

Memorandum



Date: August 31, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name of the Mayor.

Agenda Item No. 3(B)(6)

Resolution No. R-811-20

Subject: Resolution Ratifying the Execution of a Local Operating Agreement between the U.S. Army Corps of Engineers and Miami-Dade County Regarding Delegation of Regulatory Authority over Certain Types of Coastal Construction

Recommendation

It is recommended that the Board approve the attached resolution ratifying the Deputy Mayor's execution of a Local Operating Agreement between the U.S. Army Corps of Engineers (Army Corps) and Miami-Dade County regarding delegation of regulatory authority over certain types of coastal construction pursuant to the conditions of the federal Programmatic General Permit SAJ-42.

Scope

This Agreement will streamline certain coastal construction permitting in tidal waters throughout Miami-Dade County.

Fiscal Impact/Funding Source

This Agreement does not have a fiscal impact. All work associated with evaluating the coastal construction included in the delegated regulatory authority is already performed by staff as part of the Class I permitting process.

Track Record/Monitor

The Coastal Resources Section Manager, McKee Gray, in the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM), will implement the activities under this Local Operating Agreement.

Background

Under the attached Local Operating Agreement (Exhibit A to the resolution), the Army Corps delegates to Miami-Dade County regulatory authority over certain coastal construction pursuant to the conditions of the federal Programmatic General Permit SAJ-42 on behalf of the Army Corps. This delegated authority will authorize the County to issue federal authorization for specific types of coastal construction work in tidal waters, generally at single family properties, with some minor scopes of work at other types of properties. In conjunction with the existing State of Florida delegation for use of state-owned submerged lands, DERM will provide a "one-stop shop" for the benefit of the public, for county, state and federal environmental authorizations required for certain types of coastal construction. The Programmatic General Permit is attached to the resolution as Exhibit B.

DERM has been delegated the authority to issue such federal authorizations for the Army Corps on an ongoing basis since 1981. The previous Programmatic General Permit expired in 2018 and the Army Corps recently reauthorized the Permit to allow the County to issue federal authorizations for certain types of coastal construction under the new Permit. Since 2018, DERM has received many

requests to reinstate the permit to assist contractors and property owners by streamlining the environmental permitting process for Class I permits associated with coastal construction.

Based on federal requirements, the Programmatic General Permit is typically valid for one to five-year increments. In order to continue providing this service, the attached Local Operating Agreement was signed by the Deputy Mayor and is hereby submitted to the Board for ratification.

Delegation

Upon approval of this item, the County Mayor or County Mayor's designee will have the authority to execute amendments to the Local Operating Agreement for extensions of time and to execute amendments to the Local Operating Agreement to expand or contract the specific types of coastal construction which would be delegated to the County by the Army Corps provided that there is no fiscal impact. This is needed because it is possible that the Corps may wish to delegate to the County additional types of coastal construction or may seek to contract the authority given. Even if the scope of the delegation changes, any delegated authority from the Army Corps which would allow the County to issue federal authorizations would benefit the public by providing streamlined services.

A handwritten signature in blue ink, appearing to read "J. Osterholt", is written over a horizontal line.

Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 3(B)(6)

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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 3(B)(6)
8-31-20

RESOLUTION NO. R-811-20

RESOLUTION RATIFYING THE EXECUTION BY THE COUNTY MAYOR'S DESIGNEE OF THE LOCAL OPERATING AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND MIAMI-DADE COUNTY REGARDING DELEGATION OF REGULATORY AUTHORITY OVER CERTAIN COASTAL CONSTRUCTION PURSUANT TO THE CONDITIONS OF THE FEDERAL PROGRAMMATIC GENERAL PERMIT SAJ-42; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AMENDMENTS TO THE AGREEMENT FOR EXTENSIONS OF TIME AND TO EXPAND OR CONTRACT THE SPECIFIC TYPES OF COASTAL CONSTRUCTION DELEGATED TO THE COUNTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS CONTAINED THEREIN

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:

Section 1. This Board ratifies the execution by the County Mayor's designee of the Local Operating Agreement, in substantially the form attached hereto and made a part hereof as Exhibit A, with the US Army Corps of Engineers, whereby Miami-Dade County has been delegated regulatory authority over certain coastal construction pursuant to the conditions of the federal Programmatic General Permit SAJ-42, attached to this resolution as Exhibit B.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute amendments to the Local Operating Agreement for extensions of time, as may be needed from time to time, and to execute amendments to the Local Operating Agreement to expand on

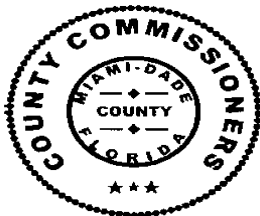
contract the specific types of coastal construction which would be delegated to the County by the Army Corps, provided that there is no fiscal impact.

