



MEMORANDUM

Agenda Item No. 14(A)(3)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving and authorizing execution of Project Partnership Agreement between Miami-Dade County and the United States Department of the Army in the approximate amount of \$180,000,000; expressing intent of County to issue port revenue bonds to finance part of Port's Phase III Dredging Project's costs


The accompanying resolution was prepared by the Port of Miami Department and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa and Co-Sponsor Commissioner Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: July 17, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving and Authorizing Execution of Project Partnership Agreement
between Miami-Dade County and the United States Department of the Army for the
Construction of Miami Harbor Federal Navigation Project Phase III

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution approving and authorizing the execution of the Project Partnership Agreement between Miami-Dade County ("County") and the United States Department of the Army ("Army") for the construction of the -50 feet Miami Harbor Federal Navigation Project Phase III ("Project") at PortMiami.

SCOPE

PortMiami ("Port") is located within District 5 – Commissioner Bruno A. Barreiro, however the impact of this agenda item is countywide as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The total cost of the Project, including the cost of construction, Army procurement and administration, environmental mitigation and monitoring, and an Army required contingency, is estimated to be \$180,000,000. This dredging project is a budgeted capital project to be paid from future anticipated Port revenue bond proceeds and State grants. In a separate, future agenda item, the County will seek Board approval (via ordinance) to issue approximately \$110,000,000 in Port revenue bonds, the proceeds of which will be used to fund the costs associated with the Army's award of the base dredging contract. Since timing for this Project is critical to the Port's objective of completing the deep dredge work to coincide with completion of the Panama Canal expansion, should the Port's anticipated issuance of revenue bonds not be completed before the County's payment of base bid associated costs to the Army is due, such payment (estimated to be \$108,000,000 in Fiscal Year 2013) shall be funded from County pooled cash, with the Seaport expected to reimburse such advance as soon as its bond proceeds become available (anticipated in the first quarter of calendar year 2013). As Project work is completed, the County anticipates receiving reimbursements from both existing and future Florida Department of Transportation grants. These grant monies will then be used by the County to fund much of the later disbursements required for Options One and Two, respectively in Fiscal Years 2014 and 2015.

To the extent the deepening of the Miami Harbor below 45 feet results in an incremental increase in future dredging maintenance costs, these incremental costs will be cost-shared 50/50 with the Department of the Army, provided, however, the County will pay 100% of the incremental increased maintenance costs (if any) attributable to the last foot of harbor deepening work (excluding overdepth). It is anticipated that maintenance work will only be necessary approximately once every ten years, at an estimated cost of \$1,000,000 per maintenance event, to be funded through the Port's operating budget.

Finally, while the Army will procure and administer the construction of the Project, under the Project Partnership Agreement, the County is required to procure and fund certain post-construction monitoring of environmental resources and Project mitigation features, the anticipated costs of which are included in the above-referenced \$180,000,000 Project cost estimate.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreement are Patrick Shortal, Chief, Engineering Design Services, Capital Development Division and Becky Hope, Environmental Manager, Capital Development Division.

BACKGROUND

In November 2007, Congress approved the Water Resources Development Act of 2007, which, among other things, authorized the Port's deep dredge Project, which will deepen the Port's outer and south channel to a depth of -50 feet. This additional depth is critical for the Port since it will enable it to accommodate deeper draft cargo vessels and help the Port remain competitive with both competing U.S. ports as well as foreign ports. Worldwide, the major shipping lines are increasingly procuring and deploying larger cargo vessels requiring deeper channel depths. At the proposed -50 foot depth, the Port will be able to remain a strategic hub for international commerce in both the north/south and east/west trade routes, as well as remain a dominant player with Latin America and the Caribbean. Additionally, as the closest United States East Coast port to the Panama Canal, the Port is uniquely positioned to take advantage of the expanded international trade and cargo traffic opportunities anticipated to be produced by the Panama Canal's soon to-be-completed expansion.

While the Water Resource Development Act of 2007 authorized the Department of the Army to deepen PortMiami, Congress has not yet appropriated any federal funds to construct the Project. Consequently, the only way for the Congressionally authorized PortMiami deep dredge project to go forward on a timely basis--to enable the Project to be completed in time for the anticipated early-2015 completion of the on-going Panama Canal improvements--is for the County to commit to both fund its (local) share of the Project's costs and to advance the federal government's share. Approval of the attached and recommended Project Partnership Agreement between the County and the Department of the Army, under which the County will fund both the local and federal shares of Project costs, allows the PortMiami deep dredge Project to go forward now--without federally appropriated construction funds. Although the Project Partnership Agreement requires the County to advance the federal government's share of Project costs (estimated to be about \$90 million), the County retains the right to seek federal reimbursement of part or all of the County advanced federal share of Project costs if and to the extent federal funds are later appropriated for such purpose. If federal funds are not appropriated for such purpose, the County will not be eligible for such federal reimbursement.

