



Flagler County Board of County Commissioners Workshop Agenda

Monday, January 22, 2024 • 1:00 p.m.
(Special Meeting to Follow)

Government Services Complex, 1769 E. Moody Blvd., Bldg 2, Board Chambers, Bunnell, FL 32110

1. Call to Order
2. Pledge to the Flag and Moment of Silence
3. Welcome: Flagler County Board Chair
4. Proclamation Designating February 3, 2024, as "Four Chaplains Saturday"
5. Economic Development Incentives Discussion
6. Army Corps of Engineers Funding and Payment Discussion
7. Disaster Recovery Cash Advance Discussion *(Added 01/12/2024 after agenda was published)*
8. Public Comment
9. Adjournment

While this is a workshop only and no decisions are expected to be made by any of the governmental bodies, if a person decides to appeal any matter that may be discussed for a future proceeding, a record of the workshop may be needed and, for such purposes, the person may need to ensure that a verbatim record of the workshop is made.

In accordance with the Americans with Disabilities Act, persons needing assistance to participate in this meeting should contact the (386) 313-4001 at least 48 hours prior to the meeting.



Flagler County Board of County Commissioners Special Meeting Agenda

Monday, January 22, 2024 Following Workshop

Government Services Complex, 1769 E. Moody Blvd., Bldg 2, Board Chambers, Bunnell, FL 32110

1. Call to Order
2. Public Comment
3. Request the Board take actions as deemed necessary regarding issues discussed at the workshop this date.
4. Adjournment

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**A PROCLAMATION OF THE
FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
DESIGNATING FEBRUARY 3, 2024 AS
“FOUR CHAPLAINS SATURDAY”**

WHEREAS, February 3, 2024, will mark the eighty-first anniversary of the sinking of the troopship U.S.A.T. Dorchester, which carried to their deaths four U.S. Army Chaplains of three faiths who stood united in prayer as the ship went down; and

WHEREAS, these four Chaplains, Roman Catholic, Jewish and Protestant gave their own life jackets to four soldiers and thus sacrificed their own lives to save the lives of others; and

WHEREAS, the heroic deeds of Chaplains Lt. George L. Fox, Lt. Alexander D. Goode, Lt. John P. Washington and Lt. Clark V. Poling and their combined act of supreme devotion and sacrifice for American liberty and human freedom will be an inspiring and ever shining example of real Brotherhood for all time to the people of the world; and

WHEREAS, we must all see to it that their supreme sacrifice to the common cause of human freedom and justice for all shall not have been in vain.

NOW, THEREFORE, THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS do hereby designate Saturday, February 3, 2024 as “**Four Chaplains Saturday**” and encourage Flagler County residents to commemorate the day with the appropriate observances of this ultimate sacrifice.

Adopted this 5th day of February, 2024.

ATTEST:

FLAGLER COUNTY BOARD
OF COUNTY COMMISSIONERS

Tom Bexley,
Clerk and Circuit Court Comptroller

Andrew S. Dance
Chair



Work Hard Play Hard in Flagler County

ECONOMIC INCENTIVES

AN INVESTMENT IN THE
FUTURE





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WHY ECONOMIC DEVELOPMENT INCENTIVES?

Incentives can be a catalyst for economic development by providing various forms of direct and indirect financial support to businesses. In return, governments that provide such support expect that the businesses will reciprocate by creating jobs and making investments in infrastructure, facilities, and equipment that will ultimately enhance the local economic climate.

Incentives can be a powerful tool for economic growth not just because of the direct jobs that they create, but also because of the leverage they create for knock-on economic activity – sometimes referred to as secondary and tertiary job creation. The amount of downstream economic growth from the original job creation and investments creates often dwarfs the relative size of the incentive grants themselves.

Briefly, incentives may provide:

- Financial support to minimize upfront costs and speed up the timeline to profitability.
- Create leverage for knock-on economic activity, which can dwarf the relative size of the incentive grants themselves.
- Create a true public-private partnership between a community, state, and company, which can create both direct and indirect economic impact based on the company's economic activity in the area.

They do this in three ways:

1. Every job supported by an incentive grant indirectly supports other jobs in their local area. Supporting the creation or retention of just 1 job has a multiplier effect on others in that worker's immediate community (think grocery stores, gas stations, service workers, schools and more).
2. In addition to jobs, companies must also invest in capital expenditures. A relatively modest incentive grant can be thought of as leverage that induces a company to spend dollars in a physical plant and equipment – and these are just a handful of examples. That private cash investment goes straight into local economies, with the same knock-on effects.
3. Those new jobs created, both directly and indirectly, generate much more economic activity than the incentive grant alone.



FAST TRACK PERMITTING PROGRAM

Overview

Implementation Time Frame: Short-Term		
Incentive 1	Legal Approach	Budget Effects on General Fund
Fast Track Permitting Program		
	Standard Operating Procedures*	N/A
<p>The program accelerates the planning, zoning, and building permitting process. It is available to companies that are expanding operations or moving into the County so that value-added employment may be created at a faster pace. The program provides qualifying projects an efficient process to resolve issues in a timely manner through face-to-face meetings with a county representative without sacrificing any requirements as established through the County's Codes or Comprehensive Plan. Companies must meet specific criteria in order to qualify for the program.</p>		

*Standard Operating Procedures would need to be crafted by the Growth Management Department in order to implement this program.



AD VALOREM REAL PROPERTY TAX ABATEMENT

Overview

Implementation Time Frame: Short-Term		
Incentive 2	Legal Approach	General Fund Effects
Ad-Valorem Tax Abatement		
<p>In property law, abatement refers to a reduction in property taxes that a company has to pay on any given property. The first five years of operation of a company - relocating or expanding - are traditionally the most expensive. By offering tax abatement during those first years of operation, a company may be able to reach peak performance and job creation at a faster rate. Abatement of taxes are often granted to incentivize economic development.</p>	Call for Referendum Vote	Limited to 5 Years
	Place on Ballot	<p><i>Note: There are different approaches to developing the program. Some governments have a point system, others are more straight forward after meeting specific criteria. Each approach would result in a different effect on the general fund.</i></p>
	1st Reading: Ordinance	
	2nd Reading & Adoption of Program	
	Each Individual Project Requires Commission Approval	
<p>The use of ad-valorem tax exemptions (property & personal property) as an economic development incentive is authorized by the State of Florida Constitution, Article VII. Further, Florida Statutes 196.1995 outlines the process that local governments must follow in order to grant such economic incentives and outlines suggested ballot language.</p> <p>The REV (Recaptured Enhanced Value) Grant Program has been used successfully in other counties in lieu of tax abatements. It is outlined on page 12 of this document.</p>		

Background

An ad valorem tax is a tax based on the assessed value of an item, such as real estate or personal property. The Latin phrase *ad valorem* means according to value. The most common ad valorem taxes are property taxes levied on real estate by local jurisdictions such as counties, municipalities, or school districts. Ad valorem taxes may be levied on both real property (land, buildings, and other structures) and major personal property (contents within a building, car, or boat).

The value of real property is considered by January 1 at least once every five years by Flagler County Property Appraiser’s office. To estimate the value, the appraiser must identify comparable properties that have been sold, their sale prices, and the terms and conditions of the sale. For residential properties, a homestead exemption may be applied capping annual tax increases to 3% or the Consumer Price Index (CPI), whichever is lower, provided the homeowner qualifies. Non-homestead properties - commercial, industrial, seasonal residential, apartment building, etc. - ad valorem real property taxes are typically capped at 10% per annum.

There are two other methods to appraise ad valorem real property taxes: the cost approach and the income approach. The cost approach is based on how much build an almost identical structure on the parcel. The income approach – usually performed on commercial property – requires a study of how much net revenue a property would produce.

Concept of Ad Valorem Real Property Tax Abatement Program

The first five years of the operations of a relocating or expanding company are often the most expensive. By offering a tax abatement during those first years, a company may be able to reach peak performance and therefore job creation at a faster pace. The County may offer a property tax abatement to qualified targeted industries to stimulate job creation for a period of up to five (5) years. All applications go through an approval process. This is a discretionary incentive, offered to projects on a case-by-case basis for the sole purpose of job creation. The incentive applies for ad valorem taxes real property taxes levied by Flagler County only.

Legal Approach

The use of ad valorem tax exemptions (real property and personal property) as an economic development incentive is authorized by the State of Florida Constitution, Article VII. Further, [Florida Statutes 196.1995](#) outlines the process that local governments must follow in order to grant such economic incentives and outlines suggest ballot language. The basic steps are:

- The board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s.3, Art. VII of the State Constitution if:
 - (a) The board of county commissioners of the county or the governing authority of the municipality votes to hold such a referendum.

- The ballot question in such referendum shall be in substantially the following form:

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art VII of the State Constitution, property tax exemptions to new businesses and expansions of existing business that are expected to create new, full-time jobs in the county (or municipality, or both)?

Yes – For authority to grant exemptions.

No – Against authority to grant exemptions.

- If the referendum is approved by voters, adoption of Ad Valorem Real Property Tax Abatement Program would be place on County Commission Agenda for consideration, two hearings, and adoption.