Section 3. This Board authorizes the County Mayor or County Mayor's designee to exercise the provisions contained within the Local Operating Agreement.

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

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	absent	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 31st day of August, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "ASR", is written over a horizontal line.

Abbie Schwaderer-Raurell

EXHIBIT A

REVISED LOCAL OPERATING AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND

MIAMI-DADE COUNTY, THROUGH ITS DEPARTMENT OF REGULATORY AND
ECONOMIC RESOURCES, DIVISION OF ENVIRONMENTAL RESOURCES
MANAGEMENT,

REGARDING DELEGATION OF REGULATORY AUTHORITY OVER THE FOLLOWING
ACTIVITIES:

SHORELINE STABILIZATION; MAINTENANCE DREDGING IN COASTAL WATERS;
MINOR STRUCTURES; PIERS/DOCKS AND APPURTENANCES; FLOATING VESSEL
PLATFORMS; AND SCIENTIFIC MEASURING DEVICES LOCATED IN WATERS OF
THE UNITED STATES, EXCLUDING FEDERALLY MAINTAINED NAVIGATION
CHANNELS AND FLOOD CONTROL PROJECTS IN MIAMI-DADE COUNTY,
PURSUANT TO THE CONDITIONS OF PROGRAMMATIC GENERAL PERMIT (PGP)
SAJ-42

This Revised Local Operating Agreement ("Agreement") is made and entered into this 29 day of August, 2019, by and between the U.S. Army Corps of Engineers (Corps) and Miami-Dade County, through its Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM). By execution of the Agreement, the Corps authorizes DERM to process requests for authorization under this PGP and may be amended from time to time.

WITNESSETH

WHEREAS, the Corps is responsible for the issuance of Federal permits for activities located in the waters of the United States, including the work described in this PGP;

WHEREAS, DERM, pursuant to Chapter 24 of the Miami-Dade County Code, is responsible for the issuance of Class I, Miami-Dade County Coastal Construction Permits and Expedited Administrative Authorizations for activities located in the waters of Miami-Dade County including the work described in this PGP;

WHEREAS, new procedures have been adopted by the Corps to address potential impacts of regulated activities, covered under this PGP, on the following species and designated critical habitat, under purview of the National Marine Fisheries Service: green sea turtles (*Chelonia mydas*), loggerhead sea turtles (*Caretta caretta*) and their critical habitat, hawksbill sea turtles (*Eretmochelys imbricata*), Kemp's ridley sea turtles (*Lepidochelys kempii*), leatherback sea turtles (*Dermochelys coriacea*), smalltooth sawfish (*Pristis pectinata*), Nassau grouper (*Epinephelus striatus*), Johnson's seagrass (*Halophila johnsonii*) and its critical habitat, elkhorn coral (*Acropora palmata*) and its critical habitat, staghorn coral (*Acropora cervicornis*) and its critical habitat, pillar coral (*Dendrogyra cylindrus*), lobed star coral (*Orbicella annularis*), boulder star coral (*Orbicella franksi*), mountainous star coral (*Orbicella faveola*) and rough cactus coral (*Mycetophyllia ferox*). Additionally, the Corps will continue to implement use of the programmatic key for determining

the effects of activities on the West Indian manatee (*Trichechus manatus*) and associated critical habitat;

WHEREAS, DERM has staff and a structured regulatory program that can expeditiously process requests for verification of Federal authorization and effectively perform compliance supervision of issued verifications and thereby improve overall efficiency and reduce duplication of regulatory effort within Miami-Dade County. Projects that do not comply with the appropriate conditions of this PGP will first be reviewed by DERM to assess potential remediation. If DERM is not able to successfully initiate a compliance resolution, DERM will refer the case to the Corps' Enforcement Program in accordance with Section E below. The Corps may at any time, upon being notified of project non-compliance, request to serve as lead for addressing projects which are non-compliant;

WHEREAS, although the Corps does not require execution of this Agreement for this PGP, DERM and the Corps agree that this Agreement provides additional procedures and guidance in administering this PGP.

I. AUTHORIZATION

The Miami-Dade County DERM is authorized to verify to an applicant that their project qualifies for Federal authorization pursuant to this PGP's terms and conditions upon issuance by the Corps.