While the Project Partnership Agreement requires the County to pay or advance all of the required Project construction costs, to lessen the County's financial burden, the County successfully sought financial commitments from the State of Florida to provide approximately \$112 million (\$112,000,000), or about 62% of the Project's estimated costs. In response, the Florida Department of Transportation has included \$112 million in support of the Project in its five-year transportation improvement plan. An existing Joint Participation Agreement (JPA Contract #AQF69) with the Florida Department of Transportation already contains \$55,831,244 of the committed funds. It is anticipated that the additional \$56 million in state funds--which have already been included as a line item in the Florida Department of Transportation's five-year transportation improvement plan--will become available subject to future Joint Participation Agreements between the Florida Department of Transportation and the County and/or added to existing County-Florida Department of Transportation Joint Participation Agreements. It is anticipated that these state funds will be used to reimburse the County for the majority of the County's Project expenditures over the next four (4) years.

As to the remaining anticipated Project costs above the amount of anticipated state funds, funding has been previously included in Miami-Dade County's approved five-year capital improvement plan. The funding allocation set in the County capital improvement plan was closely coordinated with the Army's staff and reflects anticipated County funding (including Florida Department of Transportation's state funds) requirements of \$108M in Fiscal Year 2013, \$62M in Fiscal Year 2014 and \$10M in Fiscal Year 2015.

To accommodate both the County's capital improvement plan and the Florida Department of Transportation funding allocation, the Project is being contracted in three (3) phases: a base contract and two (2) option elements. Under this base bid plus options approach, rather than having to advance the full \$180,000,000 upfront, the County can instead fund the Project through four (4) separate disbursements over four fiscal years. Based on the U.S. Army Corps of Engineer's preliminary construction schedule, it is anticipated the County will disburse \$250,000 to the Army in Fiscal Year 2012 (*disbursement one*); 100% of the costs associated with the base contract award, plus a Corps of Engineer's required contingency thereon (estimated to be approximately \$108,000,000) in Fiscal Year 2013 (*disbursement two*); and 100% of the costs

associated with Options One and Two in Fiscal Years 2014 and 2015 (*disbursements three and four, respectively*) (estimated in aggregate, including contingencies, to be \$72,000,000).

If, in the future, the United States Congress appropriates federal construction funds that may be used to reimburse the County for the federal share of Project costs it previously advanced, the County may then seek reimbursement from the Army for the federal share of Project costs advanced by the County. If, however, the County were to receive full federal reimbursement for County-advanced federal costs (approximately \$90,000,000), the Florida Department of Transportation would require the County to reimburse it approximately \$75,000,000 because state grant funds will essentially be used by the County to meet much of the County's federal funding obligations under the proposed Project Partnership Agreement.

On March 3, 2009, the Board previously passed Resolution R-203-09, approving a Design Agreement between the Army and the County, under which the Army agreed to pay 75% of the design and engineering costs of the Project and the County, as the Project's "Local Sponsor", agreed to pay the remaining 25%. The Design Agreement was executed on April 11, 2009. On July 7, 2011, the Board passed Resolution R-576-11, approving Design Agreement Amendment Number One, under which the County agreed to advance the Army additional design funds up to \$1,000,000. Design Agreement Amendment Number One was executed on July 28, 2011. To date, \$140,000 has been advanced to the Army to support its completion of Project design.

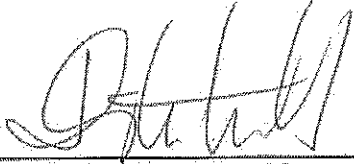
In late 2011, the Florida Department of Environmental Protection advertised public notice of its intent to issue a dredging permit and certain variances to the Army. Three administrative petitions were filed raising objections to the Florida Department of Environmental Protection's proposed permit. In response, the Board directed the County Attorney's Office to formally intervene in the administrative permit challenge to defend the Florida Department of Environmental Protection's proposed issuance of a dredging permit. On May 1, 2012, the Board passed Resolution R-422-12, approving a Settlement Agreement between Tropical Audubon Society, Inc., Biscayne Bay Waterkeeper, Inc., and resident Dan Kipnis (collectively, "Petitioners") and the County. This settlement resolved the administrative challenge brought by Petitioners and resulted in the administrative petition being withdrawn, with prejudice, on May 21, 2012. On May 22, the Florida Department of Environmental Protection issued its final dredging permit to the Army.

