

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BROWARD COUNTY, FLORIDA FOR ADDITIONAL DREDGING
IN CONNECTION WITH DREDGING OF
THE PORT EVERGLADES HARBOR, FLORIDA PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer"), and Broward County, Florida (hereinafter the "Non-Federal Interest"), represented by its County Administrator.

WITNESSETH, THAT:

WHEREAS, the Port Everglades Harbor, Florida Project (hereinafter the "Project") was authorized for construction by the River and Harbor Act of 1930 (Public Law 71-520), as modified by the River and Harbor Act of 1935 (Public Law 74-409), the River and Harbor Act of 1938 (Public Law 75-685), the River and Harbor Act of 1946 (Public Law 79-525), Section 101 of the River and Harbor Act of 1958 (Public Law 85-500), Section 301 of the River and Harbor Act of 1965 (Public Law 89-298), and Section 101(9) of the Water Resources Development Act of 1992 (Public Law 102-580);

WHEREAS, the Non-Federal Interest requests dredging of Berths 1, 2, and 3, to a depth of 31 feet mean lower low water (MLLW); Berths 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 25, 26, 27, and 30, to a depth of 42 feet MLLW; and placement of the dredging material in the Port Everglades Harbor Ocean Dredged Material Disposal Site (hereinafter the "Additional Dredging") and agrees to pay all costs of such dredging; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the Additional Dredging in connection with dredging of the Project.

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

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, and engineering and design associated with the Additional Dredging to be carried out in connection with dredging of the Project. While the Government will endeavor to limit the costs associated with the Additional Dredging to the current estimate of One Million Fourteen Thousand Dollars (\$1,014,000.00), the Non-Federal Interest acknowledges that the actual costs for the Additional Dredging may exceed such estimated amount due to claims or other unforeseen

circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Dredging.

2. Within ninety (90) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government One Million Fourteen Thousand Dollars (\$1,014,000). If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and, no later than thirty (30) calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED Jacksonville District (K3)” to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence the Additional Dredging until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and b) the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements, and rights-of-way the Government determines to be required for the Additional Dredging.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Dredging. The first such report shall be provided within ninety (90) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within ninety (90) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Dredging.

6. Upon completion of the Additional Dredging and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest’s responsibility to pay for all costs associated with the Additional Dredging, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to “FAO, USAED Jacksonville District (K3)” to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within thirty (30) calendar days of such written notice, subject to the availability of funds.

7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

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

If to the Non-Federal Interest:

County Administrator
Broward County Governmental Center
115 South Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301

If to the Government:

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

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 paragraph.

10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least fifteen (15) calendar dates written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs and incurred by the Government under this MOA, and for any and all costs of closing out or transferring any ongoing contracts.

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

THE DEPARTMENT OF THE ARMY

BROWARD COUNTY, FLORIDA

BY: _____

Andrew D. Kelly, Jr.
Colonel, U.S. Army
District Commander
Jacksonville District

BY: _____

Bertha Henry
County Administrator

DATE: _____

DATE: _____

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By _____

Al A DiCalvo (Date)
Assistant County Attorney

By _____

Russell J. Morrison (Date)
Senior Assistant County Attorney

CERTIFICATE OF AUTHORITY

I, Andrew J. Meyers, do hereby certify that I am the principal legal officer for Broward County, Florida, that Broward County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and Broward County, Florida for Additional Dredging in Connection with Dredging of the Port Everglades Harbor, Florida Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Memorandum of 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 Memorandum of Agreement on behalf of the Broward County, Florida acted within her statutory authority.

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

Andrew J. Meyers
County Attorney
Broward County, Florida