II. TERMS OF OPERATING AGREEMENT

A. PROCEDURES

1. DERM shall process requests under this PGP in conjunction with the issuance of a Class I, Miami-Dade County Coastal Construction Permit or under an Expedited Administrative Authorization (EAA) for those projects that meet its terms and conditions.
2. DERM shall require a location map, legible project sketches, the latitudinal and longitudinal coordinates, and other relevant information as part of the application process.
3. The Corps shall provide guidance to DERM on the implementation of the Manatee Key in the review of projects that are proposed in all waters accessible by manatees.
4. DERM may refer any application to the Corps for processing should there be a question about its consistency with this PGP. Similarly, DERM shall forward to the Corps any application under consideration for this PGP, if requested by the Corps.
5. DERM shall not verify a project if the project does not comply with the U.S. Army Corps of Engineers'/National Marine Fisheries Service's, "**Jacksonville District's Programmatic Biological Opinion (JAXBO), dated November 20, 2017,**" including the following from Section 2.3 of JAXBO: DERM performs a project-specific review and certifies the project meets all of

applicable Project Design Criteria (PDCs) are met; DERM completes the "Project Design Criteria Checklist for the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion Summary Checklist" and one or more of the individual activity sheets (JAXBO Checklists); and DERM submits the JAXBO Checklists and documentation. *Note: The JAXBO may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

6. The Corps shall provide assistance to DERM, as needed, to effectively implement this agreement.

8. The Corps will conduct periodic reviews to ensure that continuation of the permit after January 16, 2020, and subsequent increment(s), if any, is not contrary to the public interest. The PGP will not be extended beyond January 15, 2024, but may be replaced by a new PGP.

9. The Corps and DERM will meet at least annually to review performance and issues to identify improvements in the implementation of this PGP.

B. MODIFICATION OF AGREEMENT

This agreement may be modified or amended in writing at any time as necessary by mutual consent of the Corps and DERM. Modifications may be made in whole, by part, or by section; and upon approval shall supersede previous versions of this Agreement. Modifications to the language of the Agreement shall be approved and signed by the District Engineer for the Corps and the Mayor of Miami-Dade County, or their designees.

C. IMPLEMENTATION OF AGREEMENT

1. Within thirty (30) days of stamping plans with preliminary approval, DERM shall review the proposed project to determine whether the project is a candidate for review under this PGP and whether the project falls under one of the following categories:

a. GREEN: Projects that meet the conditions of this PGP shall be considered GREEN and processed by DERM. Upon issuance of the DERM permit or EAA, the following language shall be included: "Your project qualifies for Federal authorization pursuant to the U. S. Army Corps of Engineers Programmatic General Permit SAJ-42. Therefore, provided you follow all special conditions that may be attached to your DERM permit or EAA, additional authorization or permits from the Corps will not be required. However, failure to comply with all of the conditions in your DERM permit or EAA may also result in a violation of Federal law."

b. YELLOW:

i. Projects that are questionable whether it meets the conditions of SAJ-42 shall be considered YELLOW. DERM shall forward copies of the DERM permit application and drawings to the Corps Miami Regulatory Office within thirty (30) days of DERM's determination. Should a project be revised to comply with the conditions of this PGP, DERM may change the

determination from YELLOW to GREEN and verify the work under this PGP. DERM will notify the Corps of the change within thirty (30) days of DERM's revised determination.

ii. Projects for maintenance dredging shall be considered YELLOW. DERM shall forward copies of the DERM permit application and drawings to the Corps Miami Regulatory Office so that the Corps can verify (1) the dredging has prior authorization and (2) the disposal site is a Corps verified upland disposal site, Corps approved dredged material management area, or Corps authorized in-water or beneficial use site for mitigation or restoration. DERM shall also forward information the applicant may have provided (or the DERM has on-hand) relevant to the items to be verified by the Corps. The Corps will advise whether DERM may change the determination from YELLOW to GREEN or (if Corps cannot verify these topics) from YELLOW to RED.

c. RED: If a project is determined to be RED, DERM shall notify the applicant that their permit application will be forwarded to the Corps for evaluation under the appropriate permit category. DERM shall forward copies of the DERM permit application, drawings and explanation why determined to be RED to the Corps Miami Regulatory Office on same date DERM notifies the applicant.

2. Projects determined to be a "may affect" or "may affect, not likely to adversely affect" with further consultation required, as indicated by the Manatee Key, shall be coded RED and shall be forwarded to the Corps for separate review.

3. If DERM is uncertain as to how to apply the Manatee Key for a particular project, the application shall be coded YELLOW and forwarded to the Corps for a determination.

4. Projects located within tidal waters of Miami-Dade County that are not accessible to manatees and would have no direct or indirect effects on the manatee would result in a "no effect" determination by following the Manatee Key.

