

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
BROWARD COUNTY, FLORIDA  
FOR THE FINAL PERIODIC NOURISHMENT  
OF THE  
BROWARD COUNTY, FLORIDA  
SHORE PROTECTION PROJECT – SEGMENT II

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and Broward County, Florida (hereinafter the "Non-Federal Sponsor" or "Non-Federal Interest"), represented by the Mayor of its Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the shore protection project at Broward County and Hillsboro Inlet, Florida, ("Authorized Project") was authorized by Section 301 of the River and Harbor Act of 1965, Public Law 89-298, and the constructed project remains authorized until deauthorized;

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement, dated May 21, 1984, for the initial construction of the Broward County Beach Erosion Control Project, Segment II, from Hillsboro Inlet to Port Everglades, Florida ("Project");

WHEREAS, Section 506 of the Water Resources Development Act of 1996, Public Law 104-303, as amended, extended Federal participation in the Project for a period of 50 years from the date of initiation of construction in 1970;

WHEREAS, Section 311 of the Water Resources Development Act of 1999, Public Law 106-53, modified the Authorized Project to authorize the Secretary to reimburse the Non-Federal Interest for the Federal share of the cost of preconstruction planning and design for the project, if the Secretary determines that the work is compatible with and integral to the project;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost sharing requirements applicable to the periodic nourishment of the Project;

WHEREAS, Section 204 of the Water Resources Development Act of 1986, as amended by Section 1014 of the Water Resources Reform and Development Act of 2014, authorizes, subject to certain conditions, reimbursement of the Federal share of the final periodic nourishment of the

Project, as described in Article I.A. of this Agreement), if such construction is completed by the Non-Federal Sponsor;

WHEREAS, the Non-Federal Sponsor acknowledges that execution of this Agreement does not constitute any commitment on the part of the Government to budget for funds to reimburse the Non-Federal Sponsor and that it will be reimbursed only if funds are specifically appropriated for that purpose;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that credits and reimbursements afforded for all applicable general authorities and under specific project authority shall not exceed \$100,000,000 for all applicable projects in each fiscal year (hereinafter the "Section 102 Limit");

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement; and

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

#### ARTICLE I – RESPONSIBILITIES OF THE PARTIES

A. The Non-Federal Sponsor plans to construct the Project. The term "Project" means the renourishment of the Pompano Beach/Lauderdale-By-The-Sea shoreline (R25 to R53) and initial placement along the Fort Lauderdale shoreline (R53 to R85) of Segment II of the Authorized Project consisting of 11.3 miles of shoreline from Hillsboro Inlet south to Port Everglades Inlet as generally described in the Broward County, Florida Shore Protection Project – Segment II Limited Reevaluation Report with Environmental Assessment (“Segment II LRR”), dated \*\*\*\*\*, 2015 and approved by the Commander, South Atlantic Division on \*\*\*\*\*, 2015.

1. Prior to initiating construction of the Project, the Non-Federal Sponsor shall provide detailed plans for carrying out the Project to the Government for approval. Such plans include, but are not necessarily limited to, detailed design documents, plans and specifications, environmental documentation, proposed real estate requirements, including relocations as addressed in Article II.D. of this Agreement and Public Law 91-646 regarding assistance benefits, detailed cost estimates, detailed schedule for the construction of the Project, and projected operation and maintenance requirements. As necessary, the District Engineer shall provide the Non-Federal Sponsor with a written explanation of specific issues that must be resolved before approval can be provided. After resolution of any outstanding issues, the District Engineer shall provide to the Non-Federal Sponsor written approval of the detailed plans. In addition, the District Engineer shall provide to the Non-Federal Sponsor a written estimate of the costs that the Government would have incurred if the Government had designed and constructed the Project.

2. The Non-Federal Sponsor shall obtain all necessary permits and licenses necessary for the design and construction of the Project and, in the exercise of its responsibilities

under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances and policies specifically identified by the Corps. The Non-Federal Sponsor shall perform all required National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347; hereinafter "NEPA") investigations, prepare appropriate NEPA documents, and conduct all necessary public and agency coordination. The Non-Federal Sponsor shall comply with any mitigation requirements set forth in any Environmental Assessment for the Project. The Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the Project, as necessary, to ensure compliance with such laws, regulations, ordinances and policies specifically identified by the Corps.

