

**NEGOTIATED NONCOMPETITIVE AGREEMENT
BETWEEN
THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND
LEE COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF
SAND RESOURCES FOR THE LOVERS KEY, BONITA BEACH, AND SOUTH
BONITA BEACH FOR THE BEACH NOURISHMENT PROJECT IN
LEE COUNTY, FLORIDA**

BOEM Negotiated Agreement No. OCS-G 37966

Title I. Explanatory Recitals

- A. The United States Department of the Interior (DOI), acting through the Bureau of Ocean Energy Management (BOEM; or collectively with DOI, as the “Lessor”), enters into this Negotiated Noncompetitive Agreement (“Lease”) with Lee County, Florida (the “County” and “Lessee”), providing for the use of up to 3 million cubic yards (mcy) of Outer Continental Shelf sand (“OCS sand resources”) to nourish and sustain two beaches in Lee County, Lovers Key and Bonita Beach, with a onetime placement above mean high water (MHW) of South Bonita Beach (“the Project”) under the authority of Section 8(k)(2) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1337(k)(2)). When referring to both BOEM (Lessor) and Lee County (Lessee) together, they are herein referred to as the “Parties.”
- B. The term “OCS sand resources” means sand, gravel and shell resources found on or below the surface of the seabed on the Outer Continental Shelf (OCS), as defined in Section 2(a) of the OCSLA (43 U.S.C. § 1331(a)).
- C. Prior to the notice-to-proceed with construction, the County will procure lands, easements, and rights-of-way (collectively, “Land Rights”) as necessary from upland landowners, other property rights holders, and other persons and entities of appropriate scope and duration to facilitate the Project.

Title II. Purpose and Authority

- A. The DOI, acting through BOEM, enters into this Lease with the County to use OCS sand resources from the OCS approved borrow area located in Charlotte Harbor Block 606 (“OCS Borrow Area”) as designated in Table 1, on the attached map and design profiles (Attachments 1 and 2), in accordance with the terms of this Lease and the permits issued by the United States Army Corps of Engineers (USACE) and the Florida Department of Environmental Protection (FDEP). After removal of the OCS sand resources from the OCS and placement of those resources as specified in this Lease, BOEM has no jurisdiction over those sand resources unless they return to the OCS.

Table 1

Charlotte Harbor OCS Borrow Area Boundary
 Easting and Northing Coordinates are based on Florida State Plane West Coordinate System
 (North American Datum of 1983 [NAD 83]) Delineating Borrow Area

Charlotte Harbor Block 606 OCS Borrow Area					
BOUNDARY COORDINATE TABLE					
POINT	NORTHING	EASTING	POINT	NORTHING	EASTING
BA-01	744,348	534,313	BA-12	742,399	536,602
BA-02	746,761	536,798	BA-13	742,604	536,319
BA-03	746,569	536,950	BA-14	742,666	536,130
BA-04	745,981	537,420	BA-15	742,927	534,844
BA-05	745,785	537,576	BA-16	743,330	534,330
BA-06	745,276	537,770	BA-17	744,016	534,319
BA-07	744,768	537,964	BA-18	744,153	535,537
BA-08	744,115	538,368	BA-19	743,615	536,059
BA-09	743,897	538,503	BA-20	744,346	536,813
BA-10	742,821	539,548	BA-21	742,718	536,930
BA-11	741,358	538,041	BA-22	743,449	537,683

- B. BOEM, under the authority delegated by the Secretary of the Interior, is authorized, pursuant to Section 8(k)(2) of the OCSLA (43 U.S.C. § 1337(k)(2)), to enter into this Lease concerning the use of OCS sand resources. The Lessee enters into this Lease in compliance with the requirements of Section 8(k)(2)(A)(i) of the OCSLA (43 U.S.C. § 1337(k)(2)(A)(i)). If appropriate, duties of the Lessee may be fulfilled through authorized representatives such as a dredging contractor. The Lessee will ensure that any contractors or subcontractors operate in compliance with this Lease.

