



BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

September 21, 2015

Mr. Dennis Beach, City Manager
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, FL 33060

RE: Segment II Shore Protection Interlocal Agreements

Dear Mr. Beach:


Attached, please find the Segment II Shore Protection Project Interlocal Agreement (ILA) between Broward County and the City of Pompano Beach, providing for the City's cost share participation in the forthcoming Segment II construction project as part of the required local cost share.

The project Interlocal Agreement has been revised to incorporate comments received by our municipal partners in the project and to address the requirements provided by the Corps of Engineers (Corps), as reflected in the Project Partnership Agreement (PPA). As you will recall, these conditions were discussed at the project meeting held on July 1, 2015.

While Broward County is preparing to move forward with the project bid announcement, we cannot award the project until receipt of the PPA from the Corps and the municipal ILA's. The Corps has indicated we can expect the PPA in November. Accordingly, we ask that you please return the executed ILAs to the County by November 1, 2015. With all documents in hand, we can move promptly to project construction.

If you have any questions, please feel free to give me call or contact Nicole Sharp directly at 954-519-1231.

Sincerely,


Bertha Henry
County Administrator

Cc: Broward County Board of County Commissioners
Cynthia Chambers, Director, Environmental Protection & Growth Management
Dr. Jennifer Jurado, Director, Environmental Planning & Community Resilience
Nicole Sharp, Natural Resources Administrator

Broward County Board of County Commissioners
Mark D. Bogen • Beam Furr • Dale V.C. Holness • Martin David Kiar • Chip LaMarca • Stacy Ritter • Tim Ryan • Barbara Sharief • Lois Wexler
www.broward.org

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF POMPANO BEACH

relating to the

BROWARD COUNTY, SEGMENT II,
SHORE PROTECTION PROJECT

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY,"

AND

City of Pompano Beach, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "CITY."

WHEREAS, this Agreement is entered into pursuant to Chapter 163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969"; and

WHEREAS, since the inception of the Beach Management Program in the late 1960s, COUNTY has acted as the local sponsor for the U.S. Army Corps of Engineers ("Corps") Shore Protection Program through Interlocal Agreement; and

WHEREAS, the United States, the State of Florida, COUNTY, and CITY intend to engage in a cooperative effort to restore and replenish the beach within CITY and in other locations through a Shore Protection Project, hereinafter called PROJECT, as more particularly described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, the State of Florida has committed Ten Million Four Hundred Thirty-three Thousand and 00/100 Dollars (\$10,433,000.00) ("STATE Contribution"), and COUNTY has committed Ten Million One Hundred Thousand and 00/100 Dollars (\$10,100,000.00) ("COUNTY Contribution") to the PROJECT to defray PROJECT costs; and

WHEREAS, COUNTY has sought reimbursement from the Corps pursuant to a Project Partnership Agreement, along with additional State funding, to defray PROJECT costs ("FEDERAL Contribution"); and

WHEREAS, COUNTY has agreed to fund sixty-seven percent (67%), and the Cities of Fort Lauderdale and Pompano Beach and the Town of Lauderdale-by-the-Sea (the "Cities") have collectively agreed to fund thirty-three percent (33%) of the PROJECT costs as reduced by STATE contribution and FEDERAL contribution ("Local PROJECT Costs"); and

WHEREAS, it is anticipated that COUNTY will enter into an agreement with an engineering consultant to develop the plans and specifications, and to provide necessary engineering consulting services for the PROJECT ("CONSULTANT"); and

WHEREAS, it is anticipated that COUNTY will solicit a contractor capable of completing the required work in accordance with the PROJECT plans and specifications that include truck hauling of fill material, versus offshore dredging projects ("CONTRACTOR"); and

WHEREAS, CITY and COUNTY have entered into a Temporary Access Agreement for the PROJECT, Segment II, that provides temporary access on, over, across, and through CITY property for the purpose of facilitating the design, construction, installation, inspection, and maintenance of the PROJECT; and

