

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BROWARD COUNTY, FLORIDA
FOR DREDGED MATERIAL PLACEMENT DURING 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 the Mayor.

WITNESSETH, THAT:

WHEREAS, the Port Everglades Harbor, Florida Project (hereinafter the "Project") was authorized pursuant to 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 1965 (Public Law 89-298), and Section 101(9) of the Water Resources Development Act of 1992 (Public Law 102-580); and

WHEREAS, the Non-Federal Interest requests placement of dredged beach quality material on the beach along the east side of Dr. Von D. Mizell-Eula Johnson State Park (hereinafter the "dredged material placement") and agrees to pay all costs of such placement that are in excess of the costs of the Federal Standard dredged material placement alternative identified by the Government as the least costly alternative consistent with sound engineering practices and meeting the environmental standards established by the Clean Water Act section 404(b)(1) evaluation process or ocean dumping criteria consistent with 33 C.F.R. Part 335.

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 dredged material placement that exceed the costs of the Federal Standard dredged material placement alternative. While the Government will endeavor to limit the additional costs associated with the dredged material placement to the current estimate of \$710,000 the Non-Federal Interest acknowledges that the actual costs for the dredged material placement that are in excess of the costs of the Federal Standard dredged material placement alternative 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 dredged material placement that exceed the costs of the Federal Standard dredged material placement alternative.

2. Within thirty (30) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government the sum of \$710,000. 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 dredged material placement 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 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 dredged material placement.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the dredged material placement. 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 dredged material placement.

6. Upon conclusion of the dredged material placement 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 dredged material placement that exceed the costs of the Federal Standard dredged material placement alternative, 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. The Non-Federal Interest shall hold and save the Government free from all damages arising from the dredged material placement, except for damages due to the fault or negligence of the Government or its contractors.

9. 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.

10. Notices.

a. 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:

Mayor
Broward County
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

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 paragraph.

11. This MOA may be modified or amended only by written, mutual agreement of the parties.

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

DEPARTMENT OF THE ARMY

BROWARD COUNTY, FLORIDA

BY: _____

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

BY: _____

Mayor

DATE: _____

DATE: _____

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 Dredged Material Placement During 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 his statutory authority.

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

Andrew J. Meyers
County Attorney
Broward County, Florida