Under the terms of the recommended Project Partnership Agreement, the County will disburse funds to the Department of the Army (estimated at \$180,000,000) over four fiscal years as described above. In the event the Project costs more than the estimated \$180,000,000, the County's funding obligations will increase accordingly. Prior to contract award, however, should the bids come in at levels that would cause overall Project costs to exceed an existing statutory cap of \$181,750,000, the Army could not to go forward with the Project unless additional congressional authority was obtained or the Project was reprocured at a lower price (beneath the cap). If post award events or claims cause the Army's Project obligations to increase overall Project costs above the referenced statutory cap, the Army will stop the Project unless additional congressional authority is obtained.

While several Florida ports, including Port Everglades, Tampa, and Jacksonville, are currently seeking congressional authorization to deepen their harbors and channels to the desired depth of -50 feet, the Port of Miami is the *only* Florida port already so authorized. In fact, only three east coast ports have unconditional congressional authorization to deepen to -50 feet: the Port Authority of New York and New Jersey, Norfolk, Virginia, and PortMiami. A portion of the Port of Baltimore is also deepened to -50 feet. As such, the Port presently has an advantage over all other east coast ports in the race to capitalize on the new trade opportunities arising from the Panama Canal expansion, expected to be completed in early 2015. By approving the recommended Project Partnership Agreement, this Board will allow the PortMiami Project to move forward in a timely manner that keeps the Port's strategic advantage intact. Moreover, the Panama Canal's expansion is anticipated to not only increase the Port's future cargo traffic, but also create new opportunities to service newer and larger cargo vessels that require deeper draft channels. It is therefore vital for the County to keep this critical deepening Project moving forward and on schedule. Without the requested Project Partnership Agreement, completion of the Project in time to coincide with the anticipated completion of the on-going Panama Canal improvements will be jeopardized.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution which include the Mayor or designee to execute the Agreement, in its substantial form, and to exercise the cancellation, renewal, and funding provisions set forth in the Agreement.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 14(A)(3)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required.

Approved _____ Mayor

Agenda Item No. 14(A)(3)

Veto _____

7-17-12

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF PROJECT PARTNERSHIP AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE UNITED STATES DEPARTMENT OF THE ARMY IN THE APPROXIMATE AMOUNT OF \$180,000,000; EXPRESSING INTENT OF COUNTY TO ISSUE PORT REVENUE BONDS TO FINANCE PART OF PORT'S PHASE III DREDGING PROJECT'S COSTS; AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION, TERMINATION AND/OR FUNDING PROVISIONS CONTAINED THEREIN; AND, AUTHORIZING THE COUNTY TO ADVANCE A PORTION OF PROJECT COSTS FROM COUNTY POOLED CASH, TO BE REIMBURSED UPON FUTURE PORT REVENUE BOND PROCEEDS BECOMING AVAILABLE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves the Project Partnership Agreement between Miami-Dade County and the United States Department of the Army ("Agreement") in substantially the form attached hereto and made a part hereof;

Section 2. Expresses the intent of County to issue Seaport revenue bonds in fiscal year 2013 to finance a portion of the Seaport's Phase III Dredging Project's costs;

Section 3. Authorizes the Mayor or the Mayor's designee to execute the Project Partnership Agreement, after review and approval by the County Attorney's Office, and to exercise any cancellation, termination, and/or funding provisions contained therein; and

Section 4. Authorizes the Mayor or the Mayor's designee to advance portions of the Phase III Dredging Project costs due the Army under the Agreement from County pooled cash, provided such advances shall be reimbursed within the same fiscal year upon future Seaport revenue bond proceeds becoming available.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

DFG/SBB

Steve Bass

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MIAMI-DADE COUNTY, FLORIDA
FOR CONSTRUCTION
OF THE
MIAMI HARBOR NAVIGATION PROJECT

THIS AGREEMENT entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government") represented by the Assistant Secretary of the Army (Civil Works) and Miami-Dade County, Florida (hereinafter the "Non-Federal Sponsor"), represented by its County Mayor.