5. If DERM discovers or is advised by the Corps that Federal authorization pursuant to this PGP was issued inappropriately or for a project that requires Corps review, DERM shall so notify the applicant as follows: "Our prior notification included a paragraph stating your proposed activity qualified for Federal authorization pursuant to the SAJ-42. We hereby rescind that Federal authorization either because that was included through an administrative error or because we have received new information from the Corps. A SEPARATE permit or authorization shall be required from the Corps. You must apply separately to the Corps"

D. COMPLIANCE AND ENFORCEMENT

1. The Corps may review DERM's administration of the Corps program at any time to determine if the program is being properly administered and enforced. If additional information is needed for the Corps to effectively review DERM's performance in administering this PGP, DERM shall, upon request from the Corps, provide additional information concerning permitting, assessment techniques, and other relevant information.

2. DERM shall provide the information on all verifications issued and all compliance actions performed (inspections, resolutions and referrals) no later than one month after the quarter ends (January, April, July, October) in a mutually agreed upon format that includes at a minimum: Issue Date; File Type; Number; Applicant Name; Applicant Address; Applicant contact number or email address; Project Latitude (decimal degrees); Project Longitude (decimal degrees); Folio; Work Description; Contractor Name; Date Project Construction Completed; Was the Project Built After-the-Fact? (pick from list); Compliance Inspection Date; Is Project In Compliance? (Yes, No, N/A); Reason for Non-Compliance (the specific condition and/or reason(s) for non-compliance); Date Permit Revoked or Rescinded (if applicable); Date Corps Notified of Non-Compliance (if applicable); Action Taken to Bring Project Into Compliance (if applicable); and Date Revised Project Determined to be in Compliance.

3. The DERM shall be responsible for initial compliance inspections with respect to issued verifications, visiting at least ten percent (10%) of the project sites which have received a PGP-42. Projects that do not comply with one or more of the terms and conditions of the verification and PGP will first be reviewed by DERM to assess potential resolution of the non-compliance. If DERM is not able to achieve a compliance resolution, DERM will refer the case to the Corps. The Corps may at any time, upon being notified of project non-compliance, request to serve as lead for addressing the non-compliance. Initial compliance resolutions for non-compliant activities can be defined as voluntary restoration (e.g. voluntary reduction of structure footprint to design criteria) or issuance of an after-the-fact verification. The Corps shall be responsible for determining appropriate action to address any work completed without the benefit of federal authorization or any unresolved compliance matter that has been referred from DERM.

4. DERM shall refer unresolved compliance matter or actions requiring after-the-fact Federal authorizations to the Corps for processing. No after-the-fact verifications shall be verified by DERM. All referrals to the Corps shall be sent via email to SAJ-RD-Enforcement@usace.army.mil.

5. To better assist with compliance/enforcement coordination, DERM and the Corps will conduct periodic coordination meetings to improve the integrity of this PGP.

F. NOTIFICATION REQUIREMENTS

1. DERM shall notify the Corps prior to promulgating new or modified rules or policies that may affect the administration of this PGP.

2. The Corps shall notify DERM of any final changes to rules or policies that may affect the administration of this PGP.

3. All notices and reports required or permitted to be given under the terms and provisions of this agreement by a party to the other party shall be in writing and sent to:

Miami Permits Section
U. S. Army Corps of Engineers
ATTN: SAJ-42

9900 S.W. 107th Avenue, Suite 203
Miami, FL 33176

And electronic files (i.e., reporting, non-compliance referrals) shall be submitted to: SAJ-RD-Enforcement@usace.army.mil

Miami-Dade County DERM
Coastal Resources Section
701 NW 1st Court, 6th Floor
Miami, FL 33136

Or to such addresses as may be provided by the parties in writing.

G. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall become effective the date it is signed by both parties.

This Agreement applies only to this PGP, and this PGP currently expires on March 29, 2020 but may be extended by Corps until March 29, 2024.

This Agreement is entered into by Miami-Dade County pursuant to Sections 2-9 and 2-10 of the Code of Miami-Dade County and will expire the earlier of (1) March 29, 2024, or (2) one year from the effective date of this Agreement, if this Agreement is not ratified by the Board of County Commissioners.

If this PGP is subsequently re-authorized beyond March 29, 2024, the parties may agree in writing to extend the term of this Agreement, pursuant to provisions in Section B, Modification of Agreement. A change in procedure will require a new/updated Agreement.

H. TERMINATION OF AGREEMENT

Either party may terminate this Agreement through written notification. Termination shall be effective ninety (90) days from the date of notice.

