

COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF VENICE, FLORIDA
FOR
THE VENICE SEGMENT OF THE SARASOTA COUNTY, FLORIDA
SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Jacksonville District (hereinafter the "District Commander") and the City of Venice, Florida (hereinafter the "Public Sponsor"), represented by the Mayor of Venice.

WITNESSETH, THAT:

WHEREAS, the Government constructed the Venice Segment of the Sarasota County, Florida Shore Protection Project (SPP) (hereinafter the "Project") which was authorized by Section 501 of the Water Resources Development Act of 1986, Public Law 99-662;

WHEREAS, pursuant to Public Law 84-99, as amended (33 U.S.C. 701n), the Government is authorized to conduct repair or restoration of the Project (hereinafter "rehabilitation work", as defined in Article I.A. of this Agreement);

WHEREAS, on October 7, 2022, the Public Sponsor requested in writing that the Government undertake the rehabilitation work; and

WHEREAS, the Government and the Public Sponsor have the full authority and capability to perform the rehabilitation work in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "rehabilitation work" means nourishment of the full construction template by placing approximately 576,800 cubic yards (cy) of sand from an existing offshore borrow area within the Project footprint between Florida Department of Environmental Protection (FDEP) Range (R) monuments R-116 and R-133, as generally described in the Project Information Report for the Rehabilitation Effort for the

Venice Segment of the Sarasota County, Florida Shore Protection Project Sarasota County, Florida, dated May 2023 and approved by the Director of Contingency Operations, Homeland Security and Northwestern Division/Pacific Ocean Division RIT Leader on May 26, 2023.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “rehabilitation costs” means all costs incurred by the Government that are directly related to the design and construction of the rehabilitation work. The term includes the Government’s engineering, design, and construction costs; the Government’s supervision and administration costs; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include costs for operation and maintenance; real property interests, placement area improvements, and relocations; HTRW investigations, cleanup, and response; betterments; audits; or increased costs to correct deficient, deferred, or inadequate maintenance, or for the Public Sponsor’s preferred alternatives.

D. The term “betterment” means the difference in construction of an element of the rehabilitation work that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to construction of that element.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with applicable Federal laws, regulations, and policies, the Government shall undertake the rehabilitation work. In carrying out its obligations under this Agreement, the Public Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Government, subject to the availability of funds, shall design and construct the rehabilitation work at Federal expense, except that the Public Sponsor shall provide 100 percent of rehabilitation costs allocated by the Government to beach improvements with exclusively private benefits; 100 percent of rehabilitation costs improvements and other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation; 100 percent of the rehabilitation costs allocated by the Government to the prevention of losses of undeveloped private lands (hereinafter collectively referred to as the “non-

Federal rehabilitation costs"); and provide the following, in accordance with the provisions of this paragraph:

1. As further specified in Article III, the Public Sponsor, at no cost to the Government, shall provide the real property interests, placement area improvements, and relocations required for the rehabilitation work.

2. In accordance with Article IV, the Public Sponsor, at no cost to the Government, shall be responsible for undertaking any investigations required by the Government for the rehabilitation work that are necessary to identify the existence and extent of any hazardous, toxic, and radioactive wastes (hereinafter "HTRW"), which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

3. The Government shall provide written notice to the Public Sponsor of the estimated amount of funds required to cover the non-Federal rehabilitation costs in advance of the Government performing such work. No later than 60 calendar days after receipt of such written notice, the Public Sponsor shall make this full amount available to the Government by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Public Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

a. As of the effective date of this Agreement, the non-Federal rehabilitation costs, as determined by the Government, are projected to be \$0. Such estimated costs are subject to adjustment based on costs actually incurred and are not to be construed as the total financial responsibilities of the Public Sponsor

b. The Government shall provide the Public Sponsor with quarterly financial reports setting forth the estimated non-Federal rehabilitation costs incurred by the Government to date for such work.

c. Upon completion or termination of construction of the rehabilitation work, the Government shall conduct a final accounting and furnish the Public Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Public Sponsor to cover the non-Federal rehabilitation costs, the Public Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds through either payment method specified in paragraph B.3. of this Article. Such final accounting does not limit the Public Sponsor's responsibility to pay the non-Federal rehabilitation costs, including contract claims or any other liability that may become known after the final accounting. If the

final accounting determines that funds provided by the Public Sponsor exceed the amount that was required for the Government to cover non-Federal rehabilitation costs, the Government shall refund any remaining unobligated funds.

d. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Public Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government for the rehabilitation work. The Public Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Public Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. Within 30 calendar days of the District Commander determining that the rehabilitation work is complete, the District Commander shall so notify the Public Sponsor in writing. The Government shall furnish the Public Sponsor with an update to the Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") to reflect changed conditions resulting from the rehabilitation work and copies of all as-built drawings for the completed work.