WHEREAS, the parties are desirous of entering into a reimbursement agreement for the PROJECT whereby each of the Cities will collectively reimburse COUNTY for thirty-three percent (33%) of the Local PROJECT Costs (the "CITIES' Contribution"), NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1

SCOPE OF SERVICES

- 1.1 COUNTY shall cause the PROJECT to be completed in accordance with permit conditions, construction contract documents, plans, and specifications for the PROJECT. CITY and COUNTY agree that COUNTY's performance under this Agreement is subject to COUNTY obtaining all necessary permits, and is subject to adequate funding assurances from federal, State, and local governments, and subject to a bid from CONTRACTOR which is acceptable to COUNTY.
- 1.2 COUNTY agrees that all monies contributed by CITY pursuant to this Agreement shall be expended exclusively for the PROJECT, and in accordance with permit conditions, construction contract documents, plans, and specifications for the PROJECT.

- 1.3 COUNTY shall ensure that the PROJECT is constructed so that all sand placed onto the beach is beach-compatible sand in accordance with the approved technical and environmental documents for the PROJECT.
- 1.4 COUNTY shall provide CITY access to all records and shall allow the audit of any books, documents, and papers associated with the PROJECT.
- 1.5 CITY shall reimburse COUNTY for CITY's apportioned share of the cost of the PROJECT, as set forth in Section 3.1. CITY shall be responsible in its apportioned share, as set forth in Section 3.1, for any obligations, financial or otherwise, imposed on COUNTY by the State or federal government as a result of COUNTY's construction, operation, maintenance, and monitoring of the PROJECT.
- 1.6 In accordance with Section 402 of the Water Resources Development Act of 1986 (33 U.S.C. 701b-12), as amended, CITY shall prepare a floodplain management plan within one (1) year after the effective date of this Agreement and shall implement such plan not later than one (1) year after completion of construction of the PROJECT. The plan shall be designed to reduce the impacts of future flood events in the PROJECT area, including, but not limited to, addressing those measures to be undertaken by nonfederal interests to preserve the level of flood protection provided by the PROJECT. CITY shall provide an informational copy of the plan to COUNTY upon its preparation.
- 1.7 CITY shall prevent obstructions or encroachments on the PROJECT (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on PROJECT lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the PROJECT affords, hinder operation and maintenance of the PROJECT, or interfere with the PROJECT's proper function.
- 1.8 Except as set forth in Sections 1.5, 1.6, and 1.7 above, CITY shall have no duties, obligations, or responsibilities of any nature with respect to the construction of the PROJECT.

ARTICLE 2

TERM OF AGREEMENT

- 2.1 The term of this Agreement shall begin upon execution by COUNTY and, unless terminated by either party sooner pursuant to Article 6, shall terminate on December 31, 2021. Notwithstanding the termination of this Agreement, COUNTY shall reimburse CITY for any State or federal funding for the PROJECT received after the termination date, consistent with Section 3.1, up to the Cost Share Participation amount set forth in 3.1. The continuation of this Agreement

beyond the end of any fiscal year shall be subject to both the appropriation and availability of funds in Chapter 129, Florida Statutes.

- 2.2 All duties, obligations, and responsibilities of parties required by this Agreement shall be completed no later than December 31, 2021. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 3

BILLING AND PAYMENT

- 3.1 Final PROJECT costs shall include costs of design, permitting, engineering, construction, and annual monitoring costs for five (5) years of post-construction monitoring. Each City's proportionate share of the CITIES' Contribution to the Final PROJECT Costs shall be determined based on a City's proportionate share of the volume of sand placed on each of the beaches lying within the Cities of Fort Lauderdale and Pompano Beach and the Town of Lauderdale-by-the-Sea, respectively ("proportionate share"). Final PROJECT costs and CITY's proportionate share shall be determined after bid award, pursuant to a preconstruction survey. CITY's total reimbursement amount shall be calculated in accordance with the following formula:

PROJECT costs - STATE and FEDERAL Contributions - COUNTY Contribution x .33 x CITY's Proportionate Share = CITY's Total Reimbursement Amount.