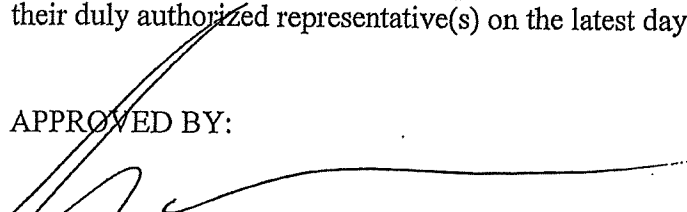
I. SEVERABILITY

If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

Nothing contained herein shall constitute a waiver by Miami-Dade County of its sovereign immunity under Section 768.28 Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

APPROVED BY:


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

Date

8/29/2019

APPROVED BY:


Jack Osterhoff
Deputy Mayor, Miami-Dade County

Date

8/15/19



US Army Corps
of Engineers®

EXHIBIT B

DEPARTMENT OF THE ARMY PERMIT PROGRAMMATIC GENERAL PERMIT SAJ-42

Permittee: Recipient of a verification from Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM)

Effective Date: September 30, 2019

Expiration Date: September 30, 2024

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the Permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

After you receive written verification for your project under this Programmatic General Permit (PGP) from DERM, you are authorized to perform work in accordance with the terms and conditions specified below.

Work Authorized: The work authorized are those activities that qualify for and are authorized by a Class I, Miami-Dade County Coastal Construction Permit or under an Expedited Administrative Authorization (EAA) and are limited to shoreline stabilization, maintenance dredging, minor structures, piers/docks and appurtenances, floating vessel platforms, and scientific measuring devices, located in waters of the United States, excluding federal projects and federal land interests in Miami-Dade County, Florida:

Special Conditions:

A. SPECIAL CONDITIONS FOR ALL WORK:

1. **Verification Required:** No work shall be performed until the applicant submits satisfactory plans for the proposed activity and receives written verification from Miami-Dade County, DERM.

2. **Restrictions in Federal Projects:** This PGP is not authorized for use within federal land interests (right-of-way or easements lands), federal navigation, or federal flood control projects (i.e. C-4, C-6, canals). Artificial waterways excavated for the sole

purpose of boating access and bordered by residential properties are not generally flood control projects. This PGP is entirely excluded from use in the Miami River (shoreline to shoreline).

3. No Wetland Fill Authorized: This PGP does not authorize the discharge of dredged or fill material in wetlands. Wetlands are those areas that are periodically inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, mangrove areas, bogs, and similar areas

4. Restrictions in Designated Habitat, Sanctuaries, and Protection Zones: No structures or work shall be authorized by this general permit in areas designated as American Crocodile critical habitat or in Biscayne Bay National Park Protection Zone, or in federal manatee sanctuaries, refuges, motorboat prohibited zones, or no entry zones.

5. Protection of Essential Fish Habitats: No activity shall be authorized under this general permit which by its size or location may adversely affect water quality, fish and wildlife habitat, wetlands, or emergent or submerged aquatic vegetation. Adverse impacts to aquatic vegetation from minor structures may be ameliorated by strict adherence to the attached joint National Marine Fisheries Service's U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion (JaxBO) (See <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>) Unless otherwise specifically approved by the National Marine Fisheries Service, minor structures authorized under the SAJ-42 must comply with the above. *Note: The JaxBO may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

6. Notification of Utilities: No work shall be performed until after the Permittee provides notification to the owner(s) or operator(s) of any utilities in the work area.

7. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect, impact, or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other

PERMIT NUMBER: PGP SAJ-42

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physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work in the vicinity and notify the Corps by emailing SAJ-RD-Enforcement@usace.army.mil. The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.

c. A cultural resources assessment may be required of the permit area, if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 C.F.R. § 800 or 33 C.F.R. § 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 C.F.R. § 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO and the Corps.

d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work in the vicinity shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist. The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 C.F.R. § 325.7. Such activity shall not resume without written authorization from the State Archeologist, SHPO and the Corps.

e. In the unlikely event that human remains are encountered on federal or tribal lands, or in situations where Archaeological Resources Protection Act of 1979, or Native American Graves Protection Repatriation Act of 1990 applies, all work in the vicinity shall immediately cease and the Permittee immediately notify the Corps. The Corps shall then notify the appropriate THPO(s) and SHPO. Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 C.F.R. § 325.7. After such notification, project activities on federal lands shall not resume without written authorization from the Corps, and/or appropriate THPO(s), SHPO, and federal manager. After such notification, project activities on tribal lands shall not resume without written authorization from the appropriate THPO(s) and the Corps.