- Each individual application for the program would be presented to the County Commissioners for approval by resolution.
- The authority to grant exemptions expires 10 years after the date such authority was approved in an election, but such authority may be renewed for subsequent 10-year periods if each 10-year renewal is approved in a referendum.
- By definition, abatement refers to the act of reducing or nullifying something. In property law, abatement refers to a reduction in property taxes a person/company has to pay on any given property.

Program Concept Guidelines

In order to apply for the Ad Valorem Real Property Tax Abatement Program company must:

- Value-Added Employer.
- Average wages must be 125% of average annual wages paid in Flagler County as defined by the State of Florida
 - \$50,950 per annum
 - \$24,54 per hour
- Add 10 new full-time employees to the payroll in Year 1.
- Ad Valorem Property Tax Abatement applies to new construction for expanding (existing) companies.
- Relocating companies would be eligible to apply for new construction as well as existing buildings for Ad Valorem Tax Abatements.
- Program would be limited to five (5) years on a sliding scale.

Year 1	100 % Exemption
Year 2	100 % Exemption
Year 3	Taxes that would have been assessed in Year 1
Year 4	Taxes that would have been assessed in Year 1 + 3%
Year 5	Taxes that would have been assessed in Year 1 + 6%
Year 6	Taxes at normal rate

The REV Grant – Recaptured Enhanced Value – Program has been used successfully in Baker County and Clay County as an economic development incentive. Their programs served as models in developing the program for Flagler County as outlined on Page 12.



TANGIBLE PERSONAL PROPERTY TAX ABATEMENT

Overview

Implementation Time Frame: Short-Term		
Incentive 3	Legal Approach	Budget Effects on General Fund
Tangible Personal Property Tax Abatement		
<p>The cost of machinery to produce goods and/or services for companies that wish to relocate or expand operations can be exorbitant. Offering tangible personal property tax abatements may help with the company's cash flow and contribute to a positive outcome during the site selection process. Tax abatements would be offered through a reimbursement program after proof of purchase and installation of needed equipment for production and/or services.</p>	Call for Referendum Vote	Limited to 5 Years
	Place on Ballot	
	1st Reading: Ordinance	
	2nd Reading & Adoption of Program	
	Each Individual Project Requires Commission Approval	
<p>The use of ad-valorem tax exemptions (property & personal property) as an economic development incentive is authorized by the State of Florida Constitution, Article VII. Further, Florida Statutes 196.1995 outlines the process that local governments must follow in order to grant such economic incentives and outlines suggested ballot language.</p> <p>The REV (Recaptured Enhanced Value) Grant Program has been used successfully in other counties in lieu of tax abatements. It is outlined on page 12 of this document.</p>		

Background

Tangible personal property (TPP) is defined as all goods and articles of value that can be physically possessed other than real estate. TPP includes furniture, fixtures, tools, machinery, equipment, signs, leasehold improvements, leased equipment, supplies, and any other equipment that may be used as part of the ordinary course of business or included inside a rental property.

The following types of business must file a Tangible Personal Property tax return with the county property tax appraiser:

- Proprietorship
- Partnership
- Corporation
- Self-employed agent or contractor
- Leases, lends or rents property

Companies that file the TPP tax return by/or before April 1st of each year are eligible for a tangible property tax exemption of up to \$25,000. Any returns filed after April 1 will be assessed penalties for improper or late filing of returns as outlined in Florida Statute 193.072.

Concept of Tangible Personal Property Tax Abatement Program

The equipment and machinery for a new or expanding business can sometimes exceed the cost of the physical structure of the building itself. Offering tangible personal property tax abatements may help with the company's cash flow and contribute to a positive outcome during the site selection process. Tax abatements would be offered through a reimbursement program after proof of purchase and installation of needed equipment for production and/or services.

Legal Approach

The use of ad valorem tax exemptions (real property and personal property) as an economic development incentive is authorized by the State of Florida Constitution, Article VII. Further, [Florida Statutes 196.1995](#) outlines the process that local governments must follow in order to grant such economic incentives and outlines suggest ballot language. The basic steps are:

- The board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s.3, Art. VII of the State Constitution if:
 - (a) The board of county commissioners of the county or the governing authority of the municipality votes to hold such a referendum.

- The ballot question in such referendum shall be in substantially the following form:

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art VII of the State Constitution, property tax exemptions to new businesses and expansions of existing business that are expected to create new, full-time jobs in the county (or municipality, or both)?

Yes – For authority to grant exemptions.

No – Against authority to grant exemptions.

- If the referendum is approved by voters, adoption of Tangible Personal Property Tax Abatement Program would be place on County Commission Agenda for consideration, two hearings, and adoption.
- Each individual application for the program would be presented to the County Commissioners for approval by resolution.



- The authority to grant exemptions expires 10 years after the date such authority was approved in an election, but such authority may be renewed for subsequent 10-year periods if each 10-year renewal is approved in a referendum.
- By definition, abatement refers to the act of reducing or nullifying something. In property law, abatement refers to a reduction in property taxes a person/company has to pay on any given property.

Proposed Program Concept Guidelines

In order to apply for the Tangible Personal Property Tax Abatement Program company must:

- Value-Added Employer
- Average wages must be 125% of average annual wages paid in Flagler County as defined by the State of Florida
 - \$50,950 per annum
 - \$24.50 per hour
- Add 10 new full-time employees to payroll over length of the program.
- Tangible Personal Property Tax Abatement Program applies to purchase or lease of new equipment needed in order to grow the business.
- Program would be limited to five (5) years on a sliding scale.

Year 1	100 % Exemption
Year 2	100 % Exemption
Year 3	Taxes that would have been assessed in Year 1
Year 4	Taxes that would have been assessed in Year 1 + 3%
Year 5	Taxes that would have been assessed in Year 1 + 6%
Year 6	Taxes at normal rate

The REV Grant – Recaptured Enhanced Value – Program has been used successfully in Baker County and Clay County as an economic development incentive. Their programs served as models in developing the program for Flagler County as outlined on Page 12 of this document.



INCENTIVE WAGE GRANT

Overview

Implementation Time Frame: Short-Term		
Incentive 4	Legal Approach	Budget Effects on General Fund
Wage Incentive Grant		
Grant to encourage the relocation/expansion of companies that pay 125% of the annual wage in Flagler County which equates to 60% higher than the poverty rate. Grant would complement the Quick Response Training Grant offered by Career Source.	Resolution to create the program.	Limited to 1 Year

Background

The Wage Incentive Grant is modeled after the Quick Response Training program, administered by CareerSource Florida. The Quick Response Training (QRT) is a state-funded grant program that provides funding to qualified businesses to train their net, new, full-time employees. Funding is provided in the form of a performance based reimbursable grant, 12-month maximum term and pay 125% above state or local wages. The proposed Wage Incentive Grant may be used to complement the QRT offered by the State or as a stand-alone incentive.

Proposed Program Concept & Guidelines

In an effort to encourage companies to pay 125% of the county average for new full-time employees, the county will off-set \$5,000 per job for one year (12 months) capped at 25 jobs. To qualify, the company must pay County ad-valorem property taxes. This represents the approximate difference between the definition of a value-added job (115%) and a more aggressive and innovative approach to attracting high paying employers.

	Average Annual Wage	Hourly Wage	115% of Annual Wage	Hourly Wage	125% of Average Wage	Hourly Wage
State of Florida	\$60,176	\$28.93	\$69,202	\$33.27	\$75,220	\$36.16
Flagler County	\$40,760	\$19.60	\$46,874	\$22.54	\$50,950	\$24.50
St. Johns	\$52,796	\$25.38	\$60,715	\$29.19	\$65,995	\$31.73
Volusia	\$46,385	\$22.30	\$53,343	\$25.65	\$57,981	\$27.88

Data Source: State of Florida Incentive Average Wage Requirements – Effective January 1, 2023



State of Florida | Program Average Wage Requirements | Effective January 1, 2024

	Average Annual Wage	Hourly Wage	115% of Annual Wage	Hourly Wage	150% of Average Wage	Hourly Wage	200% of Average Wage	Hourly Wage
State of Florida	\$63,670	\$30.61	\$73,221	\$35.20	\$95,505	\$45.92	\$127,340	\$61.22
Flagler County	\$44,801	\$21.54	\$51,521	\$24.77	\$67,202	\$32.31	\$89,302	\$43.08
St. Johns	\$56,425	\$27.13	\$64,889	\$31.20	\$84,638	\$40.69	\$112,850	\$54.25
Volusia	\$49,175	\$23.64	\$56,551	\$27.19	\$73,763	\$35.46	\$98,350	\$47.28

Utilizing the State of Florida’s 2024 Average Wage Requirements, 125% of the average annual wage in Flagler County would equate to \$56,001²⁵



RECAPTURED ENHANCED VALUE (REV) GRANT PROGRAM

Overview

Implementation Time Frame: Short-Term		
Incentive 5	Legal Approach	Budget Effects on General Fund
REV Grant - Recaptured Enhancement Value aka Tax Increment Grant		
Utilizing a base year as established by the Property Appraiser of a project's site, a certain percentage of the county's incremental increase from the base year of the taxes paid on real property may be available as a grant to the project. Program should be designed to encourage large scale development meeting specific criteria similar to what is offered by Baker County and Clay County. REV Grant is often used in lieu of Tax Abatement Programs.	Resolution to create the program. Tied to Ad-Valorem increase in value.	10 Years

Background

The Enhanced Property Value Recapture Grant (REV Grant) is designed to attract larger scale private capital investment and/or redevelopment into nonresidential project sites. The goal is to expand the tax base, create employment opportunities, or attract targeted industries, and businesses. Utilizing a “base year” assessed property value (from the Property Appraiser’s database) for the project, a percentage of the incremental increase in real and/or tangible personal property paid by the project above the base year amount is available as a grant to incentivize the project.