1. The Government undertaking the rehabilitation work has no effect on the Public Sponsor's responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project, to include any additional responsibilities related to the rehabilitation work, at no cost to the Government. The Public Sponsor shall continue to operate and maintain the Project in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and regulations, and the Government's specific directions in the OMRR&R Manual. The Government and the Public Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Public Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Public Sponsor is failing to perform its obligations under this Agreement and the Public Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Public Sponsor of its obligations under this Agreement or preclude the

Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

E. The Public Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the funds are not expressly prohibited from such use and the Federal agency providing the funds verifies in writing that the funds are otherwise eligible to be used for rehabilitation of the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. The Public Sponsor shall hold and save the Government free from all damages arising from the rehabilitation work, and for operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or the Government's contractors.

G. The Public Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program, and of Title 33, Code of Federal Regulations, Part 208.10 (33 CFR 208.10).

H. The Public Sponsor may request in writing that the Government perform betterments on the Public Sponsor's behalf. Each request shall be subject to review and written approval by the Division Commander for South Atlantic Division. If the Government agrees to such request, the Government shall provide written notice to the Public Sponsor of the amount of funds required to cover the costs of such work in advance of the Government performing the work. In addition, the Public Sponsor is responsible for providing, at no cost to the Government, any additional real property interests, relocations, and placement area improvements determined by the Government to be required for such work.

1. As of the effective date of this Agreement, the costs for betterments are projected to be \$0.

2. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments, the Public Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Public Sponsors shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Public Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

3. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Public Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government for the betterments. The Public Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

I. For shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Public Sponsor shall ensure the public use of, and access to, such shores by all on equal terms in a manner compatible with the authorized purpose of the Project.

J. The Public Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, AND RELOCATIONS

A. The Government, after consultation with the Public Sponsor, shall determine the real property interests required for the rehabilitation work. The Government shall provide the Public Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Public Sponsor must provide for the rehabilitation work. The real property interests required for the rehabilitation work may be provided incrementally for each construction contract. In accordance with Article IV, the Public Sponsor shall investigate to verify that HTRW does not exist in, on, or under any of the real property interests required for the rehabilitation work. For real property interests currently owned or controlled by the Public Sponsor, such HTRW investigations must be completed prior to the Government advertising a construction contract for that work. For any additional real property interests to be acquired by the Public Sponsor, such HTRW investigations must be completed by the Public Sponsor prior to the Government providing the Public Sponsor with a written notice to proceed with that acquisition. The Public Sponsor shall provide the Government with authorization for entry to such real property interests according to the Government's construction schedule for that work. The Public Sponsor shall ensure that real property interests they provide are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Public Sponsor, shall determine the placement area improvements required for the rehabilitation work, provide the Public Sponsor with general written descriptions, including maps as appropriate, of such improvements, and provide the Public Sponsor with a written notice to proceed with such improvements. The Public Sponsor shall construct the improvements in accordance with the Government's construction schedule for that work.

C. The Government, after consultation with the Public Sponsor, shall determine the relocations required for the rehabilitation work, provide the Public Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Public Sponsor with a written notice to proceed with such relocations. The Public Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for that work.

D. In acquiring the real property interests for the rehabilitation work, the Public Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Public Sponsor will be guided, to the greatest extent practicable under State or Commonwealth law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) displaced persons will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE IV - HTRW

A. The Public Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for the rehabilitation work.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for the rehabilitation work, the Public Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Public Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Public Sponsor should proceed. If HTRW is discovered in, on, or under real property interests that the Public Sponsor currently owns or controls or after acquisition of the real property interests, no further rehabilitation activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Public Sponsor shall be solely responsible, as between the Government and the Public Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Public Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Public Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Public Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Public Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Public Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Public Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the owner and operator of the Project, including the rehabilitation work, for purposes of CERCLA liability or other applicable law.

ARTICLE V - TERMINATION OR SUSPENSION

A. If at any time the Public Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for rehabilitation of the Project are not sufficient to complete such work, the

Government shall so notify the Public Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds available to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to rehabilitation of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Public Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Public Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VII - 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 mailed by registered or certified mail, with return receipt, as follows:

If to the Public Sponsor:
Venice City Council
401 W. Venice Avenue
Venice, Florida 34285-1999

If to the Government:
District Commander

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

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

ARTICLE VIII - 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 IX - 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 a party to this Agreement.

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

DEPARTMENT OF THE ARMY

CITY OF VENICE, FLORIDA

BY: _____
Brandon L. Bowman
Colonel, U.S. Army
District Commander

BY: _____
Nick Pachota
Mayor

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Kelly M. Fernandez, do hereby certify that I am the principal legal officer for the City of Venice, Florida, that the City of Venice, 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 City of Venice, Florida in connection with the Venice Segment of the Sarasota County, Florida Shore Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the City of Venice, Florida acted within his statutory authority.

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

Kelly M. Fernandez
City Attorney
City of Venice, 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 31 U.S.C. 1352. 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.

Nick Pachota
Mayor
City of Venice, Florida

DATE: _____