8. Discretionary Authority: The District Engineer reserves the right to require that any request for authorization under PGP be evaluated as a Standard Permit. Conformance with the terms and conditions of this PGP does not automatically guarantee Federal authorization.

PERMIT NUMBER: PGP SAJ-42
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9. Manatee Effect Determination Key: Prior to issuance of authorization, the dichotomous key entitled "The Corps of Engineers, Jacksonville District, and the State of Florida Effect Determination Key for the Manatee in Florida, 2013" (See https://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/endangered_species/Manatee/2013_FINAL_ManateeKey.pdf) will be used to determine potential manatee impacts. Projects evaluated under the manatee key with a "may affect" or a "may affect, not likely to adversely affect," requiring additional correspondence with the U.S. Fish and Wildlife Service to the manatee must be coordinated with the U.S. Fish and Wildlife Service in accordance with the Endangered Species Act and are not authorized under this general permit. *Note: The manatee key may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

10. Standard Manatee Construction Conditions: The Permittee shall comply with the Standard Manatee Construction conditions (See https://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/endangered_species/Manatee/2011_StandardConditionsForIn-waterWork.pdf).

11. Manatee Protection Plan: No structure or work may be inconsistent with the terms and conditions of the Miami-Dade County Manatee Protection Plan.

12. Manatee Restriction Zones: No structure or work that is in federal manatee sanctuaries, refuges, motorboat prohibited zones, or "no entry zones" shall be authorized by this PGP. Applications for work in these areas will be forwarded to the Corps for processing.

13. Threatened and Endangered Species: No activity shall be authorized under this PGP which is likely to adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat.

14. Compliance with the Jacksonville District's Programmatic Biological Opinion, National Marine Fisheries Service (JaxBO): Activities authorized under this general permit must satisfy the attached Project Design Criteria (PDCs) provided for all activities and pile-supported structures as stated in the U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion, November 2017 (JAXBO). For all projects that do not comply with the PDCs of JAXBO, Miami-Dade County will inform the applicant the project does not qualify for this PGP and refer it to the Corps for processing. In accordance with the Endangered Species Act, the Corps will then seek individual consultation with the National Marine Fisheries Service (NMFS). Please note that failure to comply with the attached PDCs, where a take of listed species occurs,

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would constitute an unauthorized take, and noncompliance with this general permit. The NMFS is the appropriate authority to enforce the terms and conditions of JAXBO. The most current version of JAXBO can be accessed at the Jacksonville District Regulatory Division internet webpage in the Endangered Species section of the Sourcebook located at:

<http://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll3/id/577>.

Note: JAXBO may be subject to revision at any time. It is our intention that the most recent version of these conditions will be utilized during the evaluation of the permit application.

15. In the event of a conflict between this general permit and the JaxBO, the more restrictive conditions prevails.

16. Setbacks to Federal Channels: For projects proposed adjacent to federal navigation projects, no structure, including mooring piles, authorized under this general permit shall be within the established setback as depicted in the November 9, 2017, Setback Guidance for Structures along Certain Federal Channels.

The most current version of the guidance can be accessed at the Jacksonville District Regulatory Division internet webpage located at:

<http://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/1971>

For the Intracoastal Waterway (IWW), Jacksonville to Miami, Federal Project this includes 100 feet from the design edge of the channel and for the Port of Miami this includes 300 feet from the design edge of the channel. This PGP is excluded from use in the Miami River Federal Project - shoreline to shoreline. *Note: The setback guidance may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

17. Assurance of Navigation: Any structure authorized under this general permit must not exceed 25% of the waterway.

18. Hold Harmless: For projects authorized under this PGP in navigable waters of the United States, the Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. A structure authorized under this regional general permit must not interfere with general navigation.

19. Water Quality Certification: Activities qualifying for this programmatic general permit (PGP) must be authorized by the applicable permit or exemption under

Part IV of Chapter 373, F.S., and by any authorization required to use or occupy state-owned submerged lands (SSL) under Chapter 253, F.S., and, as applicable, Chapter 258, F.S. Such permit, issued by the Department of Environmental Protection (DEP), a water management district under s. 373.069, F.S., or a local government with delegated authority under s. 373.441, F.S., will provide the applicable Water Quality Certification (WQC) or waiver thereto, and Coastal Zone Consistency Concurrence (CZCC). WQC is waived for activities authorized under this PGP that qualify for an exemption under s. 403.813(1) or 373.406, F.S., or the rules of the Florida Administrative Code (F.A.C.) adopted under Part IV of Chapter 373, F.S. The Corps under 33 C.F.R. § 325.2(b)(2) may presume CZCC for the above exempt activities by operation of s. 380.23(7), F.S., provided the activity receives the applicable authorization to use and occupy SSL under Chapter 253, F.S., and, as applicable, Chapter 258, F.S., and the rules of the F.A.C. adopted thereunder.