Proposed Concept of REV Grant

- New construction or redevelopment of nonresidential properties that generate additional ad valorem tax revenue.
- Applicant/project must invest a minimum of \$10 million in construction or renovation (excluding land).
- Eligible projects may include: light industrial projects, warehousing, and logistic developments.
- Prospective businesses must employ at least 30 employees at 125% of annual Flagler County wage.

The Project must generate enough tax increment to cover the requested assistance. A grant is paid annually to the owner after construction of the project that creates the increment is completed, the property becomes taxable, and property taxes and assessments are paid. Incentive grant only applies to taxes levied by Flagler County.



Grant would be offered on a sliding scale:

Years 1 – 5	Incentive Grant = 75% of Increment Value of Assessed Ad-Valorem Property Tax
Years 6 – 10	Incentive Grant = 50% of Increment Value of Assessed Ad-Valorem Property Tax
Year 11	Return to Normal Taxation Value

IMPACT FEE GRANT PROGRAM – CUSTOMIZED PACKAGE

Overview

Implementation Time Frame: Long-Term		
Incentive 6	Legal Approach	Budget Effects on General Fund
Customized Packages - Impact Fee Grant Program		
Interest earned from impact fees by a governmental entity may be used to offer economic development incentive programs provided that the monies are used for the express purpose of offsetting impact fees. The use is limited for grants from the same line item or impact fee. Example: Interest earned from previously collected road impact fees may be used to offset costs for road impact fees. FS 219.075 (1)(b) affirmed by AGO 94-39	Resolution	N/A
		Fund Would be Replenished by Interest Earned in Each Line Item

Background

[F.S. 219.075](#) Investment of surplus funds by county officers.—

(1)(a) Except when another procedure is prescribed by law or by ordinance as to particular funds, a tax collector or any other county officer having, receiving, or collecting any money, either for his or her office or on behalf of and subject to subsequent distribution to another officer of state or local government, while such money is in excess of that required to meet current expenses or is pending distribution, shall invest such money, without limitation, as provided in s. 218.415.

(b) These investments shall be planned so as not to slow the normal distribution of the subject funds. The investment earnings shall be reasonably apportioned and allocated and shall be credited to the account of, and paid to, the office or distribute, together with the principal on which such earnings accrued.

In 1995, Collier County ask substantially the following question of the Florida Attorney General:

May a county use interest that accrues on impact fee accounts to pay for affordable housing waiver and deferrals of such impact fees?

After much discussion, Attorney General Robert A. Butterworth concluded:

“Accordingly, it is my opinion that the interest on an impact fee trust fund may be used to offset the cost of granting waivers and deferrals from the impact fee for low-income housing, since such expenditures would be for the same purpose for which the impact fee was charged.”

Since the AGO ruling, economic developers have been able to utilize that same principle in order to provide incentives to economic development projects.

Proposed Project Guidelines

- Set up accounting systems to delineate the interest that is earned in each impact fee account that is assessed by Flagler County.
 - Fire / Rescue
 - EMS
 - Law Enforcement
 - Libraries (residential only)
 - Parks & Recreation (residential only)
 - Transportation / Roads
- Allow interest to accrue for a number of years (3+ years).
- Use interest as an additional tool in incentivizing economic development projects.

PUBLIC PRIVATE PARTNERSHIP TO DEVELOP A LIGHT INDUSTRIAL PARK

Overview

Implementation Time Frame: Long-Term		
Incentive 7	Legal Approach	Budget Effects on General Fund
Public Private Partnership - P3		
Working with municipal partners, purchase land for the development of a light industrial park. In coordination with private sector developer, master plan site, install horizontal infrastructure as needed. Private sector developer would be responsible for vertical construction, marketing, selling &/leasing. As properties are sold, the government would recover initial investment.	Resolution to create the program.	Capital Improvement Plan

Background

Public Private Partnerships involve collaboration between a government agency and a private-sector company that can be used to finance, build, and operate projects. Some examples include public transportation networks, parks, and convention centers. Financing & construction through a public private partnership can allow a project to be completed sooner or make it a possibility in the first place.

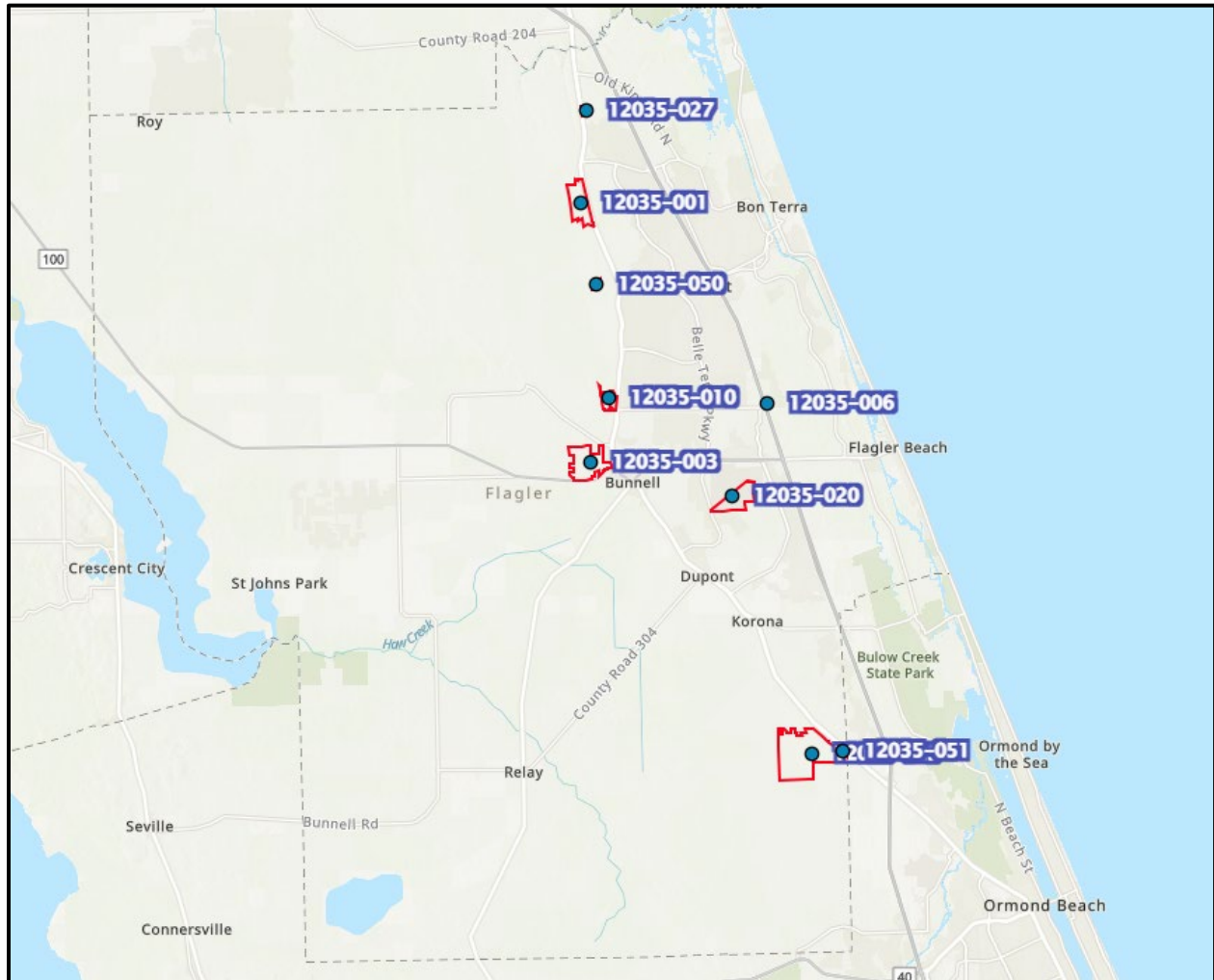
Partnerships typically have contract periods of 20 to 30 years or longer. Financing comes partly from the private sector but requires payments from the public sector and/or users over the project’s lifetime. The private sector partner participates in designing, completing, implementing, and funding the project, while the public partner focuses on defining and monitoring compliance with the objectives.

Approximately 15 years ago, over 30 sites were identified in Flagler County that were appropriate for light industrial development out of 86 that were examined for suitability. In March 2023, county and municipal staff re-examined the properties under the guidance of site consultants. The exercise yielded 9 remaining sites as a desirable location for creating an economic engine. Identifying sites within Flagler County and throughout the State of Florida is part the *SSI Study* which is funded by Florida Power & Light, Enterprise Florida (now the Florida Department of Commerce) and Duke Energy in an effort to prepare properties that will diversify the State’s economic base.