However, the Town of Lauderdale-by-the-Sea's Total Reimbursement Amount shall not exceed Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). If application of the foregoing formula results in a Total Reimbursement Amount for the Town of Lauderdale-by-the-Sea exceeding Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), COUNTY shall be responsible for the difference between the Town's Total Reimbursement Amount, thereby ensuring that the Total Reimbursement Amount for the Cities of Fort Lauderdale and Pompano Beach remain unaffected. Any additional State and federal funding received by COUNTY after the effective date of this Agreement shall require recalculation of CITY's total reimbursement amount, by increasing the STATE and FEDERAL Contributions. If CITY has made payments pursuant to this Agreement at the time such subsequent funding is received, and the amount of such funding exceeds the amount due under this Agreement, COUNTY shall reimburse CITY for the difference between its original reimbursement amount and the recalculated reimbursement amount. In no event, however, shall such recalculated reimbursement amount be less than the amount calculated in accordance with the

following formula:

$[(.10 \times \text{PROJECT Costs}) - (.33 \times \text{COUNTY Contribution})] \times \text{CITY's Proportionate Share} = \text{Cost Share Participation.}$

As beach renourishment projects are anticipated to be an ongoing and recurring expense, a minimum participation of ten percent (10%) gives all parties a vested interest in current and future projects. Any STATE or FEDERAL Contribution that would cause CITY reimbursement to be less than the Cost Share Participation shall be retained by COUNTY for future beach renourishment purposes.

3.2 Any excessive costs, to be solely determined by COUNTY, resulting from onerous or impractical conditions placed on the PROJECT by CITY, will be the financial responsibility of CITY, and shall be reimbursed promptly following written notice of excessive cost by COUNTY. Excessive costs will be determined by COUNTY after reviewing the change of PROJECT construction at the direction of CITY.

3.3 METHOD OF BILLING AND PAYMENT

3.3.1 CITY Reimbursement payments shall be made in three (3) equal yearly payments. Commencing on October 15, 2016, and each October 15th for two (2) years thereafter, COUNTY shall submit an original invoice plus one (1) copy to CITY for payment in accordance with Section 3.1 above.

3.3.2 No later than November 15, 2016, and no later than each November 15th for two (2) years thereafter, CITY shall submit payment in accordance with Section 3.1 above.

3.4 Payment will be made to COUNTY at:

Broward County Environmental Protection and Growth Management Department
Environmental Planning and Community Resilience Division
Attn: Nicole S. Sharp, P.E., Natural Resources Administrator
115 South Andrews Avenue, Room 329H
Fort Lauderdale, Florida 33301

ARTICLE 4

GOVERNMENT IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party except as provided herein, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. COUNTY and CITY are political subdivisions as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents and employees to the extent permitted by law.

ARTICLE 5

INSURANCE

- 5.1 COUNTY and CITY are entities subject to Section 768.28, Florida Statutes, and COUNTY and CITY shall furnish the Risk Manager for CITY and COUNTY, respectively, with written verification of liability protection in accordance with state law prior to final execution of this Agreement.
- 5.2 Prior to COUNTY, CONTRACTOR, or CONSULTANT commencing any PROJECT work on the beach within CITY's jurisdiction, COUNTY shall require such CONTRACTOR or CONSULTANT to provide general liability and casualty insurance coverage in accordance with COUNTY's standards, naming COUNTY and CITY as additional insureds against any claims arising from the performance of work within CITY under this Agreement.