20. Turbidity Control: Turbidity control measures will be used to control water quality and the work must be in accordance with State Water Quality Standards in Chapter 62.302, and sections 62-4.242 and 62-4.244 in the Florida Administrative Code. Turbidity control measures may include but are not limited to, turbidity control curtains, the exclusive use of suction dredging, the exclusive use of closed "clam shell" dredging, or any other technique necessary to reduce turbidity to no more than background turbidity. The DEP may require the applicant to submit a daily turbidity report which may be verified by state or local government inspectors.

21. Permit Expiration: This regional general permit will be valid for a period of five years from the date specified above unless suspended or revoked by the District Engineer prior to that date. If SAJ-42 expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on SAJ-42 will remain in effect provided the activity is completed within 12 months of the date SAJ-42 expired or was revoked.

22. The Permittee shall perform all work in accordance with the general conditions for permits. The general conditions attached hereto are made a part of this permit and must be attached to all authorization processed under this PGP.

B. SPECIAL CONDITIONS FOR SHORELINE STABILIZATION:

1. Description of Work Authorized: The work herein includes the installation of seawalls/bulkheads with necessary backfill in existing canals, east of the salinity control structures in Miami-Dade County. Placement of backfill is limited to those situations where it is necessary to level the land behind seawalls or riprap and is avoided and minimized to greatest extent practicable.

2. **New Shoreline Stabilization:** New shoreline stabilization projects cannot exceed 500 ft in length. New seawalls and footers cannot extend any further waterward than 1.5 ft (18 in) from MHW, unless necessary to align a new seawall with 1 or more adjacent seawalls and approved by the Corps prior to verification under the PGP.

3. **Repair/Replacement of Existing Vertical Seawalls:** The repair, and replacement of seawalls and footers cannot extend any further waterward than 1.5 ft (18 in) from the wet face of the existing seawall or existing footer i.e. gravity wall, unless necessary to align with 1 or more adjacent seawalls. The repair or replacement of an existing seawall and/or seawall cap is not restricted to 500 ft in length.

4. **Materials:** The work authorized herein will be for shoreline stabilization materials, which may consist of riprap, articulating blocks or mats, and sand cement, geotextile/ filter fabric.

5. **Clean Fill:** The backfill must be from upland sources and consist of suitable material, free from toxic pollutants in other than trace quantities.

6. **Restrictions on Mangroves, Seagrass, Hard Bottom, and Corals:** At no time should this general permit be construed to allow filling of, or construction in mangroves or other wetlands, seagrass, hard bottom/live bottom communities, or any other special aquatic sites. The Corps does not regulate the trimming of mangroves. Permits for trimming would need to be obtained by the State of Florida or its authorized entity.

C. SPECIAL CONDITIONS FOR MAINTENANCE DREDGING:

1. **Restriction:** The work authorized herein is limited to coastal waters in Miami-Dade County, Florida.

2. **Description of Work Authorized:** This general permit only authorizes maintenance dredging of existing areas, such as canals, channels, basins, berths, marinas, boat slips, and areas around intake and discharge structures. Maintenance dredging will be limited to the depth and width previously authorized by the Corps or other regulatory authority such as DEP or water management districts. There is no size limit for maintenance dredging so long as it meets the previously authorized depth and width. If the previous authorized depth is unknown, dredging is limited to -7.0 ft MLW including any advanced maintenance or overdredge. Prior to verification under this PGP, the Corps must verify the dredging activity has prior authorization.

3. **Disposal:** All dredged material must be placed in a Corps verified upland disposal site, Corps approved dredged material management area, or Corps authorized

in-water or beneficial use site for mitigation or restoration. Prior to verification under this PGP, the Corps must verify the disposal site adheres to the one of the aforementioned categories.

4. **Fill is Not Authorized:** No discharge of dredged or fill material into waters of the United States is authorized by this general permit under this section.

5. **Excavation:** Excavation of wetlands or areas containing submerged aquatic vegetation is not authorized by this general permit. For the purpose of this general permit, the Corps considers submerged aquatic vegetation to be vascular plants such as seagrasses, not macroalgae.

6. **Hydrologic Connection:** This permit does not authorize the removal of plugs or the connection of any canal to waters of the United States.

