

RESOLUTION NO. 2023 - 329

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA ACCEPTING AND AUTHORIZING THE CHAIR OF THE BOARD TO JOIN IN THE EXECUTION OF A COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND ST. JOHNS COUNTY REGARDING THE EMERGENCY NOURISHMENT OF THE ST. JOHNS COUNTY COASTAL STORM RISK MANAGEMENT PROJECT AT SOUTH PONTE VEDRA AND VILANO BEACH.**

**WHEREAS**, the U.S. Army Corps of Engineers (“USACE”) and St. Johns County (“County”) entered into a Project Partnership Agreement for the St. Johns County Coastal Storm Risk Management Project at South Ponte Vedra And Vilano Beach (“Project”) in 2019; and,

**WHEREAS**, the federal government is authorized to assist in the repair and restoration of the Project destroyed by wind, wave, or water action of other than an ordinary nature and the County requested the federal government to repair or restore the Project in accordance with this authorization; and,

**WHEREAS**, the Cooperation Agreement (the “Agreement”), attached hereto as Exhibit “A”, is required for the USACE to accomplish rehabilitation effort, scheduled for summer 2023, with the entirety of the estimated \$43,587,800.00 of direct costs to be paid by the federal government; and

**WHEREAS**, this is a modification of a previously agreed cooperation agreement which is increasing the estimate of direct costs to the federal government to \$43,587,800.00.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY**, as follows:

**Section 1.** The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

**Section 2.** The Chair of the Board is hereby authorized to execute the Agreement between the Department of the Army and St. Johns County in substantially the form attached.

**Section 3.** To the extent that there are typographic and /or administrative errors that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board.

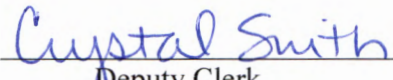
**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 5<sup>th</sup> day of September, 2023.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

**Rendition Date** SEP 06 2023

BY:   
Christian Whitehurst, Chair

**ATTEST:** Brandon J. Patty, Clerk of the Circuit  
Court and Comptroller

By:   
Deputy Clerk



**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
ST. JOHNS COUNTY, FLORIDA  
FOR**

**REHABILITATION OF A FEDERAL HURRICANE/SHORE PROTECTION PROJECT**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Commander, Jacksonville District, U.S. Army Corps of Engineers, and ST. JOHNS COUNTY, FLORIDA (hereinafter referred to as the "Non-Federal Sponsor"), represented by the Chair of the St. Johns County Board of County Commissioners.

**WITNESSETH THAT:**

**WHEREAS**, the Government constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP), authorized by Section 501(a) of the Water Resources Development Act of 1986, Public Law 99-662, as modified by Section 316 of the Water Resources Development Act of 1999, Public Law 106-53, and governed by the Project Cooperation Agreement dated August 24, 2000 and entitled Project Cooperation Agreement between The Department of the Army and St. Johns County, Florida for Construction of the St. Johns County, Florida Shore Protection Project which remains in full effect;

**WHEREAS**, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

**WHEREAS**, via written correspondence, the Non-Federal Sponsor has requested the Government to repair or restore the HSPP which was damaged by wind, wave, or water action of an other than an ordinary nature, in accordance with 33 U.S.C. 701n, and established policies of the U.S. Army Corps of Engineers; and,

**WHEREAS**, the Non-Federal Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Agreement;

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

**ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean restoration to full construction template, by placing approximately 451,400 cubic yards of material between Florida Department Of

Environmental Protection range monuments R-137A to R-151 as generally described in a report entitled "Project Information Report Addendum for the Rehabilitation Effort for the St. Johns County, Florida Shore Protection Project" and prepared by the District Commander, U.S. Army Engineer District, Jacksonville, Florida, dated February 27, 2023, and approved by the approved by the Headquarters Director of Contingency Operations on \_\_\_\_\_, in addition to the approximately 1,958,000 cubic yards of material generally described in a report entitled "Project Information Report for the Rehabilitation Effort for the St. Johns County, Florida Shore Protection Project St. Johns County Florida [St. Augustine Beach]" prepared by the District Commander, U.S. Army Engineer District Jacksonville, dated February 11, 2022 and approved by the Headquarters Director of Contingency Operations on March 29, 2022.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily be limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Non-Federal Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Non-Federal Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Non-Federal Sponsor, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Non-Federal Sponsor shall be afforded the opportunity to review and comment on all solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Non-Federal Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the HSPP.

C. As further specified in Article IV, the Non-Federal Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 0 percent of Rehabilitation Effort costs.

