Non-Federal Sponsor; however, the Non-Federal Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Non-Federal Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Non-Federal Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI- OPERATION AND MAINTENANCE

A. The Non-Federal 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 Non-Federal Sponsor with written notice of such determination, the Non-Federal 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 Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Non-Federal 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 Non-Federal Sponsor for any reason is failing to fulfill the Non-Federal Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Non-Federal 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 Non-Federal Sponsor of responsibility to meet the Non-Federal 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 Non-Federal Sponsor's rights and obligations hereunder, the Non-Federal Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII- RELATIONSHIP OF PARTIES

The Government and the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor and the Government shall provide prompt notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Non-Federal 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 Non-Federal Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for 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 Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor:

Program Manager
Beaches, Boating & Waterways
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way Building A, Room 219
Viera, Florida 32940

If to the Government:

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

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

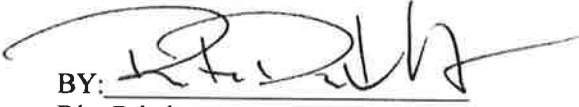
C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

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

BREVARD COUNTY

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

BY: 
Rita Pritchett
Chair
Board of Brevard County Commissioners
As Approved by the Board on JUL 25 2023

DATE: _____

DATE: AUG 03 2023

ATTEST: 
for Rachel M. Sadoff, Clerk

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.



Rita Pritchett

Chair

Board of Brevard County Commissioners

DATE: AUG 03 2023

CERTIFICATE OF AUTHORITY

I, Morris Richardson, do hereby certify that I am the principal legal officer for 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 Brevard County, Florida, in connection with the Rehabilitation of the Brevard County, Florida South Reach Shore Protection Project, Mid-Reach Segment and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of Brevard County, Florida, acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____
day of _____ 2023.

Morris Richardson
County Attorney




BOARD OF COUNTY COMMISSIONERS

Item F.3
Natural Resources Management Department

2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, Florida 32940

Inter-Office Memo

TO: Clerk to the Board
FROM: Mike McGarry – Project Manager, NRM 
DATE: August 8, 2023
SUBJECT: Agreement for Execution BOCC Item F.3. July 25, 2023

On July 25th the BOCC approved execution of agreements with Army Corps once the final copy arrived and was approved by County Attorney (Clerks memo attached). On August 7th the final Agreement for the South Reach was provided by Army Corps and approved by County Attorney's office (AO29 attached).

The four copies of this agreement must be signed by the Chair twice (Page 8 and 9) and attested by Clerk on page 8. We will request signature by Morris Richardson on page 10 separately. Once signed and attested please contact Mike McGarry (Mike.McGarry@brevardfl.gov 321-537-1779) to arrange pickup.

Thank You !




July 26, 2023

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.3., Brevard County Shore Protection, Agreements for Restoration of the South Reach and Mid Reach Project Areas

The Board of County Commissioners, in regular session on July 25, 2023, approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida, Shore Protection Project, South Reach, subject to approval by the County Attorney; approved and authorized the Chair to execute the Cooperative Agreement between the United States of America and Brevard County, Florida for rehabilitation of the Brevard County, Florida Shore Protection Project, Mid-Reach segment, subject to approval by the County Attorney; and approved the Memorandum of Agreement among the bureau of Ocean Energy Management (BOEM), the U.S. Army Corp of Engineers, and Brevard County Board of County Commissioners regarding the use of outer continental shelf sand resources for the shore protection and restoration, upon approval by the County Attorney.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

cc: Contracts Administration
County Attorney
County Manager

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: United States of America		2. Amount: \$20,700,000	
3. Fund/Account #: NA		4. Department Name: Natural Resources	
5. Contract Description: Cooperation Agreement between USA & Brevard County for Rehabilitation of South Reach			
6. Contract Monitor: Mike McGarry		8. Contract Type:	
7. Dept/Office Director: Virginia Barker		INTERGOVT/FEDERAL	
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGarry, Mike <small>Digitally signed by McGarry, Mike Date: 2023.08.07 12:35:06 -04'00'</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Caron, Justin <small>Digitally signed by Caron, Justin Date: 2023.08.07 16:41:36 -04'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
BREVARD COUNTY
FOR
REHABILITATION OF A FEDERAL HURRICANE/SHORE PROTECTION PROJECT**

THIS AGREEMENT, entered into this _____ day of _____, 2023, 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 "Non-Federal Sponsor"), represented by its Chair of the Brevard County Board of Commissioners.