D. SPECIAL CONDITIONS FOR MINOR STRUCTURES:

1. **Description of Work:** The work herein authorized will be for minor structures to include:

- a. Mooring pilings.
- b. Small mooring dolphins (limited to a cluster of four or fewer pilings).
- c. Non-commercial information signage.
- d. Boat lifts and their appurtenant catwalks, hoists, davits.
- e. Other minor structures that would have less environmental impact than a small dock.

2. **Restrictions on Work:** No work shall be authorized by this general permit within the boundaries of any national or state park.

E. SPECIAL CONDITIONS FOR PIERS/DOCKS AND APPURTENANCES:

1. **Description of Work:** Structures authorized under this general permit include the repair and replacement or installation of docks, marginal docks, and other similar structures with similar purpose. This would include normal appurtenances such as boat hoists, boat shelters with open sides, stairways, walkways, mooring pilings, dolphins, and maintenance of these structures. This does not include structures that support

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large commercial vessels including ferries, tankers, and cargo ships such as ferry terminals and large ports.

2. Maintenance of Existing Structures: Repair or rehabilitation of currently serviceable multi-slip watercraft access structures may be authorized under this general permit provided all of the following are met: 1) the project is not located in an Important Manatee Area, 2) the number of slips is not increased; 3) the number of existing slips is not in question; 4) the improvements to the existing watercraft access structures do not result in increased watercraft usage. (see Manatee Key and see <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx> for more details).

3. Prohibitions on Fuel and Storage Facilities: No living, fueling, or storage facilities over navigable waters of the United States are authorized under this general permit.

4. Waterward Limits of Structures: Structures (including any mooring areas) constructed on principally residential canals must not extend waterward more than 25 percent of waterway width. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the Permittee's expense.

F. SPECIAL CONDITIONS FOR FLOATING VESSEL PLATFORMS:

1. Description of Work: The work herein authorized will be for floating vessel platforms (FVPs) to include the construction, installation, operation, or maintenance of FVPs or floating boat lifts within an authorized slip.

2. FVP Requirements: FVPs must float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use. FVPs must not be used for mooring vessels that remain in the water when not in use.

3. Areal Restriction: FVPs within a single parcel (folio number) must not exceed a total area of 200 square feet per authorized slip whether associated with a dock or attached to a bulkhead on a parcel of land.

4. Prohibitions on Placement of FVPs: This general permit does not authorize the placement of FVPs or construction where mangroves or other wetlands, seagrass or hard bottom/live bottom communities are present, or any other special aquatic sites.

G. SCIENTIFIC MEASURING DEVICES

1. **Description of Work:** The work herein authorized will be for installation, repair, and removal of scientific survey devices, including any related equipment and anchors, for up to 24 months if those devices are intended to measure and/or record scientific data in tidal waters, such as staff gages, weirs, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, vibracore samplings, and similar structures.

2. **Aquatic Life Passage:** The scientific survey device, including any related equipment and anchors, shall not block access of species to an area. For example, the structures shall not prevent movement in or out of a river or channel.

3. **Equipment Removal:** No later than 24 months after initial installation or upon completion of data acquisition, whichever comes first, the measuring device and any other structure or fills associated with that device (e.g., anchors, buoys, lines) must be removed and the site must be restored to pre-construction conditions.

4. **Conditions for All Work:** The scientific survey device, including any related equipment and anchors, shall be inspected by the Permittee following storm events that may have moved or dislodged the structure to ensure that equipment and anchors are still in place and have not moved to areas containing ESA-listed corals.

General Conditions:

1. The time limit for completing the work authorized ends on **September 30, 2024**.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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4. If you sell the property associated with this permit, you must obtain the signature and mailing address of the new owner in the space provided below and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344)

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

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b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or Construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 3 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

6. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

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This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Shawn H. Zinszer
(DISTRICT ENGINEER)
for Andrew D. Kelly, Jr.
Colonel, U.S. Army
District Commander

09/26/2019
(DATE)

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***Attachments to Department of the Army
Regional General Permit SAJ-42***

1. *U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion, November 2017 (JAXBO).*
2. *The Corps of Engineers, Jacksonville District, and the State of Florida Effect Determination Key for the Manatee in Florida.*
3. *Standard Manatee Conditions for In-Water Work (Manatee Construction Conditions).*
4. *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat.*
5. *Key for Construction Conditions for Docks or Other Minor Structures Constructed in or Over Johnson's seagrass (Halophila johnsonii).*
6. *Sea Turtle and Smalltooth Sawfish Construction Conditions.*
7. *Acropora spp. Critical Habitat Map.*
8. *American Crocodile Critical Habitat Map.*
9. *Johnson's Seagrass Critical Habitat Map.*