D. The Non-Federal Sponsor shall not use Federal funds to meet its share of Rehabilitation Effort costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the HSPP, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Non-Federal Sponsor agrees to continue participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program and the Project Partnership Agreement cited above.

G. The Non-Federal Sponsor may request the Government to accomplish betterments. The Non-Federal Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

### **ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646**

A. The Government shall provide the Non-Federal Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Non-Federal Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project and the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

### **ARTICLE IV - METHOD OF PAYMENT**

A. The Non-Federal Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Non-Federal Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$43,587,800 and the Non-Federal Sponsor's share (cash and services in kind) of Rehabilitation Effort costs is currently estimated to be \$0. In order to meet the Non-Federal Sponsor's cash payment requirements, the Non-Federal Sponsor must provide a cash contribution estimated to be \$0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Non-Federal Sponsor of the Non-Federal Sponsor's estimated share of the Rehabilitation Effort costs including the Non-Federal Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Non-Federal Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED Jacksonville (K3)" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Non-Federal Sponsor of the additional contribution the Non-Federal Sponsor will be required to make to meet the Non-Federal Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Non-Federal Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Non-Federal Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Non-Federal Sponsor a final accounting of the Non-Federal Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Non-Federal Sponsor is less than the Non-Federal Sponsor's required share of total Rehabilitation Effort costs, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of the total project costs.

2. In the event total contribution by the Non-Federal Sponsor is more than the Non-Federal Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Non-Federal Sponsor; however, the Non-Federal Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Non-

Federal Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Non-Federal Sponsor for excess contributions provided.

#### **ARTICLE V - CREDITING OF IN-KIND SERVICES**

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0 for implementation of such services by the Non-Federal Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Non-Federal Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Non-Federal Sponsor be entitled to any reimbursement for any excess credit amount.

#### **ARTICLE VI- OPERATION AND MAINTENANCE**

A. The Non-Federal Sponsor maintains responsibility for operating and maintaining the HSPP at all times. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Non-Federal Sponsor with written notice of such determination, the Non-Federal Sponsor shall operate and maintain the HSPP, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Non-Federal Sponsor owns or controls for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Non-Federal Sponsor for any reason is failing to fulfill the Non-Federal Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Non-Federal Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE VII -FEDERAL AND STATE LAWS**

In the exercise of the Non-Federal Sponsor's rights and obligations hereunder, the Non-Federal Sponsor agrees to comply with all applicable Federal and state laws and regulations.

## **ARTICLE VIII- RELATIONSHIP OF PARTIES**

The Government and the Non-Federal Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

## **ARTICLE IX -OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## **ARTICLE X -COVENANT AGAINST CONTINGENT FEES**

The Non-Federal Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Non-Federal Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **ARTICLE XI- TERMINATION OR SUSPENSION**

If at any time the Non-Federal Sponsor fails to carry out its obligations under this Agreement, the District Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander determines that continuation of work on the Rehabilitation Effort 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 this Rehabilitation Effort and the HSPP. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Non-Federal Sponsor elects to proceed with further construction or terminates this Agreement.

## **ARTICLE XII -HAZARDOUS SUBSTANCES**

A. After execution of this Agreement and upon direction by the Contracting Officer, the Non-Federal Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Non-Federal Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All



actual costs incurred by the Non-Federal Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the HSPP or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Non-Federal Sponsor and the Government shall provide prompt notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Non-Federal Sponsor determine to proceed or continue with the construction 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 any and all necessary clean up and response costs, 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 the total Rehabilitation Effort costs as defined in this Agreement. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article X of this Agreement.

D. The Non-Federal Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate and maintain the HSPP in a manner that will not cause liability to arise under CERCLA.

### **ARTICLE XIII -NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chair  
St. Johns County Board of County Commissioners  
500 San Sebastian View  
St. Augustine, Florida 320984

If to the Government:

District Commander  
U.S. Army Corps of Engineers, Jacksonville District  
P.O. Box 4970  
701 San Marco Blvd.  
Jacksonville, Florida 32232-0019

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 such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

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

THE DEPARTMENT OF THE ARMY

ST. JOHNS COUNTY, FLORIDA

BY: \_\_\_\_\_  
James L. Booth  
District Commander  
Jacksonville District

BY: \_\_\_\_\_  
Christian Whitehurst  
Chair  
Board of County Commissioners

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, David Migut, do hereby certify that I am the principal legal officer for St. Johns County, Florida, that St. Johns 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 St. Johns County, Florida in connection with the St. Johns 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 St. Johns County, Florida acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_  
day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
David Migut  
County Attorney