Proposed Concept of Public Private Partnership for Economic Development

- Purchase one of the large remaining large tracts of land (150-200+ acres) in order to reserve space for a light industrial park.
- Issue RFP for joint venture in development of park.
- County/municipality would own the land; developer would be responsible for infrastructure & buildings.
- As the building sells/lease at market price, government would recover land price investment.

Remaining Properties with Property Connectivity as Identified by Strategic Sites Inventory (SSI) Study



INDUSTRIAL DEVELOPMENT REVENUE BONDS

Overview

Implementation Time Frame: Long-Term		
Incentive 8	Legal Approach	Budget Effects on General Fund
Industrial Development Revenue Bonds		
Industrial Development Revenue Bonds (IDRBs) finance business and industrial expansions for firms with strong credit. IDRBs can provide low-interest loans for large projects by permitting the borrower to take advantage of long-term financing with lower than prime interest rates. Additionally, for certain types of manufacturing facilities, interest rates may be lowered due to the tax-exempt status of the bond issue. Private parties purchase the bonds, in effect making the loan to the borrowing business. IDRBs may finance up to 100% of project costs, with up to \$10 million available if the financing is tax exempt.	Resolution for Each Individual Project Outside Bond Consultant	N/A
Industrial Development Revenue Bonds are authorized by Florida Statutes, Chapter 159 . The bonds would be approved by County Commission, with principal and interest paid solely by the company receiving the funding. An application, financing and attorney fees are usually assessed and are outlined in the adopting resolution present to County Commission.		

Background

Industrial Development Revenue Bonds (IDRBs), also known as “private activity bonds”, are an alternative method of financing. There are two types of bonds, taxable and tax-exempt. Although both kinds of bonds may be issued, it is generally the tax-exempt bonds that are of interest to a qualifying project.

The Internal Revenue Code creates tax-exempt bonds, which provide a source of long-term-rate financing. IDRBs are securities sold to investors with the proceeds used to finance the project. The borrower pays the principal and interest on the debt. Because the interest is exempt from the federal income tax, the rate on this type of financing is generally lower than conventional debt financing.

Tax-exempt IDRBs allow certain types of business the opportunity to finance facility construction and related costs at an interest typically two or three percent below conventional financing rates. The bonds can be used for construction, demolition, new machinery and equipment, land purchase (up to 25% of the bond value), and other specified items. Generally, the break-even point, below which conventional forms of financing may prove to be less expensive overall, is considered to be \$2,000,000. This is primarily the result of the fact that the issuance costs associated with this type of financing are greater than those associated with conventional financing and are paid by the applicant.



Legal Authority

- [Chapter 159, Florida Statutes](#), as may be amended;
- [Chapter 19A-4, Florida Administrative Code](#), as may be amended;
- [Securities Act of 1933](#); and
- [U.S. Internal Revenue Code, Sections 103, 146, and 148](#); and applicable U.S. Treasury Regulations, as may be amended.

Proposed Concept of Industrial Development Revenue Bond Program

Florida Statute allows both counties and municipalities to issue Industrial Development Revenue Bonds. It is the responsibility of the applicant to retain their own bond counsel for the issuance of the bonds. However, all documents are reviewed by trained legal counsel working for the local government. Many counties have opted to form an Industrial Development Authority to work on its behalf although final approval of the issuance of the bonds is retained by the commission/council.

Typical Fee Structure for the Issuance of IDRBs in other Counties

Application Fee	\$1,500
Financing Fees	Never to exceed \$75,000
Less than \$10 Million	.5%
Over \$10 Million	.25%

Collected funds from the issuance of IDRBs are then used to finance to support Economic Development projects within the county.

In the case of the Industrial Development Authority, the County Commission appoints a board to oversee the task of coordinating the program with final approval given by the County Commission.



INDUSTRIAL DEVELOPMENT AUTHORITY

Overview

Alternative Approach		
Incentive 9	Legal Approach / Outside Consultant	Budget Effects on General Fund
Industrial Development Authority		
The County Commission may create an Industrial Development Authority as authorized by FS 159.44 . Authorities are created for the purpose of financing and refinancing projects to foster economic development in a county. The Authority may issue revenue bonds or other debt obligations repayable solely from revenues derived from the sale, operation, or leasing of projects or other payments received under financing agreements.	<ol style="list-style-type: none"> 1. Create Authority by Resolution 2. Appoint board comprised of 5 members 3. Adopt by-laws; powers of authority 4. Select Bond Counsel 	FS 159.48 County Commission is authorized and <u>may</u> levy ad valorem tax in an amount not to exceed 1 mill annually to aid each industrial development authority.

Background

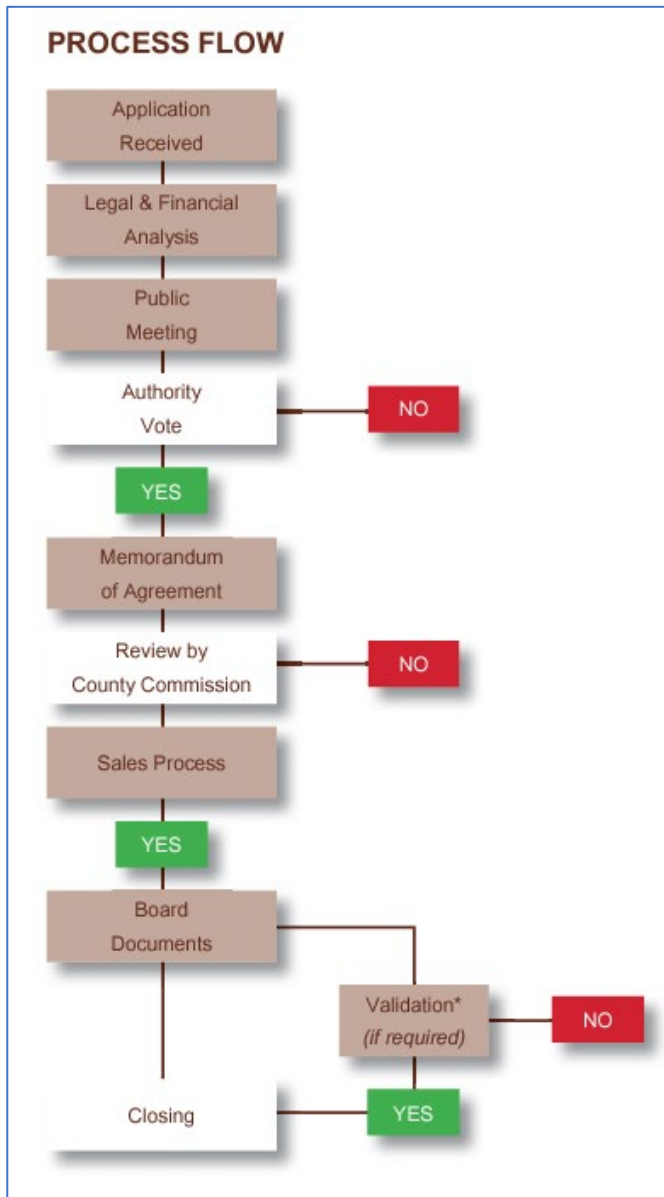
Counties may create an Industrial Development Authority for the purpose of financing and re-financing capital projects as defined by, and in the manner provided by, the Florida Industrial Development Financing Act and by Sections 159.44-159.53 of [Chapter 159 of Florida Statutes](#). Each industrial development authority shall study the advantages, facilities, resources, products, attractions, and conditions concerning the county with relation to the encouragement of economic development in that county. The Industrial Development Authority (IDA) serves as the initial entry point into the Industrial Development Revenue Bond application process. The IDA assesses the proposed project’s capability of producing tangible economic benefits in the form of new employment, new capital investment, or a combination of those benefits. The County Commission ultimately approves the issuance of the IDR upon the recommendation of the IDA.

Proposed Concept of Industrial Development Authority

In order to institute an Authority:

- Flagler County Board of County Commissioners would create the Authority by resolution.
- Designate 5 persons who are residents and electors of the county as members of the authority.

The authority would then be required to adopt bylaws for the regulation of its affairs and the conduct of its business. The authority would also select bond counsel for the organization, determine pricing structure and associated fees.



Typical Fee Structure for the Issuance of IDRBs in other Counties

Application Fee	\$1,500
Financing Fees (never to exceed \$75,000)	
Less than \$10 Million	.5%
Over \$10 Million	.25%

Collected funds from the issuance of IDRBs are then used to finance to support Economic Development projects within the county.



APPENDIX

State of Florida Incentives

INCENTIVE PROGRAMS

High Impact Performance Incentive (HIPI). The HIPI is a negotiated grant used to attract and grow major high impact facilities in Florida. Grants are provided to applicants pre-approved by the Department of Economic Opportunity. To participate in the program, the project must operate within designated high-impact portions of the following sectors — clean energy, life sciences, financial services, corporate HQs, transportation equipment manufacturing, IT, advanced manufacturing and semiconductors; create at least 50 new full-time equivalent jobs (if a R&D facility, create at least 25 new full-time equivalent jobs) in Florida in a three-year period; and make a cumulative investment in the state of at least \$50 million (if a R&D facility, make a cumulative investment of at least \$25 million) in a three-year period. Once approved by the state, the high impact business is awarded 50 percent of the eligible grant upon commencement of operations and the balance once full employment and capital investment goals are met.