3. The Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, the disposal of dredged or excavated material, shall perform or ensure performance of all relocations, and shall construct improvements required on lands, easements, rights-of-way to enable the disposal of dredged or excavated material the Government determines to be required for the construction, operation, and maintenance of the project. The Non-Federal Sponsor shall comply with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the Project, including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

4. The Non-Federal Sponsor shall perform, or ensure performance of, investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigational servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

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

6. The Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination.

7. The Non-Federal Sponsor and the Government shall consult with each other to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

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

B. In consultation with the Government, the Non-Federal Sponsor shall prepare an Operation, Maintenance, Repair, Rehabilitation and Replacement Manual (hereinafter the "OMRR&R Manual") for approval by the Government. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project in a manner compatible with the authorized purposes of the Project in accordance with applicable Federal, State and Local laws and the OMRR&R Manual and as further described in this paragraph.

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

2. The Non-Federal Sponsor shall grade and reshape the beach and dune profile, as applicable, using material within the Project area to maintain the Project features.

3. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purposes. If the Government determines that the Non-Federal Sponsor is failing to perform its responsibilities under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its responsibilities under this Agreement, or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

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

copy of the plan to the Government upon its preparation.

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

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

F. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

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

H. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure conditions of public ownership and public use of the shores upon which the amount of Federal participation is based.

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

J. The Non-Federal Sponsor shall control water pollution in the Project area to the extent necessary to safeguard the health of bathers.

K. In carrying out its responsibilities under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; and 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act).

L. The Non-Federal Sponsor shall not use Federal program funds to meet any of its responsibilities under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency plus any non-Federal contribution required as a matching share therefor.

M. Except as provided in Article III, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement from the Government for costs it incurs in performing its responsibilities

under this Agreement.

## ARTICLE II - VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in the total cost of construction of the Project the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article I.A.3. of this Agreement; the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article I.A.3. of this Agreement; and the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article I.A.3. of this Agreement. However, the Government shall not include in the total cost of construction of the Project the value of any lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, the Government shall not include in the total cost of construction of the Project the value of lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using Federal program funds unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the Project.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article I.A.3. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of the contribution, such as lands, easements, rights-of-way and relocations, for the purpose of including such value in the total cost of construction of the Project in accordance with the provisions of this Agreement.

C. For the sole purpose of determining the value to be included in the total cost of construction of the Project in accordance with the provisions of this Agreement, the value of lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs defined below in Article II.C.4. of this Agreement of acquiring those interests, as determined in accordance with the provisions of this paragraph.

### 1. Date of Valuation.

a. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the contractor with authorization for entry thereto, or, if the Non-Federal Sponsor performs the construction with its own forces, the date that the Non-Federal Sponsor begins construction of the Project.

b. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

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

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

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

a. If the Government previously has approved the appraisal in writing, or

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

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

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

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article III.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps and mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article I.A.3. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable and required to be paid by applicable State law due to the acquisition of a real property interest in accordance with Article I.A.3 of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article I.A.3. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to Article II.C.2. of this Agreement, as determined by the Government, and subject to an audit in accordance with Article III.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

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



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

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

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

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

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article III.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

F. The value to be included in the total cost of construction of the Project for relocations or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). Notwithstanding any other provision of this Agreement, inclusion of the value of relocations or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in the total cost of construction of the Project may be denied, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

### ARTICLE III – REIMBURSEMENT

A. As of the effective date of this Agreement, the total cost of construction of the Project

is estimated at \$51,872,000, with the Federal share of that cost estimated to be \$28,572,000. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, necessary for construction and operation and maintenance of the Project is estimated to be \$0. This value does not include incidental costs, which includes closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps and mapping costs, and actual amounts expended for payment of any relocation assistance benefits provided in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24.

C. Upon completion of construction, the Non-Federal Sponsor, in a timely manner, shall provide the Government with appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Such costs shall be subject to audit to determine reasonableness, allocability, and allowability and shall be subject to the following procedures, requirements, and limitations as set forth in this Agreement.

