

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LEE COUNTY, FLORIDA
FOR ADDITIONAL SAND PLACEMENT
IN CONNECTION WITH PERIODIC RENOURISHMENT OF THE
GASPARILLA ISLAND SEGMENT
OF THE
LEE COUNTY, FLORIDA
SHORE PROTECTION 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 Commander, Jacksonville District (hereinafter the "District Commander"), and the Lee County, Florida (hereinafter the "Non-Federal Interest"), represented by the Chairman of its Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, the Lee County, Florida, Shore Protection Project (hereinafter the "Project") was authorized for construction by Section 201 of the Flood Control Act of 1965, Public Law 89-298, and approved by Senate Committee Resolution dated December 17, 1970 and House Resolution dated December 15, 1970;

WHEREAS, the Non-Federal Interest requests placement of sand on its beaches beyond the limits of the Project (hereinafter the "Additional Placement") and agrees to pay all costs of such sand placement; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the Additional Placement in connection with periodic renourishment 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 Placement to be carried out in connection with periodic renourishment of the Project. While the Government will endeavor to limit the additional costs associated with the Additional Placement to the current estimate of \$4,500,000.00 the Non-Federal Interest acknowledges that the actual costs for the Additional Placement 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 Placement.

2. Within 30 calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government \$4,500,000.00. 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 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 (K3)” to the District Commander 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 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 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 Placement.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Placement. The first such report shall be provided within 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 90 calendar days after the final day of each succeeding quarter until the Government concludes the Additional Placement.

6. Upon completion of the Additional 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 Additional Placement, 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 30 calendar days of such written notice by delivering a check payable to “FAO, USAED Jacksonville (K3)” to the District Commander 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 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:

Chairman
Lee County Board of County Commissioners
P.O. Box 398
Ft. Myers, Florida 33902-0398

If to the Government:

District Engineer
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 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs 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

LEE COUNTY, FLORIDA

BY: _____
Colonel Andrew D. Kelly, Jr.
District Engineer
Jacksonville District

BY: _____
Larry Kiker
Chairman
Board of County Commissioners

DATE: _____

DATE: _____