Capital Investment Tax Credit (CITI). The Capital Investment Tax Credit is used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to 20 years, against the corporate income tax. Eligible projects are those in designated high-impact portions of the following sectors: clean energy, corporate HQs, financial services, IT, life sciences, semiconductors, advanced manufacturing and transportation equipment manufacturing. Projects must also create a minimum of 100 jobs and invest at least \$25 million in eligible capital costs. Eligible capital costs include all expenses incurred in the acquisition, construction, installation and equipping of a project from the beginning of construction to the commencement of operations. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.

Incumbent Worker Training (IWT). This program provides employers with funds to train currently employed workers to keep their firms and workers competitive. The program addresses retraining to meet changing skill requirements caused by new technology, retooling, new product lines and new organizational structuring.


Expedited Permitting Assistance. State and local permit streamlining procedures are available to assist businesses in obtaining necessary permits and approvals in a quick, efficient and predictable manner.

Quick Response Training. The Quick Response Training program provides grant funding for customized, skills-based curriculum development and training, through partial reimbursement, to new or expanding businesses in Florida's targeted industries.

Specialized Incentives. Project may qualify for opportunities such as urban or rural tax credits and incentives for brownfields.

Expert Bio's

[Mr. Irvin M. Weinstein](#) | Attorney - Applicant Perspective



Irvin M. Weinstein

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Practice Areas:

- Capital for Business
- Corporate and Business Transactions
- Public Finance

Education:
University of Florida, B.S.B.A.,
with high honors, 1972

Columbia University School of
Law, J.D., 1975

ROGERS | TOWERS

Mr. Weinstein practices in the area of public finance and corporate finance, serving in the capacities of bond counsel, underwriter's counsel and counsel to letter of credit banks. Mr. Weinstein also counsels corporate trust departments of financial institutions in their capacity as administrator of municipal and corporate debt transactions. Mr. Weinstein's practice also includes counseling business enterprises on general business and corporate transactions.

Bar Association Memberships:

- The Florida Bar

Awards and Distinctions:

- AV Preeminent Rating®, Martindale-Hubbell
- *The Best Lawyers in America*® (Municipal Law), 2017-2022
- *The Best Lawyers in America*® (Nonprofit/Charities Law), 2022
- *The Best Lawyers in America*® (Business Organization (including LLCs and Partnerships)), 2022
- *Florida Trend Magazine*, "Legal Elite" (Public Finance & Bonds), 2010
- Board of Editors, *Columbia Law Review*
- Harlan Fisk Stone Scholar

Client Successes:

- Has served as bond counsel and underwriter's counsel in a variety of different types of public finance transactions for cities, counties, health care institutions and other government bodies.
- Extensive experience in counseling corporate trustees for hundreds of bond transactions, involving a variety of different structures.
- Representation of power marketing corporation.
- Continuous representation of businesses in corporate matters.

[Mr. Michael J. McCabe](#) | Attorney – Industrial Development Authority & St. Johns County Perspective

McCabe | Ronsman

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Bio

Michael J. McCabe, is an attorney at McCabe & Ronsman and practices in the areas of **construction, real estate, community association law**, eminent domain, land use, and government. He is a licensed Professional Engineer and received his Bachelor of Science in Civil Engineering from Florida State University. He earned his Juris Doctor degree from Florida Coastal School of Law in 2005 while continuing to work as a Professional Engineer.

Mr. McCabe has extensive experience in representing community associations in a variety of matters, including collections, association governance, election disputes, enforcement of association governing documents, construction and design defect claims, and mediation and arbitration with the Florida Department of Business and Professional Regulation.

Mr. McCabe has represented construction professional and corporations in contract negotiations and dispute resolution. His eminent domain, environmental, and land use practice includes the filing of applications and the organization, preparation, and presentation of disputed matters. He has represented clients before municipalities and county zoning authorities as well as state and local government agencies.

Prior to entering the practice of law, Mr. McCabe worked as a civil engineer for seven (7) years as an aviation, transportation, and structural engineer. Through this experience, he obtained a general contracting license. His experience in construction includes scheduling, estimating, contract negotiations, contract agreements, performance bonds, utility agreements, right-of-way acquisition, and project management.

Mr. McCabe is admitted to practice law in Florida state courts and the U.S. District Court, Middle District of Florida. He was appointed as a Special Magistrate in St. John's County. He also serves as counsel to the Town of Hastings. Mr. McCabe also provides legal counsel to the Industrial Development Board and the County Code Enforcement Board in St. Johns County.



Incentives Awarded in Neighboring Counties

Successful Programs in Neighboring Counties

County	Program	Awarded
Baker County	REV Grant Ad-Valorem	6
Since 5/2003	Tangible Property	6
Clay County	REV Grant Ad-Valorem	5
	Tangible Property	7
	Mobility Fee Mitigation	1
St. Johns County	Ord. 2014-30	23
	IDRB's (1979)	38

Note: St. Johns County has approved the Issuance of \$1,401,971,640 in Industrial Revenue Bonds since 1979.

St Johns County Bond Issuances

PAST RESOLUTIONS APPROVED THE FOLLOWING SJIC IDA BOND ISSUANCES			
Resolution	Organization	Amount	Type
BCC Resolution			
Res. 1979-6	VAW of America, Inc.		Industrial/Manufacturing
Res. 1983-65	Hale Project		
Res. 1985-180	Davis-Stoval Limited Partnership	\$1,000,000	Preservation Historical Structure, Urban Parking
Res. 1985-83	Jack's Hi-Grade Food Company	\$1,500,000	Industrial/Manufacturing
Res. 1985-98	Parker-Hannifin Corporation Project	\$6,000,000	Industrial/Manufacturing
Res. 1986-171	Coastal Health Care Investors LTD, Series 1986	\$2,700,000	Healthcare
Res. 1986-180	Vicar's Landing, Series 1987A and 1987B	\$50,000,000	Continuing Care
Res. 1991-147	Flagler Hospital, Series 1991	\$16,000,000	Healthcare
Res. 1993-149	Vicar's Landing, Series 1993A and 1993B, Refunding	\$36,000,000	Continuing Care
Res. 1996-203	Bayview Project, Series 1997A and 1997B	\$13,280,000	Healthcare
Res. 1996-204	Flagler Hospital, Series 1996A and 1996B	\$56,000,000	Healthcare
Res. 1997-116	VAW of America, Inc., Series 1997, Refunding	\$5,860,000	Industrial/Manufacturing
Res. 1997-136	Professional Golf Hall of Fame, Series 1997A and 1997B	\$24,000,000	Professional Golf Hall of Fame
Res. 1998-1	Bronz-Glow Technologies, Series 1998	\$1,800,000	Industrial/Manufacturing
Res. 2001-107	Professional Golf Hall of Fame, Series 2001, Refunding	\$29,000,000	Professional Golf Hall of Fame
Res. 2001-123	Flagler Hospital, Series 2001	\$7,000,000	Healthcare
Res. 2001-123	Flagler Hospital, Series 2003	\$35,000,000	Healthcare
Res. 2004-151	Presbyterian Retirement Communities, Series 2004A and 2004B	\$48,000,000	Continuing Care
Res. 2004-334	Rulon Corporation, Series 2004	\$8,000,000	Industrial/Manufacturing
Res. 2006-317	Glenmoor at St. Johns, Series 2005	\$64,900,000	Continuing Care
Res. 2009-136	Flagler Hospital, Series 2009, Refunding	\$31,000,000	Healthcare
Res. 2010-114	Presbyterian Retirement Communities, Series 2010	\$138,000,000	Continuing Care
Res. 2010-240	Vilano Town Center Partners, Series 2010	\$6,515,000	Town Center Buildings and Parking
Res. 2010-279	Flagler Hospital, Series 2010A and 2010B, Refunding	\$58,275,000	Healthcare
Res. 2011-17	Flagler Hospital, Series 2011, Refunding	\$12,500,000	Healthcare
Res. 2012-206	St. Johns County Council on Aging	\$3,500,000	Social Services
Res. 2012-291	Professional Golf Hall of Fame, Series 2012A and 2012B	\$26,000,000	Professional Golf Hall of Fame
Res. 2012-94	Flagler Hospital, Series 2012A and 2012B	\$30,000,000	Healthcare
Res. 2013-85	BVM Florida Obligated Group	\$20,660,750	Senior Living and Healthcare
Res. 2014-17	Vicar's Landing	\$16,000,000	Continuing Care
Res. 2014-76	Glenmoor / Life Care St. Johns, Series 2014A and 2014B	\$57,145,890	Continuing Care
Res. 2016-132	Vicar's Landing	\$15,725,000	Continuing Care
Res. 2017-262	Flagler Hospital, Series 2017B	\$115,000,000	Healthcare
Res. 2017-292	Westminster St. Augustine, Series 2017A and 2017B	\$43,805,000	Continuing Care
Res. 2020-254	Presbyterian Retirement Communities, Series 2020	\$107,360,000	Continuing Care
Res. 2020-289	Flagler Hospital, Series 2020A and 2020B	\$168,815,000	Healthcare
Res. 2021-214	Life Care Ponte Vedra / Vicar's Landing, Series 2021A and 2021B	\$115,630,000	Continuing Care
Res. 2022-221	Vicar's Landing, Series 2022	\$30,000,000	Continuing Care
		\$1,401,971,640	

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING / AGENDA ITEM 6**

SUBJECT: Consideration of Transfer of Funds to the US Army Corps of Engineers (USACE) for the Flagler County, Florida Coastal Storm Risk Management (CSRМ) Modified Federal Project.