WITNESSETH THAT:

WHEREAS, the Government constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP), authorized by Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303 and governed by the Project Cooperation Agreement dated April 20, 2000, and as amended on August 8, 2013, and August 31, 2016, and 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. 701n, 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean full restoration of the South Reach of the Brevard County, Florida Shore Protection Project to the full construction template by placing approximately 610,800 cubic yards of sand between 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 for the Brevard County, Florida Shore Protection Project (Phase II, South Reach), prepared by the District Commander, U.S. Army Engineer District Jacksonville, dated June 1, 2023 and approved by the Director of Contingency Operations on July 10, 2023;

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Non-Federal 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 Non-Federal 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 Non-Federal 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 NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor may request the Government to accomplish betterments. The Non-Federal 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 Non-Federal Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Non-Federal Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$20,700,000 and the Non-Federal Sponsor's share (cash and services in kind) of Rehabilitation

Effort costs is currently estimated to be \$0. In order to meet the Non-Federal Sponsor's cash payment requirements, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor of the Non-Federal Sponsor's estimated share of the Rehabilitation Effort costs including the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor of the additional contribution the Non-Federal Sponsor will be required to make to meet the Non-Federal Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor a final accounting of the Non-Federal Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Non-Federal Sponsor is less than the Non-Federal Sponsor's required share of total Rehabilitation Effort costs, the Non-Federal 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 Non-Federal Sponsor's required share of the total project costs.

2. In the event total contribution by the Non-Federal Sponsor is more than the Non-Federal 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 Non-Federal Sponsor; however, the Non-Federal Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Non-Federal Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Non-Federal Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI- OPERATION AND MAINTENANCE

A. The Non-Federal 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 Non-Federal Sponsor with written notice of such determination, the Non-Federal 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 Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Non-Federal 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 Non-Federal Sponsor for any reason is failing to fulfill the Non-Federal Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Non-Federal 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 Non-Federal Sponsor of responsibility to meet the Non-Federal 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 Non-Federal Sponsor's rights and obligations hereunder, the Non-Federal Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII- RELATIONSHIP OF PARTIES

The Government and the Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal 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 Non-Federal Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor and the Government shall provide prompt notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Non-Federal 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 Non-Federal Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for 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 Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor, the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor:

Program Manager
Beaches, Boating & Waterways
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way, Building A, Room 219
Viera, Florida 32940

If to the Government:

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

B. A party may change the 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

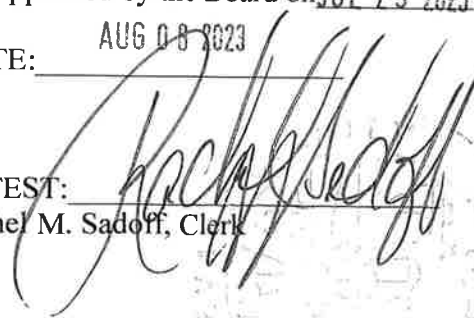
BY: _____
James L. Booth
District Commander
Jacksonville District

DATE: _____

BREVARD COUNTY

BY: 
Rita Pritchett
Chair
Board of Brevard County Commissioners
As Approved by the Board on JUL 25 2023

DATE: AUG 08 2023

ATTEST: 
Rachel M. Sadoff, Clerk

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.



Rita Pritchett

Chair

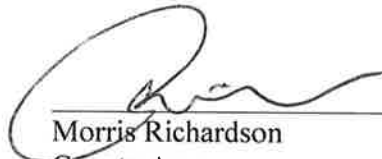
Board of Brevard County Commissioners

DATE: _____

CERTIFICATE OF AUTHORITY

I, Morris Richardson, do hereby certify that I am the principal legal officer for Brevard County, that Brevard County 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 Brevard County in connection with the Brevard County Shore Protection Project (Phase II, South Reach), and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of Brevard County acted within her statutory authority.

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



Morris Richardson
County Attorney