WITNESSETH, THAT:

WHEREAS, the Miami Harbor Miami-Dade County, Florida Navigation Study Final General Reevaluation Report and Environmental Impact Statement, dated February 2004, identifies a plan that maximizes net national economic development (hereinafter the "*NED Plan*", as defined in Article I.C. of this Agreement) for commercial navigation;

WHEREAS, the Non-Federal Sponsor prefers construction of a locally preferred plan, which provides greater channel depths (hereinafter the "*Project*", as defined in Article I.A. of this Agreement), and is willing to pay 100 percent of the total costs of construction of the general navigation features that exceed the total costs of construction of the *NED Plan*;

WHEREAS, construction of the *Project* was authorized by Section 1001(17) of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the construction, operation, and maintenance of the *Project*;

WHEREAS, Section 1001(17) of the Water Resources Development Act of 2007, Public Law 110-114, directs that the non-Federal share of the cost of the general reevaluation report that resulted in the report of the Chief of Engineers for the *Project* shall be cost shared in the same percentage as the non-Federal share of the cost of construction of the *Project* and that this cost sharing be reflected in the Project Partnership Agreement for the *Project*;

WHEREAS, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the *Project* and sets forth procedures for adjusting such maximum amount;

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated April 11, 2009, as amended on July 28, 2011, for engineering and design of the *Project* (hereinafter the "Design Agreement"), with the Non-Federal Sponsor paying a portion of the costs for engineering and design;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project until a non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, the Secretary of the Army is authorized, pursuant to 33 U.S.C. 561, to accept an advance of funds from the Non-Federal Sponsor for the prosecution of this authorized navigation project;

WHEREAS, the Non-Federal Sponsor considers it to be in its interest to expedite the construction of the *Project* by providing all funding required for construction of the *Project*, including advancing the Federal share of the cost of the *Project*;

WHEREAS, the Non-Federal Sponsor understands that neither execution of this Agreement nor acceptance of advanced funds represents or gives rise to any commitment on the part of the Government to budget for funds to reimburse any funds advanced by the Non-Federal Sponsor;

WHEREAS, the Non-Federal Sponsor understands that it will be reimbursed for advanced funds only if Congress appropriates funds specifically for that purpose;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103, provides that total reimbursements provided for all applicable general authorities and specific project authorities shall not exceed \$100,000,000 in each fiscal year;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the *general navigation features* and all lands, easements, rights-of-way, *relocations*, and *deep draft utility relocations* that the Government determines to be necessary for construction or operation and maintenance of the *general navigation features*, but shall not include aids to navigation or the *local service facilities*.

B. The term "*general navigation features*" shall mean deepening of portions of the project for a channel depth of 50 feet and an entrance channel depth of 52 feet, realignment of portions of the project, turning basin expansion, widening of the entrance channel, addition of a turn widener, channel widening and the dredged or excavated material disposal facilities at Virginia Key, and mitigation required for the *general navigation features* as generally described in the "Miami Harbor, Miami-Dade County, Florida Navigation Study Final General Reevaluation Report and Environmental Impact Statement," dated February 2004 and approved by the Chief of Engineers on April 25, 2005. The term does not include any lands, easements, rights-of-way, *relocations*, or *deep draft utility relocations*; *betterments*; aids to navigation; or *local service facilities*.

C. The term "*NED Plan*" shall mean deepening of portions of the project optimized at a channel depth of 49 feet and an entrance channel depth of 51 feet, realignment of portions of the project, turning basin expansion, widening of the entrance channel, addition of a turn widener, channel widening and the dredged or excavated material disposal facilities at Virginia Key, and mitigation required for the *NED Plan* as generally described in the "Miami Harbor, Miami-Dade County, Florida Navigation Study Final General Reevaluation Report and Environmental Impact Statement," dated February 2004 and approved by the Chief of Engineers on April 25, 2005. The term does not include any lands, easements, rights-of-way, *relocations*, or *deep draft utility relocations*; *betterments*; aids to navigation; or *local service facilities*.

D. The term "*period of construction*" shall mean the time from the date that the Government either issues the solicitation for the first construction contract for the *general navigation features* or commences construction of the *general navigation features* using the Government's own forces, whichever is earlier, to the date that construction of the *general navigation features* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.D. of this Agreement, whichever is earlier.

E. The term "*GRR Study Costs*" shall mean the sum of all costs incurred by the Government and the Non-Federal Sponsor directly related to preparation of the "Miami Harbor, Miami-Dade County, Florida Navigation Study Final General Reevaluation Report and Environmental Impact Statement," dated February 2004 ("GRR") and include, but are not necessarily limited to: the Government's labor charges; direct costs; overhead expenses; supervision and administration costs; costs of contracts with third parties; any termination or suspension costs associated with preparation of the GRR; and the Non-Federal Sponsor's costs in providing in-kind contributions that the Government determines were needed for preparation of the GRR; and the Government's and Non-Federal Sponsor's costs of participation in Study Management and Coordination.