D. In calculating the total cost of the Project, the Government shall include all creditable costs incurred by the Non-Federal Sponsor and costs incurred by the Government in the design and construction of the Project, including engineering and design costs; costs to identify the existence and extent of hazardous substances; costs of cultural and historic preservation activities; the Non-Federal Sponsor's actual construction costs, including supervision and administration costs; the Non-Federal Sponsor's incidental costs associated with the acquisition of lands, easements, and rights-of-way or the performance of relocations; the Non-Federal Sponsor's preconstruction planning and design costs for the Project if the Secretary determines that the preconstruction planning and design work is compatible with and integral to the Project; and all costs of the Government in the development, review, monitoring, inspection, and auditing of the Non-Federal Sponsor's design and construction of the Project.

1. The calculation of the total cost of the Project shall not include any interest charges, or any adjustment to reflect changes in price levels from the time the work is completed; the value of work, supplies, or materials provided at no cost to the Non-Federal Sponsor; any non-Federal Sponsor costs allocated by the Government to beach improvements with exclusively private benefits. Further, costs are limited to the Government's estimate of the cost for such item if it had been performed by the Government.

2. The Government may exclude or reduce the amount of non-Federal Sponsor costs included in the calculation of the total cost of the Project if the Non-Federal Sponsor fails to comply with the requirements of applicable Federal laws and regulations.

E. To the extent funds are specifically appropriated for such reimbursement and subject to the Section 102 Limit, the Government shall reimburse the Non-Federal Sponsor an amount

equal to the Federal Share of the total cost of construction of the Project and the Federal Share of the cost of preconstruction planning and design for the Project if the Secretary determines that the preconstruction planning and design work is compatible with and integral to the Project. The Federal Share equals 65 percent of the total cost of the Project allocated by the Government to hurricane and storm damage reduction plus 50 percent of the total cost the Project allocated by the Government to recreation and excludes any non-Federal costs allocated by the Government to beach improvements with exclusively private benefits. The Federal cost-share apportionment rate is estimated to be 55.08.

#### ARTICLE IV - DISPUTE RESOLUTION

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

#### ARTICLE V – HOLD AND SAVE

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

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible

for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement.

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

#### ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and responsibilities under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide any contractor with a release that waives, or purports to waive, any right the other party may have to seek relief or redress against that contractor.

#### ARTICLE VIII – NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

County Administrator  
Broward County Board of County Commissioners  
115 S. Andrews Avenue, Room 409  
Fort Lauderdale, Florida 33301

If to the Government:

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

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

## ARTICLE IX – CONFIDENTIALITY

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

## ARTICLE X - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. 306108, hereinafter "Section 106"). At the Government's request, the Non-Federal Sponsor shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations.

B. The Non-Federal Sponsor shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties, as defined in Section 106, the Government determines necessary for the Project within the "Area of Potential Effect" as that term is used in the application of Section 106.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards as discussed in 36 CFR Part 61. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to historic properties, the Non-Federal Sponsor shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The Non-Federal Sponsor shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of any construction activities affecting historic properties.

C. The Non-Federal Sponsor shall include provisions in all of its construction contracts for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and the Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the

Non-Federal Sponsor elects to perform the construction using its own forces, the same procedures shall be followed.

D. The Government, as it determines necessary for the Project, shall perform any data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as amended (54 U.S.C. 312507(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in the total cost of construction of the Project, up to the statutory level of one percent of the total amount authorized to be appropriated to the Government for the Project.

E. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in Article X.D. of this Agreement unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (54 U.S.C. 312508(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent level shall not be included in the total cost of construction of the Project but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing in accordance with the provisions of this Agreement. Further, any costs for data recovery activities related to lands involving beach improvements with exclusively private benefits shall not be included in the total cost of construction of the Project but shall be borne entirely by the Non-Federal Sponsor.

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

DEPARTMENT OF THE ARMY

BROWARD COUNTY, FLORIDA

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

BY: \_\_\_\_\_  
Tim Ryan  
Mayor  
Board of County Commissioners  
Broward County, Florida

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

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

CERTIFICATE OF AUTHORITY

I, Joni Armstrong Coffey, do hereby certify that I am the principal legal officer of Broward County, Florida ("Broward County"), that Broward County is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the Department of the Army and Broward County for Periodic Nourishment of the Broward County, Florida Shore Protection Project – Segment II 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 the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Broward County have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

Joni Armstrong Coffey  
County Attorney

Broward County, Florida

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

## CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

\_\_\_\_\_  
Tim Ryan, Mayor  
Broward County Board of County  
Commissioners

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