

AGREEMENT

between

BROWARD COUNTY, a political subdivision
of the state of Florida hereinafter referred to as "COUNTY"

and

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
an agency of the state of Florida, hereinafter referred to as "DEPARTMENT"

for

Restoration of John U. Lloyd Beach State Park South Jetty Fishing Walkway and Sand
Tightening of a portion of South Jetty hereinafter referred to as "PROJECT"

WITNESSETH:

WHEREAS, COUNTY has the authority to enter into this Agreement; and

WHEREAS, DEPARTMENT intends to contract for services providing for the
PROJECT at John U. Lloyd Beach State Park in Hollywood, Florida; and

WHEREAS, COUNTY's Port Everglades and Environmental Protection and
Growth Management Departments have each budgeted One Hundred Thousand
Dollars (\$100,000.00) in their respective 2012 fiscal year capital improvement plan
budgets, to provide a financial contribution to DEPARTMENT in order for it to undertake
and complete the PROJECT; and

WHEREAS, the PROJECT will provide a stable jetty fishing walkway structure
and serve to sand tighten the current porous structure; and

WHEREAS, COUNTY has determined that the PROJECT does not adversely
affect the Port Everglades navigation channel and its financial participation in the
PROJECT is in the best interests of Broward County;

NOW THEREFORE, in consideration of the mutual covenants, promises,
representations, and payments provided herein, the Parties hereto agree as follows:

1.0 Purpose of Agreement: The purpose of this Agreement is to provide
DEPARTMENT with a financial contribution from COUNTY in an amount not to exceed
Two Hundred Thousand Dollars (\$200,000.00) for the PROJECT.

7.0 Requisition and Payments: DEPARTMENT shall invoice COUNTY for COUNTY's financial contribution to the PROJECT in the amount provided for herein, within seven (7) calendar days of the date COUNTY executes this Agreement.

8.0 Compliance with Consultant's Competitive Negotiation Act. It is understood and agreed by the Parties hereto, that DEPARTMENT will comply with the provisions of Chapter 287 F.S. in connection with the PROJECT.

9.0 Non-Discrimination Equal Employment Opportunity: In connection with the carrying out of any PROJECT, DEPARTMENT shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex, or national origin. DEPARTMENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited, to the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. DEPARTMENT shall post, in conspicuous places available to employees and applicants for employment for PROJECT work, notices to be provided by DEPARTMENT setting forth the provisions of this nondiscrimination clause.

10.0 Prohibited Interests: DEPARTMENT shall not enter into a contract or arrangement in connection with the PROJECT or any property included or planned to be included in the PROJECT, with any officer, director or employee of DEPARTMENT, or any business entity of which the officer, director, or employee or the officer's, director's, or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director, or employee or the officer's, director's, or employee's spouse or child, or any combination of them, has a material interest.

"Material interest" means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.

11.0 Environmental Compliance: Execution of this Agreement constitutes a certification by DEPARTMENT that the PROJECT will be carried out in conformance with all applicable environmental regulations, including the securing by DEPARTMENT of all applicable permits for the PROJECT. DEPARTMENT will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the failure to secure any applicable permits.

12.0 Severability: The provisions of this Agreement are severable, and should one or more clauses, sections or provisions be deemed unlawful, invalid, or unenforceable by a court of competent jurisdiction then, notwithstanding said determination, all other remaining provisions of this Agreement will remain in full force and effect and not be affected thereby.

13.0 Governmental Immunity: COUNTY is a state agency or political subdivision as defined in Chapter 768.28, F.S., and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by COUNTY to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by COUNTY to be sued by third parties in any matter arising out of this Agreement or any other contract. Likewise, DEPARTMENT is a state agency as defined in Chapter 768.28, F.S., and agrees to be responsible for acts and omissions of its agents or employees when required by law. Nothing herein is intended to serve as a waiver of sovereign immunity by DEPARTMENT to the extent sovereign immunity may be applicable. Nothing herein shall be construed as consent by DEPARTMENT to be sued by third parties in any matter arising out of this Agreement or any other contract.

14.0 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

15.0 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of four counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one in the same instrument.

16.0 Notices: Any notices required by this Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either Party shall have the right, by giving written notice to the other, to change the address as which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

COUNTY

Chief Executive
Port Everglades Department
1850 Eller Drive
Fort Lauderdale, FL 33316

Director
Broward County Environmental
Protection and Growth Management Dept.
115 South Andrews Avenue
Fort Lauderdale, FL 33316

DEPARTMENT

Jeff Raley, PE
Coastal Project Manager
Florida Park Service
Bureau of Natural and Cultural Resources
3900 Commonwealth Blvd., MS #530
Tallahassee, FL 32399

17.0 Applicable Law and Venue; Waiver of Jury Trial: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Second Judicial Circuit of Leon County, Florida, the venue situs, and shall be governed by the laws of the state of Florida. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION THAT MAY ARISE HEREUNDER, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION.**

18.0 Effectiveness, Term, and Time of Performance: This Agreement shall become effective only upon execution by both of the Parties. The term, and obligations hereunder, shall begin upon execution by both of the Parties and shall end after all duties, obligations, and responsibilities set forth in this Agreement are fulfilled or met, by undertaking or completion thereof as herein required; provided, however, that in no event shall this Agreement extend more than three years beyond the effective date, unless amended in writing in accordance with this Agreement.

Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

19.0 Independent Contractor: COUNTY and DEPARTMENT are independent contractors under this Agreement. Services provided by DEPARTMENT pursuant to this Agreement shall be subject to the supervision of DEPARTMENT. DEPARTMENT, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of COUNTY and the COUNTY, its officers, employees, or agents are not authorized to and shall not act as officers, employees, or agents of DEPARTMENT. This Agreement shall not constitute or make the Parties a partnership or joint venture.

20.0 Third Party Beneficiary: Neither COUNTY nor DEPARTMENT intends to directly or substantially benefit a third party by this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights in or obligations to any third person or entity by this Agreement; therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

21.0 Assignment: Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either Party without the written consent of the contract administrator of the other Party.

22.0 Waiver of Breach: Neither COUNTY's nor DEPARTMENT's failure to enforce any provision of this Agreement shall be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to

be a modification of the terms of this Agreement.

23.0 Compliance with Laws: DEPARTMENT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement. Likewise, COUNTY shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

24.0 Joint Participation: The Parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

25.0 Construction of Agreement: It is the intent of the Parties that this Agreement shall be liberally construed and interpreted consistent with the "Whereas" clauses set forth herein so as to fully effectuate its purposes and intent. The Parties agree that they will cooperate, act in good faith, and make best efforts to accomplish any and all of the terms, conditions, and provisions of this Agreement, and shall take all appropriate and necessary actions and execute such additional documents as are necessary to effectuate this Agreement.

26.0 Amendments: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared and executed with the same or similar formality as this Agreement.

27.0 Merger: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

28.0 Remedies: The event of breach or default of any term, condition, covenant, or obligation of this Agreement by either Party, the other party may exercise any right available to it at law or equity, including, without limitation, an action for specific performance, and all such remedies shall be cumulative.

29.0 Incorporations: The Parties confirm and acknowledge the truth and accuracy of the "Whereas" clauses contained in this Agreement and same are hereby incorporated into and made a part of this Agreement.

30.0 Contingent on Appropriation: The state of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

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AGREEMENT BETWEEN BROWARD COUNTY AND THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR RESTORATION OF JOHN
U. LLOYD BEACH STATE PARK SOUTH JETTY FISHING WALKWAY AND
SAND TIGHTENING PROJECT

IN WITNESS WHEREOF, the parties hereto have made and executed this
Second Amendment on the respective dates under each signature: BROWARD
COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through
its Mayor or Vice-Mayor, authorized to execute same and the FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION, signing by and through its
_____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its BOARD
OF COUNTY COMMISSIONERS

(Signature)

By _____

Mayor

(Print Name)

____ day of _____, 2011

(Signature)

(Print Name)

Approved as to form by
Office of the County Attorney
Broward County, Florida
JONI ARMSTRONG COFFEY,
County Attorney
1850 Eller Drive, Suite 502
Fort Lauderdale, FL 33316
Telephone: (954) 523-3404
Telecopier: (954) 523-2613

By _____

Hollie N. Hawn (10/31/11)
Assistant County Attorney

By _____

Noel M. Pfeffer (11/2/11)
Deputy County Attorney

RJM/HNH:cr/dh

Rev. 10/26/11


FDEP_JohnULloyd fishing jetty.docx

AGREEMENT BETWEEN BROWARD COUNTY AND THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR RESTORATION OF JOHN
U. LLOYD BEACH STATE PARK SOUTH JETTY FISHING WALKWAY AND SAND
TIGHTENING PROJECT (Cont'd)

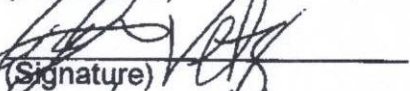
DEPARTMENT

WITNESSES:

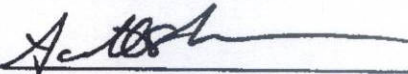
STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


(Signature)

M. Diane Langston
(Print Name)


(Signature)

Leyladi Velez
(Print Name)

By 

31 day of October, 2011

Approved as to form and legality

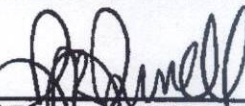
By 
Reagan K. Russell
Senior Assistant General Counsel

EXHIBIT "A"

PROJECT DESCRIPTION

DEPARTMENT will contract to sand tighten and repair the south jetty in order to reduce impacts to the beach fill seaward of John U. Lloyd State Park and eliminate the creation of hazardous sinkholes in the sandy beach berm. Once the jetty is tightened and repaired, the park service will replace the jetty walkway with new cement topping and guard rails to make it accessible for recreational purposes, i.e. saltwater non-boat fishing. The sand tightening will increase the net efficiency of area beach nourishment and dredging projects by reducing beach sand loss and channel sedimentation. In addition, the restoration of the jetty walkway will regenerate a wonderful amenity utilized for public fishing and enhance the coastal educational experience of park visitors viewing the fascinating environmental and navigational activity surrounding the port entrance.