F. The term "*total costs of construction of the general navigation features*" shall mean the *GRR Study Costs*; the costs of engineering and design pursuant to the Design Agreement; and all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement directly related to construction of the *general navigation features* for the *Project*, which include, but are not necessarily limited to: the Government's engineering and design costs during construction; the costs of mitigation associated with construction of the *general navigation features*, including the costs of monitoring by the Non-Federal Sponsor in accordance with Article II.F. of this Agreement; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances

in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Articles XVII.A.1. and XVII.C.1. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the Non-Federal Sponsor's and the Government's costs associated with obtaining the water quality certification; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Articles IX.B. and IX.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, *relocations*, or *deep draft utility relocations*; costs of operation and maintenance of the *general navigation features*; any costs of dispute resolution under Article VII of this Agreement; any costs of aids to navigation; any costs of construction or operation and maintenance of the *local service facilities*; or the Non-Federal Sponsor's costs of negotiating this Agreement.

G. The term "*total costs of construction of the NED Plan*" shall mean the sum of all costs that would have been incurred by the Non-Federal Sponsor and the Government had the *NED Plan* been constructed.

H. The term "*incremental costs*" shall mean the difference between the *total costs of construction of the general navigation features* and the *total costs of construction of the NED Plan*.

I. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway (which includes any highway, roadway, street or way, including any bridge thereof, that is owned by a public entity), railroad (including any bridge thereof), or public facility, excluding any bridge over navigable waters of the United States, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a *relocation*, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

J. The term "*deep draft utility relocation*" shall mean providing a functionally equivalent facility to the owner of a utility that may take the form of alteration, lowering, raising, or replacement and attendant demolition of the utility owner's existing facility, or part thereof, when such action is necessary for the construction or operation and maintenance of *general navigation features* with an authorized depth of greater than 45 feet, excluding associated *over-depth* and entrance wave allowances.

K. The term "*betterment*" shall mean a difference in the engineering and design or construction of an element of the *general navigation features* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the engineering and design or construction of that element. The term does not include features in addition to the *general navigation features*.

L. The term "*dredged or excavated material disposal facility*" shall mean improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with construction or operation and maintenance of the other *general navigation features*. Such improvements may include, but are not necessarily limited to,

retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes. The term also includes modifications to a dredged or excavated material disposal facility to increase capacity beyond that created by regularly recurring operation and maintenance activities.

M. The term "*over-depth*" shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

N. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

O. The term "*local service facilities*" shall mean the berthing and service facilities necessary to realize the benefits of the *general navigation features*.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Non-Federal Sponsor shall provide all funding required after the date of execution of this Agreement for construction of the *general navigation features*, including advancing the Federal share of the cost of the *general navigation features*.

1. The Government shall allocate the *total costs of construction of the general navigation features* among the following depth increments: depth of the *NED Plan* in excess of 20 feet but not in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances; depth of the *NED Plan* in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances; and depth of the *Project* in excess of the *NED Plan*.

2. The Non-Federal Sponsor's share of the *total costs of the general navigation features* required during the *period of construction* is as follows: 25 percent of the costs of the depth of the *NED Plan* in excess of 20 feet but not in excess of 45 feet; 50 percent of the costs of the depth of the *NED Plan* in excess of 45 feet, including associated *over-depth* and entrance channel wave allowances; and 100 percent of all *incremental costs* associated with implementation of the *Project* in excess of the cost of the *NED Plan*.

3. The Non-Federal Sponsor's share shall also include an additional amount equal to 10 percent of *total costs of construction of the NED Plan* less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and *relocations* and *deep draft utility relocations*.

4. The Non-Federal Sponsor has elected to provide all funding required to construct the *general navigation features* and understands that neither execution of this Agreement nor acceptance of advanced funds constitutes, represents, or implies any commitment on the part of the Department of the Army or the Federal Government to budget or appropriate funds to provide for reimbursement of the advanced funds. To the extent that funds are appropriated specifically for reimbursement of the advanced funds, the Government shall reimburse the Non-Federal Sponsor the Federal share of the *total costs of construction of the general navigation features*.

B. The Government, using those funds provided by the Non-Federal Sponsor, shall expeditiously construct the *general navigation features*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *general navigation features* shall be exclusively within the control of the Government.

2. At the time the U.S. Army Engineer for the Jacksonville District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract for the *general navigation features*, the District Engineer shall furnish the Non-Federal Sponsor with a copy thereof.

C. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those necessary for the borrowing of material or the disposal of dredged or excavated material, that the Government determines the Non-Federal Sponsor must provide for construction or operation and maintenance of the *general navigation features*, and shall perform or ensure performance of all *relocations* and *deep draft utility relocations* that the Government determines to be necessary for construction or operation and maintenance of the *general navigation features*. The Non-Federal Sponsor shall not be entitled to reimbursement for any value of lands, easements, rights-of-way, and *relocations* and *deep draft utility relocations* provided or performed pursuant to Article III of this Agreement even if such value exceeds 10 percent of *total costs of construction of the NED Plan*.

D. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the *period of construction*. Upon providing such notification, the Government shall conduct an accounting, in accordance with Article VI of this Agreement, and furnish the results to the Non-Federal Sponsor.

E. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features*.

1. The Government shall be responsible for the costs of operation and maintenance of the general navigation features, except the Non-Federal Sponsor shall be responsible for, and shall pay, in accordance with Article VI.G. of this Agreement, 50 percent of the increase in annual operation and maintenance costs attributable to operation and maintenance of the deep draft portion of the *NED Plan*, i.e., depths of the *NED Plan* exceeding 45 feet, if any,

and 100 percent of the increase in annual operation and maintenance costs, if any, attributable to operation and maintenance of depths in excess of the *NED Plan*.

2. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the *general navigation features*. However, nothing contained herein shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

3. The Non-Federal Sponsor hereby authorizes the Government to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in the Government's sole discretion, are necessary for the operation and maintenance of the *general navigation features*. Such activities include, but are not necessarily limited to, construction or operation and maintenance of the *dredged or excavated material disposal facilities* and management of disposal of dredged or excavated material associated with construction or operation and maintenance of the other *general navigation features*. In addition, as between the Government and the Non-Federal Sponsor, for so long as a *dredged or excavated material disposal facility* is required for construction or operation and maintenance of the other *general navigation features* as determined by the Government, the Government shall have the full authority and exclusive right to operate and maintain or manage such facility, including the exclusive right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government.

F. In coordination with the U.S. Corps of Engineers, U.S. Coast Guard, Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and National Park Service, the Non-Federal Sponsor shall monitor the mitigation features of the *Project* for a period of five years from the date that construction of each mitigation feature site is completed. In addition, in accordance with requirements set forth in the state water quality certification issued to the Government on May 22, 2012, the Non-Federal Sponsor shall conduct monitoring, which includes certain pre-construction surveys and post-construction surveys and monitoring, of environmental resources.

G. The Non-Federal Sponsor shall not use funds provided by another Federal agency to meet any of its obligations under this Agreement unless that Federal agency verifies in writing that the funds are authorized to be used to carry out the *Project*.

H. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall undertake all actions associated with the *local service facilities*, including dredging, excavation, and disposal of material therefrom, that are necessary to realize the benefits of the *general navigation features*. The Government shall have no obligation under this Agreement for construction, including modification or improvement, of the *local service facilities* or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party.

I. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so

notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.F. of this Agreement.

1. Acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *general navigation features*. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV of this Agreement.

2. Inclusion of *betterments* in the engineering and design or construction of the *general navigation features*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *general navigation features* that include *betterments* between *total costs of construction of the general navigation features* and the costs of the *betterments*.

3. Engineering and design, construction, including modification or improvement of, or operation and maintenance of the *local service facilities* in conjunction with the engineering and design, construction, or operation and maintenance of the associated *general navigation features*. Notwithstanding the performance of this additional work by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV of this Agreement.

ARTICLE III - LANDS, RELOCATIONS, DEEP DRAFT UTILITY RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those necessary for the borrowing of material, the disposal of dredged or excavated material, *relocations*, and *deep draft utility relocations*, and including those that the Government determines to be subject to the navigation servitude. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction or operation and maintenance of the applicable *general navigation features*, as set forth in such

descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the *general navigation features* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*. Although the parties currently anticipate that dredged or excavated material from construction, operation, and maintenance of the *general navigation features* will be disposed of at offshore dredged material disposal locations, to the extent that it becomes necessary for the dredged or excavated material to be disposed in another manner, the Non-Federal Sponsor shall provide lands, easements, and rights-of-way necessary for such disposal in accordance with the provisions of this Article of the Agreement.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* and *deep draft utility relocations* necessary for construction or operation and maintenance of the *general navigation features*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government, in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* and *deep draft utility relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations* and *deep draft utility relocations*. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* and *deep draft utility relocations* the Government determines to be necessary for that work.

C. Nothing in this Agreement shall be deemed to affect any rights the Non-Federal Sponsor may have to seek and receive contributions from a utility owner, in accordance with Section 101(a)(4) of Public Law 99-662, as amended (33 U.S.C. 2211(a)(4)), for the owner's share of *deep draft utility relocation costs*.