DATE OF MEETING: January 22, 2024

OVERVIEW/SUMMARY: Flagler County staff has been engaged in ongoing coordination with the USACE to plan and prepare for the upcoming CSRМ Modified Federal Project in City of Flagler Beach (CoFB).

Flagler County entered into a Project Participation Agreement (PPA) with the USACE on July 23, 2019. The Agreement formalized the commitments and obligations of the Federal Government and Flagler County for a federally authorized CSRМ beach renourishment project (Federal Project) in CoFB between Florida Department of Environmental Protection (FDEP) Range Monuments R-80 to R-94 (approximately S. 6th Street to S. 28th Street). The Cost Share for the Federal Project is 65% Federal and 35% Non-Federal funds.

A Memorandum of Agreement (MOA) between Flagler County and the USACE dated September 11, 2023, provides for the inclusion of non-federal reaches north and south to be included in the federal project procurement and construction to provide for a continuous and seamless construction effort while utilizing only non-federal funding sources for the areas beyond the federally authorized project limits. Therefore, 100% cost of the non-federal reaches are funded by non-federal sources. The term "Modified Federal Project" describes the resulting combination of both Federal and Non-Federal project reaches between N. 7th Street and Gamble Rogers State Park as generally illustrated on Attachment 4.

County staff has coordinated with partner agencies FDOT and FDEP to maximize state contributions in order to satisfy the non-federal match obligations and non-federal cost for the Modified Federal Project. The \$15,740,000 fund transfer is based upon the sum of the \$6,050,000 approximate estimated cost of the non-federal reaches (R-77 to R-80 and R-94 to R-96) plus the \$9,690,000 approximate estimated non-federal match obligation of the federal segment (R-80 to R-94) as further detailed in the USACE Funds Request Letter (Attachment 3)

This fund transfer is being provided in accordance with the terms and conditions of the project agreements between Flagler County and the USACE. The dollar amounts represent the current estimated costs anticipated at this time. The actual costs will be known when the USACE's bidding and procurement has been completed. Flagler County will be required to provide additional funds in the event that the actual costs exceed the current estimate.

At the January 8th, 2024 Regular BOCC meeting (meeting minutes not available at time of publishing) the Board approved a \$2,145,000 interfund loan from the General Fund to Fund 1111 for the remaining balance of Non-Federal share not being received via the Florida Department of Transportation.

At this time, the funding in the amount of \$13,595,000 is expected from FDOT, however the wire has not been received. In the event that the wire is not timely received, staff is requesting an interfund loan from the General Fund to cover the amount to be received from FDOT in order that we can fulfill our obligations to the USACE. An update will be provided at the workshop.

STRATEGIC PLAN:

Focus Area: Growth and Infrastructure

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING / AGENDA ITEM 6**

- Goal 2 – Protect and Manage Natural Resources
 - Objective G12.1 Develop stewardship plans for county managed natural resources.
 - Objective G12.3: Develop a beach management plan

FUNDING INFORMATION: Staff is requesting an interfund loan from the General Fund to the Dune Restoration - ST RD A1A Fund 1116 not to exceed \$13,595,000.

DEPARTMENT CONTACT: Hamid Tabassian, P.E., Assistant County Engineer (386) 313-4046

RECOMMENDATION: Request the Board approve an interfund loan from the General Fund to Fund 1116 not to exceed \$13,595,000 and approve an electronic transfer of funds in the amount of \$15,740,000 to the USACE.

ATTACHMENTS:

1. Project Participation Agreement (PPA)
2. Memorandum of Agreement (MOA)
3. ACOE Funds Request Letter
4. Project Area Depictions
5. Reserve Worksheet

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE FLAGLER COUNTY, FLORIDA
FOR
THE FLAGLER COUNTY, FLORIDA
COASTAL STORM RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this 23 day of July, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Jacksonville District and the Flagler County, Florida (hereinafter the "Non-Federal Sponsor"), represented by its County Chairman.

WITNESSETH, THAT:

WHEREAS, construction of the Flagler County, Florida Coastal Storm Risk Management Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by Section 1401(3)(2) of the Water Resources Development Act of 2016, Public Law 114-322;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, to the extent that appropriations provided under the Construction heading, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter "BBA 2018"), are available and used to undertake construction of the Project, the Government is authorized to finance the non-Federal cash contributions required for initial construction of the Project, currently estimated at \$2,490,000, in accordance with the provisions of Section 103(k) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(k)), with the interest rate for deferred payments determined in accordance with Section 106 of the Water Resources Development Act of 1986 (33 U.S.C. 2216);

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for initial construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor's full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform 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 “Project” means a 10-foot dune and beach profile extension along 2.6 miles of shoreline in Flagler Beach, Florida from Florida Department of Environmental Protection monuments R80 to R94 with subsequent periodic renourishments, as generally described in the Flagler County, Florida Hurricane and Storm Damage Reduction Project, Final Integrated Feasibility Study and Environmental Assessment, dated September 2014 and approved by the Chief of Engineers on December 23, 2014 (hereinafter the “Decision Document”).

B. The term “periodic nourishment” means the placement of suitable beach berm material after initial construction of the Project, at appropriate intervals during the 50-year period of Federal participation that begins on the date of initiation of construction of the Project, as generally described in the Decision Document.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction; the Government’s supervision and administration costs; the Government’s costs of monitoring; the Non-Federal Sponsor’s creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; betterments; or additional work; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

G. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Jacksonville District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

H. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for South Atlantic Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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

J. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

K. The term “additional work” means items of work related to, but not cost shared as a part of, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

L. The term “Maximum Cost Limit” means the statutory limitation on the total cost of periodic nourishment for the Project, as determined by the Government in accordance with Section 902 of the Water Resources Development Act of 1986, as amended, and Government regulations issued thereto.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall design and construct the Project, with initial construction undertaken using BBA 2018 funds to the extent they are available for that purpose and with periodic renourishment subject to receiving funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute 35 percent of construction costs for initial construction of the Project, and 50 percent of construction costs for periodic nourishment, allocated by the Government to coastal storm risk management; and 100 percent of construction costs allocated by the Government to beach improvements with exclusively private benefits, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsor's estimated credits for real property interests, placement area improvements, and relocations will exceed 35 percent of construction costs for initial construction or 50 percent of construction costs for periodic nourishment allocated to coastal storm risk management, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as a part of the Government's cost of construction. Nothing in this provision affects the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. For initial construction of the Project, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the cash contributions that otherwise would have been required from the Non-Federal Sponsor to meet its cost share for construction costs allocated to coastal storm risk management. To the extent BBA 2018 funds are available for initial construction of the Project, the Government, in accordance with the provisions of Article VI.B., may defer payment of the cash contributions that the Non-Federal Sponsor would have otherwise been required to provide during initial construction of the Project in order to meet its cost share. However, for construction costs allocated to beach improvements with exclusively private benefits, the Non-Federal Sponsor, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

4. For each cycle of periodic nourishment, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year.

a. No later than 120 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.C. For construction costs allocated to beach improvements with exclusively private benefits, the Non-Federal Sponsor, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

b. No later than August 1st prior to each subsequent fiscal year during a cycle of periodic nourishment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal

year to meet its cost share. Not later than September 30th prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, 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. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that initial construction of the Project, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work. The Government's undertaking of a cycle of periodic nourishment has no effect on the Non-Federal Sponsor's continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project. If a cycle of periodic nourishment changes those responsibilities, the Non-Federal Sponsor, at no cost to the Government, shall commence any additional responsibilities upon notification from the Government.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions

prescribed by the Government in the OMRR&R Manual. The Government and the Non-Federal 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 Non-Federal 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 Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal 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 Non-Federal 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.

F. At least twice annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

G. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

H. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of initial construction of the Project. The plan shall be designed to reduce the impacts of future coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of coastal storm risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of coastal storm risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

L. For shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

M. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.

N. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

O. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), 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.

P. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

Q. The Non-Federal Sponsor may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

R. Notwithstanding any other provision in this Agreement, in the event that there are insufficient BBA 2018 funds available to complete initial construction of the Project, such completion shall be subject to receiving Federal funds appropriated by the Congress. To the extent that Federal funds other than BBA 2018 funds are used, financing is not available for any required cash contribution, and the Non-Federal Sponsor must provide such amounts in accordance with the following:

I. The Government shall determine the amount of funds required from the Non-Federal Sponsor to meet its cost share for the then-current fiscal year. No later than 30 calendar

days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.B.1.c.

2. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.B.1.c.