ARTICLE 6

TERMINATION

Prior to the time that COUNTY notifies CITY that the PROJECT will be commencing on the beach within CITY's jurisdiction, this Agreement may be terminated by either party upon ninety (90) days' written notice to the other party of such termination pursuant to Section 7.3, NOTICES. However, prior to termination by CITY, all expenses reasonably incurred by the CONSULTANT or CONTRACTOR shall be reimbursed by CITY in proportion to its anticipated volume, as described in Section 3.1 of this Agreement. After COUNTY has provided notice to CITY of commencement of or has commenced the PROJECT on the beach within CITY's jurisdiction, CITY shall not be entitled to terminate this Agreement. Notwithstanding the termination of this Agreement, COUNTY shall reimburse CITY for any State or federal funding for the PROJECT received after the termination date, consistent with Section 3.1. COUNTY may terminate this Agreement at any time for cause for reasons including, but not limited to, CITY's violation of Sections 1.5, 1.6, and 1.7. The obligations of Sections 1.5, 1.6, and 1.7 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 7

MISCELLANEOUS

7.1 RESTORATION

If property damage is suffered within that portion of the beach within CITY in the performance of any work in connection with the PROJECT, COUNTY shall ensure that CONTRACTOR, promptly and with due diligence, fully restores that portion of

the beach to the same condition that existed prior to the commencement of work under the PROJECT.

7.2 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.3 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301

FOR CITY:

City Manager

7.4 MATERIALITY AND WAIVER OF BREACH

7.4.1 COUNTY and CITY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

7.4.2 COUNTY's and CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.5 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

7.6 JOINT PREPARATION

The parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

7.7 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 7 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 shall prevail and be given effect.

7.8 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The parties acknowledge that jurisdiction of any controversies or legal disputes arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the State courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

7.9 AMENDMENTS

The parties may amend this Agreement, including amendments to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein

shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by COUNTY and CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

7.10 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.11 SUBSEQUENT AGREEMENTS

All of the benefits and terms granted CITY under this Agreement with respect to Article 3, Billing and Payment, are similar benefits and terms granted by COUNTY to any previous municipality within Broward County, Florida, regarding shore restoration projects located within Broward County.

7.12 NO INTEREST

Any monies which are the subject of a dispute regarding this Agreement and which are not paid by CITY when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by CITY and COUNTY.

7.13 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement.

7.14 REPRESENTATION OF AUTHORITY

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

7.15 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

7.16 EFFECTIVE DATE

Pursuant to Subsection 163.01(11), Florida Statutes, this Interlocal Agreement shall be effective upon filing of the fully executed Interlocal Agreement with the Clerk of the County for BROWARD COUNTY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and CITY, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
(Date)

By _____
Daphne E. Jones (Date)
Assistant County Attorney

By _____
Maite Azcoitia (Date)
Deputy County Attorney

DEJ/gmb
BC-Shore project
09/02/15
15-058

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF
POMPANO BEACH RELATING TO THE BROWARD COUNTY, SEGMENT II, SHORE
PROTECTION PROJECT.

Attest:

City Clerk

By _____
Mayor-Commissioner
____ day of _____, 20__

By _____
City Manager
____ day of _____, 20__

APPROVED AS TO FORM:

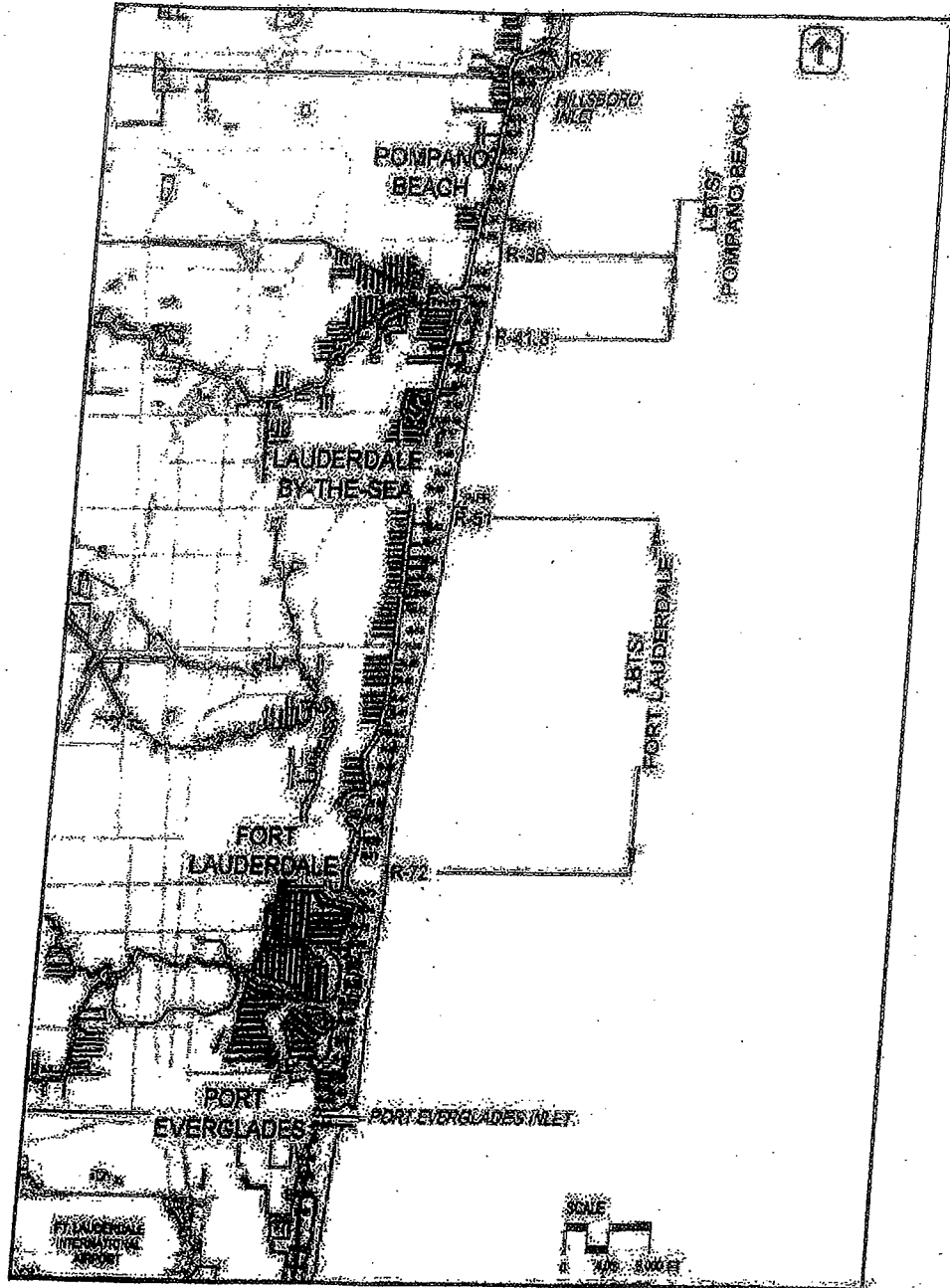
By _____
City Attorney

EXHIBIT "A"
Broward County Segment II Shore Protection Project

Project Description: The project consists of the nourishment of approximately 4.94 miles of critically eroding shoreline within Segment II (Hillsboro Inlet to Port Everglades). About 750,000 cubic yards of compatible sand will be placed on the subject beaches, which will include portions of south Pompano Beach, north and south Lauderdale-By-The Sea, and north and central Fort Lauderdale. Sand for the project will be obtained from upland sand mines and delivered to the project area by truck. The attached drawings illustrate the current project design. The attached design is subject to change in accordance with state of federal permit conditions, which are presently in negotiation.

Segment II Project Location: Previously constructed areas, for which an Erosion Control Line is established and recorded, lie between R25 and R53. For the proposed project, beach fill will be placed between DEP monuments R36 and R41.3 (SE 4th Street in Pompano Beach, to Ocean Colony Condominium in Lauderdale-By-The-Sea), and between monuments R51 and R72 (-300 feet south of Anglin's Pier in Lauderdale-By-The Sea, to Terramar Street in Fort Lauderdale).

EXHIBIT A LOCATION MAP



BROWARD COUNTY
SHORE PROTECTION PROJECT
SEGMENT II
LOCATION MAP