D. The Non-Federal Sponsor shall comply with the 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 necessary for construction or operation and maintenance of the *general navigation features* and the *local service facilities*, including those necessary for *relocations*, *deep draft utility 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.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DEEP DRAFT UTILITY RELOCATIONS

A. To determine the additional amount owed by the Non-Federal Sponsor pursuant to Article II.A.3. of this Agreement, the Government shall afford credit toward an amount equal to 10 percent of *total costs of construction of the NED Plan* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III of this

Agreement, and for the value of the *relocations* and *deep draft utility relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, no credit shall be afforded for the value of any lands, easements, rights-of-way, *relocations*, or *deep draft utility relocations* that have been provided previously as an item of cooperation for another Federal project. In addition, no credit shall be afforded for the value of lands, easements, rights-of-way, *relocations*, or *deep draft utility relocations* that were acquired or performed using funds provided by another Federal agency unless that Federal agency verifies in writing that the 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 III.A. or III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contribution for the purpose of determining the amount of credit to be afforded in accordance with the provisions of this Article.

C. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph D. of this Article, the value of lands, easements, and rights-of-way, including those necessary for the *relocations*, *deep draft utility relocations*, 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 of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. 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 Government with authorization for entry thereto. 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 paragraph C.3. or C.5. of this Article, 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 Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. 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 paragraph C.2.a. of this Article, 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 paragraph C.2.a. of this Article, 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 paragraph C.2.a. of this Article.

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 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 paragraph C.3. of this Article, 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 necessary for construction or operation and maintenance of the *general navigation features*, 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 IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but are not necessarily limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. 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 III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for crediting purposes pursuant to paragraph C.2.a. of this Article, as determined by the Government, and subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes 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. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.J.I. of this Agreement shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, and actual amounts expended for payment of any relocation assistance benefits in accordance with Public Law 91-646, as amended.

E. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* and *deep draft utility relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a highway or a utility, 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. For a *relocation* of a utility, the value shall be only that portion of *relocation* costs borne by the Non-Federal Sponsor 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.

4. The value of a *deep draft utility relocation* shall be that portion of the *deep draft utility relocation* costs borne by the Non-Federal Sponsor, but not to exceed 50 percent of the total *deep draft utility relocation* costs, that the Government determines are necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

5. *Relocation* costs and *deep draft utility relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation* or the *deep draft utility relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation* or the *deep draft utility relocation*, as determined by the Government. *Relocation* costs and *deep draft utility relocation* costs shall not include any additional cost of using new material when suitable used material is available. *Relocation* costs and *deep draft utility relocation* costs shall be subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. Any credit afforded for the value of *relocations* and *deep draft utility relocations* 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Non-Federal Sponsor acknowledges that the Government may, as appropriate, adjust or withhold credit to reflect any payment that should have been made by the Non-Federal Sponsor or any of its agents or contractors pursuant to these laws.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of construction*. The

Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including but not necessarily limited to matters related to: engineering and design; plans and specifications; scheduling; real property, *relocation*, *deep draft utility relocation*, real property acquisition; contract awards or modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and *deep draft utility relocations*; the Government's cost projections; final inspection of the entire *Project* or functional portions of the *Project*; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operation and maintenance of the *general navigation features*; and other matters related to the *Project*. The Project Coordination Team shall also generally oversee the coordination of schedules for the *Project* and the *local service facilities*. Oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *general navigation features*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. Beginning October 1, 2012 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall maintain and provide to the Non-Federal Sponsor records of costs incurred, current projections of costs, funding provided by the Non-Federal Sponsor, and credit afforded for the value of lands, easements, rights-of-way,

relocations, and deep draft utility relocations. As of the effective date of this Agreement, *total costs of construction of the general navigation features* are projected to be \$176,300,000, *total costs of construction of the NED Plan* are expected to be \$153,800,000, *incremental costs* are expected to be \$22,500,000, the credit to be afforded for the value of lands, easements, rights-of-way, *relocations, and deep draft utility relocations* to be provided or performed through the end of the *period of construction* is projected to be \$3,000,000, and the 10% additional amount required by Article II.A.3. of this Agreement is projected to be \$15,230,000. 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. No later than 15 business days (which excludes Saturdays, Sundays, and Federal holidays) after the date of execution of this Agreement, the Non-Federal Sponsor shall provide to the Government \$250,000, which is the estimated amount of costs associated with the solicitation for the construction contract for the *general navigation features*. Not less than 30 business days prior to the scheduled date for award of the construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor for costs associated with award of the base contract, and the Non-Federal Sponsor shall provide to the Government the full amount no later than 10 business days prior to the scheduled award date. The Non-Federal Sponsor shall provide funds required under this paragraph by delivering a check payable to "FAO, USAED, Jacksonville District" to the District Engineer, or by verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

C. No later than 10 business days prior to exercise of any contract option, the Non-Federal Sponsor shall provide to the Government the full amount of costs associated with such option, as determined in writing by the Government, through any of the payment mechanisms specified in paragraph B. of this Article.

D. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. No later than 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B. of this Article.

E. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for the *period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for the *period of construction* from being conducted in a timely manner, the Government shall conduct an interim accounting for the *period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings for the *period of construction* are resolved, the Government shall amend the interim

Federal Sponsor shall provide the required funds through any of the payment mechanisms specified in paragraph B. of this Article.

2. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor in the current *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. No later than 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

ARTICLE VII - 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. The parties each 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 VIII - HOLD AND SAVE

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

ARTICLE IX - 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, or 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 and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, 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. Sections 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. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and, as determined by the Government, included in *total costs of construction of the NED Plan*, and shared in accordance with the provisions of 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. The costs of Government audits performed in accordance with this paragraph shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE X - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XI - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations 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.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If the Government determines at any time the Non-Federal Sponsor is failing to fulfill its obligations under this Agreement, the Government shall provide the Non-Federal Sponsor written notice regarding the details of the Non-Federal Sponsor's failure to provide a required payment or otherwise to perform in accordance with this Agreement. If the Non-Federal Sponsor does not, within 90 days of such notice, provide a required payment or correct its performance in a manner satisfactory to the Government, the Assistant Secretary of the Army (Civil Works) may terminate this Agreement or suspend future performance under this Agreement unless she determines that continuation of work on the *general navigation features* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.D. of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary 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. Sections 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation 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.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and, as determined by the Government, included in *total costs of construction of the NED Plan*, and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances that are determined by the Government to be attributable to the *general*

navigation features shall be included in *total costs of construction of the general navigation features* and, as determined by the Government, included in *total costs of construction of the NED Plan*, and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform, or ensure performance of, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, and rights-of-way necessary solely for construction or operation and maintenance of the *local service facilities*. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this paragraph shall be borne entirely by the Non-Federal Sponsor. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

C. 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 that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*, 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 the parties agree that the Non-Federal Sponsor should proceed. In the event it is discovered through any means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way necessary for construction or operation and maintenance of the *local service facilities*, 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.

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction or operation and maintenance of the *general navigation features*, or, if already in construction or operation and maintenance of the *general navigation features*, whether to continue with construction or operation and maintenance of the *general navigation features*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction or operation and maintenance of the *general navigation features* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total costs of construction of the general navigation features* or *total costs of construction of the NED Plan*. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this

Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *general navigation features*. The Government shall have no obligation under this Agreement for the costs of any cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the *local service facilities*.

E. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph D. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

F. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - 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 delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Port Director
Port of Miami
Miami-Dade County, Florida
1015 North American Way, Second Floor
Miami, Florida 33132

If to the Government:

District Engineer
U.S. Army Corps of Engineers
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32223-0019

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

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - 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 XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties.

1. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and, as determined by the Government, included in *total costs of construction of the NED Plan*, and shared in accordance with the provisions of this Agreement.

2. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.E. of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as renumbered and amended by Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total costs of construction of the general navigation features*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *NED Plan*.

C. The Government shall not incur costs for archeological data recovery activities that exceed the statutory one percent limit specified in paragraph B. of this Article 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 (16 U.S.C. Section 469c-2(3)).

1. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to construction of the *NED Plan* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to operation and maintenance of the *NED Plan* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.I. of this Agreement.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XIX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), and understands that it establishes a maximum amount for the *Project*. Notwithstanding any other provision of this Agreement, the Government shall not incur any additional financial obligation for the *Project* if such obligation would cause total costs of the *Project* to exceed this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount for the *Project* is estimated to be \$181,750,000, as calculated in accordance with ER 1105-2-100 using October 1, 2011 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280).

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

MIAMI-DADE COUNTY,
FLORIDA

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

Carlos A. Gimenez
County Mayor

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, R.A. Cuevas, Jr., do hereby certify that I am the principal legal officer of Miami-Dade County, Florida, that Miami-Dade County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Miami-Dade County in connection with the Miami Harbor Federal Navigation Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of 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 Miami-Dade County have acted within their statutory authority.

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

R.A. Cuevas, Jr.
County Attorney
Miami-Dade County, Florida

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 Section 1352, Title 31, U.S. Code. 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.

Carlos A. Gimenez
County Mayor
Miami-Dade County,
Florida

DATE: _____