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.D., must provide

funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (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 Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code 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 Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal 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 defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third 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 Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement or, if required for in-kind contributions covered by an in-kind Memorandum of Understanding (hereinafter "In-Kind MOU"), that were publicly owned on the effective date of the In-Kind MOU), placement area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project. However, for initial construction of the Project, only costs incurred by the Non-Federal Sponsor to acquire real property interests from private owners, to construct placement area improvement, to perform relocations, and to provide in-kind contributions are eligible for credit.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. For initial construction of the Project, only costs associated with real property interests acquired from private owners after the effective date of this Agreement are eligible for credit, unless such real property interests acquired from private owners were required for in-kind contributions covered by an In-Kind MOU. The Non-Federal Sponsor shall obtain, for each creditable real property interest (except interests in lands subject to shore erosion that are publicly owned on the effective date of this Agreement), an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. For crediting purposes, appraisals of interests in lands subject to shore erosion acquired from private parties after the effective date of this Agreement must consider special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (2016) (hereinafter "Uniform Appraisal Standards").

(1) Date of Valuation. For any real property interests (other than interests in lands subject to shore erosion) owned by the Non-Federal Sponsor on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value. For any real property interests required for in-kind contributions covered by an In-Kind MOU (other than interests in lands subject to shore erosion that were publicly owned on the effective date of the In-Kind MOU), the date of initiation of construction shall be used to determine fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal

Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

(1) If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. Except as provided in paragraph C.1.b.(2) below, the fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

(2) For interests in lands subject to shore erosion, the Government will credit the amount of the court award or stipulated settlement only to the extent that the court award or stipulated settlement considered special benefits in accordance with the Uniform Appraisal Standards. If the court award or stipulated settlement did not consider special benefits, fair market value for crediting purposes shall be the limited to the amount determined by an appraisal that considers special benefits.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise

the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project after the effective date of this Agreement, unless such incidental costs were required for in-kind contributions covered by an In-Kind MOU. For initial construction of the Project, only incidental costs for acquiring real property interests from private owners are eligible for credit. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of placement area improvements required for the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for credit, unless such placement area improvements were required for in-kind contributions covered by an In-Kind MOU. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind MOU.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind MOU between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or that are required for beach improvements with exclusively private benefits or real property interests for initial construction of the Project (other than those acquired through relocations) that are owned or controlled by public entities.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total construction costs are projected to be \$98,798,000, with the Government's share of such costs projected to be \$52,023,000 and the Non-Federal Sponsor's share of such costs projected to be \$46,775,000. Construction costs allocated to coastal storm risk management for initial construction are projected to be \$17,494,000, with the Government's share of such costs projected to be \$11,371,000 and the Non-Federal Sponsor's share of such costs projected to be \$6,123,000, which includes creditable real property interests, relocations, and placement area improvements projected to be \$3,633,000, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet its cost share projected to be \$2,490,000. Construction costs allocated to coastal storm risk management for periodic nourishment are projected to be \$81,304,000, with the Government's share of such costs projected to be \$40,652,000, and the Non-Federal Sponsor's share of such costs projected to be \$40,652,000. Construction costs allocated to beach improvements with exclusively private benefits are projected to be \$0 for initial construction and \$0 for periodic nourishment. Costs for betterments are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. Deferred Payment of Cash Contributions for Initial Construction of the Project. To the extent BBA 2018 funds are available for initial construction of the Project, the following provisions apply:

1. During initial construction of the Project, the Government will maintain records of monthly Federal obligations and determine non-Federal share of such obligations.
 - a. The Government shall charge interest on the non-Federal share of each monthly amount. Interest shall be compounded annually on the anniversary of each monthly amount until the date initial construction of the Project is completed or terminated, as applicable. If such anniversary is less than twelve months, the Government will prorate the interest charges.
 - b. The Government shall provide the Non-Federal Sponsor with monthly reports of all such monthly amounts incurred to date and the estimated interest charges applied to each monthly amount through that quarter.
 - c. If the Non-Federal Sponsor elects to make a payment of funds during initial construction of the Project or the Government determines at any time that it does not have

sufficient funds to allow the Non-Federal Sponsor to defer its cash contributions pursuant to the provisions of paragraph B. of this Article, the Non-Federal Sponsor shall provide such funds 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.

2. Pursuant to Article II.E. or Article VII, the District Commander shall provide written notification to the Non-Federal Sponsor of the date initial construction was completed or terminated, as applicable. After such notification, the Government shall conduct a final accounting to determine the construction costs for initial construction and each party’s required share thereof, and each party’s total contributions thereto. Such final accounting does not limit the Non-Federal Sponsor’s responsibility to pay its share of construction costs for initial construction, including contract claims or any other liability that may become known after the final accounting. In addition, if the final accounting for initial construction determines that the Non-Federal Sponsor’s credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed its share of construction costs for initial construction, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

3. Not later than 30 calendar days after the date of the District Commander’s written notice pursuant to paragraph B.2. of this Article, the Government shall complete the final accounting and notify the Non-Federal Sponsor in writing of the principal amount, which includes that portion of the non-Federal cash contributions that have been deferred plus interest during construction, and the initial annual installments of the principal amount amortized over a period of 30-years using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The payment period begins on the date the Government notifies the Non-Federal Sponsor of the principal amount and the initial annual installments.

4. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of the principal amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

5. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government’s notification pursuant to paragraph B.3. of this Article, and each annual installment thereafter on the anniversary date of such notification, by delivering a check payable to “FAO, USAED, Jacksonville (K3)” to the District Commander or providing an Electronic Funds Transfer in accordance with procedures established by the Government. The Non-Federal Sponsor, in its sole discretion, may prepay the principal amount, in whole or in part, at any time without penalty.

C. Payment of Funds for Each Cycle of Periodic Nourishment.

1. While undertaking periodic nourishment, the Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

2. For each cycle of periodic nourishment, the Non-Federal Sponsor shall provide the funds required to meet its share of construction costs allocated to coastal storm risk management by delivering a check payable to "FAO, USAED, Jacksonville (K3)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs allocated to coastal storm risk management as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 120 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

4. Upon completion of each cycle of periodic nourishment, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 120 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If a final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs for periodic nourishment, the Government shall refund such excess amount, subject to the availability of funds for the refund. In addition, if such final accounting determines that the Non-Federal Sponsor's credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed its share of construction costs for periodic nourishment, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

D. If there are beach improvements with exclusively private benefits; or real property interests, placement area improvements, relocations, additional work, or betterments provided on behalf of the Non-Federal Sponsor; the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal 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 Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project 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 construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction, until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction of periodic nourishment if the Maximum Cost Limit is exceeded.

C. If hazardous substances regulated under CERCLA are 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 construction 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 Non-Federal 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 VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs that are cost shared, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to

be considered the officer, agent, or employee of the other. 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 XII - 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 Non-Federal Sponsor:

Chairman
Flagler County Board of County Commissioners
1769 East Moody Blvd., Bldg. 2
Bunnell, Florida 32110

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 XIII - 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 XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

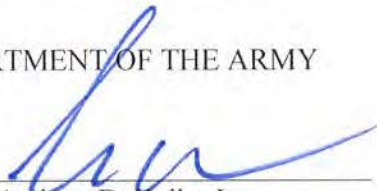
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

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

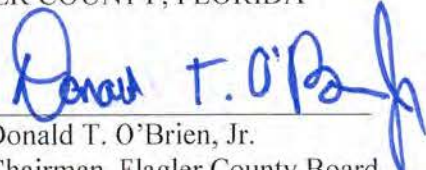
DEPARTMENT OF THE ARMY

FLAGLER COUNTY, FLORIDA

BY: _____


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

BY: _____


Donald T. O'Brien, Jr.
Chairman, Flagler County Board
of County Commissioners

DATE: _____

23 July 2019

DATE: _____

7/23/19

CERTIFICATE OF AUTHORITY

I, Albert J. Hadeed, do hereby certify that I am the principal legal officer for Flagler County, Florida, that Flagler 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 Flagler County, Florida in connection with the Flagler County, Florida Coastal Storm Risk Management 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 Flagler County, Florida acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

25rd day of July 2019.


Albert J. Hadeed
Flagler County Attorney

CERTIFICATION REGARDING LOBBYING

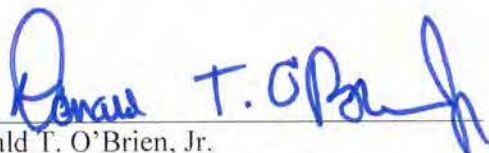
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Donald T. O'Brien, Jr.
Chairman, Flagler County Board of
County Commissioners

DATE: 7/23/19

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE FLAGLER COUNTY, FLORIDA
FOR ADDITIONAL SAND PLACEMENT
IN CONNECTION WITH INITIAL CONSTRUCTION OF
THE FLAGLER COUNTY, FLORIDA
COASTAL STORM RISK MANAGEMENT PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is entered into this 11 day of Sept, 2023, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Commander, Jacksonville District (hereinafter the “District Commander”), and the Flagler County, Florida (hereinafter the “Non-Federal Interest”), represented by the Chair of Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, the Flagler County, Florida Coastal Storm Risk Management Project (hereinafter the “Project”) was authorized for construction by Section 1401(3)(2) of the Water Resources Development Act of 2016, Public Law 114-322;

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

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to carry out the Additional Placement in connection with initial construction of the Project.

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

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, and engineering and design, associated with the Additional Placement to be carried out in connection with initial construction of the Project. While the Government will endeavor to limit the additional costs associated with the Additional Placement to the current estimate of \$2,845,000, the Non-Federal Interest acknowledges that the actual costs for the Additional Placement may exceed such estimated amount due to claims or other unforeseen circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Placement.
2. Within thirty (30) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government \$130,000. If at any time the Government determines that

additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and, no later than thirty (30) calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED Jacksonville (K3)” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence the Additional Placement until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and b) the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements, and rights-of-way the Government determines to be required for the Additional Placement.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Placement. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Placement.

6. Upon completion of the Additional Placement and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest’s responsibility to pay for all costs associated with the Additional Placement, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to “FAO, USAED Jacksonville (K3)” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within thirty (30) calendar days of such written notice, subject to the availability of funds.

7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

9. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

Chair
Flagler County Board of County Commissioners
1000 Belle Terre Boulevard
Palm Coast, Florida 32164

If to the Government:

District Commander
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019


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


10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least 15 calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this MOA and for any and all costs of closing out or transferring any ongoing contracts.

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

THE DEPARTMENT OF THE ARMY

FLAGLER COUNTY, FLORIDA

BY: 
James L. Booth
Colonel, U.S. Army
District Commander

BY: 
FER: Gregory L. Hansen
Chair
Board of County Commissioners

DATE: 11 SEP 23

DATE: 8/21/23



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-8175

December 11, 2023

Programs and Project Management Division

Ms. Amy Stroger
LEED AD, Project Manager
1769 East Moody Boulevard
Building 2
Bunnell, Florida 32110

Dear Ms. Stroger:

Pursuant to the Project Partnership Agreement (PPA) Article VI: Payment of Funds, between the Department of the Army and Flagler County, Florida for initial construction of the Flagler County, Florida Coastal Storm Risk Management Project (City of Flagler Beach), the non-Federal sponsor shall provide funds required to cover the costs associated with construction of the project, including the Government's engineering during construction (EDC), and construction supervision and administration (S&A) costs as described in Article I.C of the PPA.

As per the detailed project cost breakdown provided by email on October 23, 2023, the Jacksonville District is hereby requesting the non-federal share of estimated construction contract award and administrative oversight costs in the amount \$15,740,000. This includes approximately \$15,045,000 for contract award of which approximately \$8,995,000 is required for the cost shared federal project (Florida Department of Environmental Protection (FDEP) Range Monuments R-80 to R-94) and approximately \$6,050,000 is required for the non-federal project limit extensions (FDEP Range Monuments R-80 to R-77 (northern extension) and R-94 to R-96 (southern extension) as per the Memorandum of Additional Work (MOA) dated September 11, 2023. The remaining amount of \$695,000 will be applied to the non-federal share for construction administration and oversight.

Once construction is complete, the government will provide a separate letter requesting the non-federal share of post-construction environmental monitoring as per the FDEP Permit. The total non-federal share is approximately \$262,500 to be divided annually for the 3 years of required monitoring.

We request the non-federal share in the amount of \$15,740,000 to be deposited via wire transfer no later than January 19, 2024, to avoid any delays with the start of the procurement package review currently scheduled to start January 29, 2024, followed by contract advertisement on February 29, 2024.

If you have any questions regarding this or need additional information please contact the Project Manager, Jason Harrah at 904-305-0323 or by email at Jason.S.Harrah@usace.army.mil

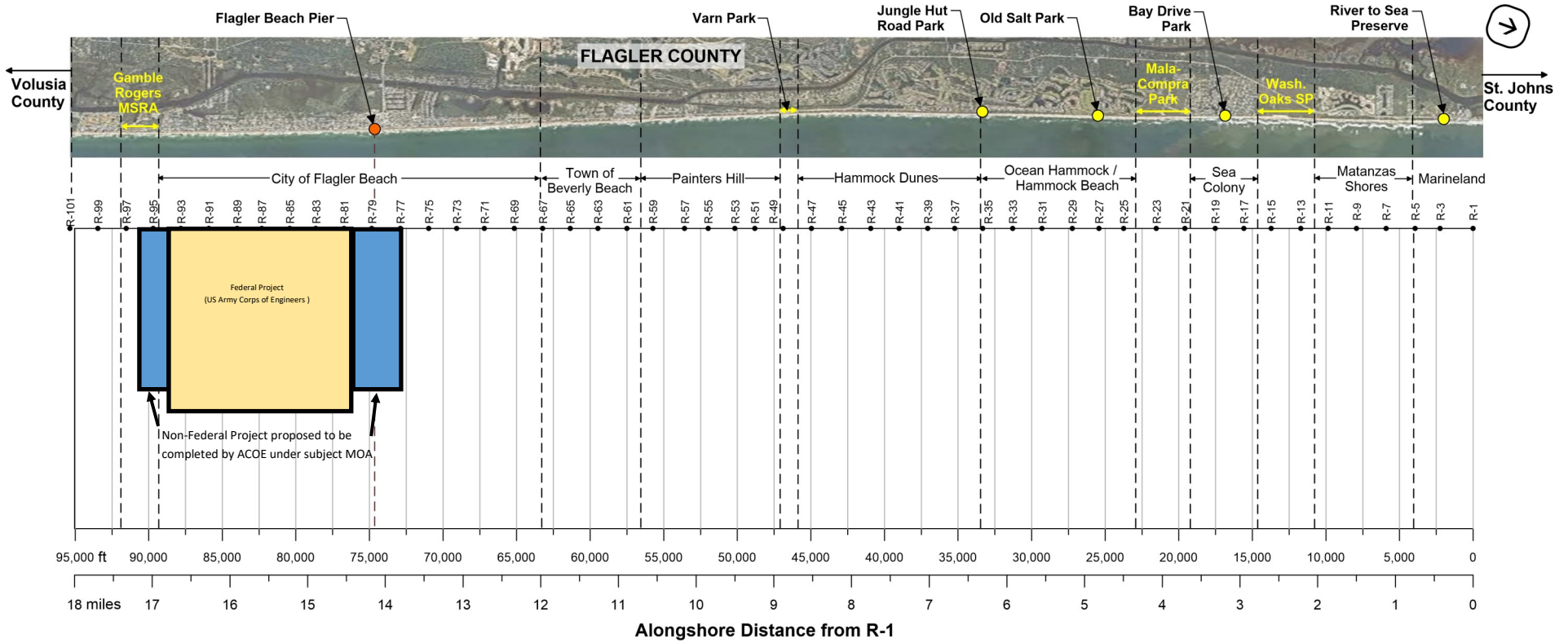
Sincerely,

MORA.MILLAN
.A.1367741470

Digitally signed by
MORA.MILLAN.A.1367741470
Date: 2023.12.11 17:35:39
-05'00'

Encl

Milan A. Mora, P.E.
Chief, Water Resources Branch
Programs and Project Management



Flagler County Board of County Commissioners
Appropriated Reserves: General Fund
FY 2024
1001-150-5000-000000-590-00-000-000-598020

Item Description	Date Approved	Item #	Interfund Loan	Budget Transfer	*Reserve Balance
FY24 Adopted Budget					16,749,894
Updated CCF	11/20/2023	9a		13,511,526	30,261,420
Marineland Acres Interfund Loan	12/18/2023	7o	(700,000)		29,561,420
ACOE Funding Gap and Interfund Loan	1/8/2024	7r	(2,145,000)		27,416,420
ACOE Interfund Loan	1/22/2024	SM	(13,595,000)		13,821,420
Disaster Recovery Interfund Loan	1/22/2024	SM	(2,500,000)		11,321,420
			(18,940,000)	-	

*Reserve balance is inclusive of pending transactions and items seeking approval at this meeting.

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
SPECIAL MEETING / AGENDA ITEM 7**

SUBJECT: Consideration of an Interfund Loan not to exceed \$2,500,000 from the General Fund to the Disaster Relief Fund (Fund 1184).

DATE OF MEETING: January 22, 2024

OVERVIEW/SUMMARY: Starting in FY 2018-19 the County established the Disaster Relief Fund (Fund 1184) to account for expenditures related to disasters affecting Flagler County. As with all Federally declared disasters, nearly all of the funding the County receives is on a reimbursement basis. Due to delays with projects being obligated or amended and payments taking longer to be processed by both the Federal Emergency Management Agency (FEMA) and the Florida Department of Emergency Management (FDEM).

STRATEGIC PLAN:

Focus Area: Effective Government

- Goal 1- Maintain Financial Stability
 - Objective EG 1.1: Ensure a minimum of 5% operating reserves beginning each fiscal year for unforeseen expenses or natural disasters. (Reserved for contingencies.)
 - Measure 1.1.1: Prioritize support and flexibility within budget to successfully navigate unforeseen expenses within a given fiscal year.

FUNDING INFORMATION: Staff is requesting an interfund loan not to exceed \$2,500,000 to continue processing payments to our vendors.

DEPARTMENT CONTACT: E. John Brower, Financial Services Director (386) 313-4036

RECOMMENDATION: Request the Board approve an interfund loan from the General Fund to Fund 1184 not to exceed \$2,500,000.

ATTACHMENTS:

1. Reserve Balance Worksheet

Flagler County Board of County Commissioners
Appropriated Reserves: General Fund
FY 2024
1001-150-5000-000000-590-00-000-000-598020

Item Description	Date Approved	Item #	Interfund Loan	Budget Transfer	*Reserve Balance
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*Reserve balance is inclusive of pending transactions and items seeking approval at this meeting.