BOEM has determined that the Project meets the requirements of Section 8(k)(2)(A)(i) of OCSLA. Therefore, in accordance with Section 8(k)(2) and subject to the terms and conditions as contained herein, BOEM hereby authorizes the use of OCS sand resources from the OCS Borrow Area identified in Table 1 and Attachments 1 and 2 for the construction of the Project. The Parties acknowledge that under the terms of Section 8(k)(2)(B), BOEM will not assess any fee against the County for the value of the OCS sand resources described herein.

Nothing in this Lease is intended to abrogate or diminish the Secretary of the Interior's authority under OCSLA to oversee and regulate the removal of OCS sand resources. Pursuant to 30 CFR § 583.330, failure to comply with any applicable law, or any provision, term, or condition of this agreement may result in termination of the agreement at the sole discretion of BOEM, referral to an appropriate Federal or State agency with jurisdiction for possible enforcement, or both. The failure to comply in a timely and satisfactory manner with any provision, term or condition of this agreement may also delay or prevent BOEM's approval of future requests for use of OCS sand made by the County.

The Lease may be terminated by BOEM consistent with provisions in 30 CFR § 583.350. If the County violates any provisions of this Lease, BOEM may, by written notice, suspend the lease and order any further operations of the County under this Lease to cease, except such

operations as may be necessary to remedy any violations. If the County fails to remedy violations within thirty (30) days after receipt of a suspension notice, BOEM may, by written notice, terminate this Lease.

In the event that BOEM suspends or terminates the Lease, the County will not be entitled to compensation as a result of expenses or lost revenues resulting from the suspension or termination.

- C. Nothing in this Lease is intended to impede or hinder the County's ability to complete the Project or abrogate or diminish either Parties' authority or responsibilities under applicable law, including but not limited to the Clean Air Act (CAA) (42 U.S.C. § 7401 et seq.), Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), Coastal Zone Management Act (CZMA) (16 U.S.C. § 1451 et seq.), Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. § 801 et seq.), Marine Mammal Protection Act (MMPA) (16 U.S.C. § 1361 et seq.), Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703–712), National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.), and National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.).

Title III. Description of the Authorized Activity

The Lessee is undertaking the Project to provide storm damage reduction benefits; create, restore, and sustain habitat for Threatened and Endangered (T&E) species including but not limited to marine turtles and shorebirds, and provide recreational benefits through beach and dune fill placement utilizing the offshore sand source from Charlotte Harbor Block 606. The need for the Project is based on the annual monitoring conducted by the County which documented the erosion losses since the last nourishment event and the significant damage caused by Hurricane Ian. The overall project area (Attachment 1) includes:

- (1) the nourishment area that encompasses approximately six (6) miles of coastline from the north end of Lovers Key to the south end of Bonita Beach,
- (2) three borrow areas located in the Gulf of Mexico including the OCS sand resource located approximately 29 nautical miles (nmi) (33.4 miles [mi]; 53.7 kilometers [km]) to the west of Lovers Key, Bonita Beach, and South Bonita Beach, and
- (3) temporary dredge pipeline conveyance corridors connecting the pump-out and borrow areas to the nourishment areas.

The limits of the engineered beach and dune on Lovers Key extend from 500 feet north of FDEP Range Monument, a coastal survey marker identifying key survey points along Florida's sand coastline, R-215 to R-221 equal to approximately 6,200 feet. The proposed beach fill template includes the permitted footprint and an increased berm elevation of +3.5 feet North American Vertical Datum of 1988 (NAVD88) to account for sea level change. The proposed template includes restoring the dune destroyed by Hurricane Ian. The dune crest elevation and width are +6.3 feet NAVD88 and 55 feet, respectively.

The limits of the engineered beach and dune on Bonita Beach extend from FDEP Range Monuments R-226 to R-230 equal to approximately 3,900 feet. The proposed beach fill template includes a 75-foot-wide design beach plus 95 feet to account for advanced

nourishment and equilibrium profile adjustment, and an increased berm elevation of +4.9 feet NAVD88 to account for sea level change.

The southern end of Bonita Beach (South Bonita Beach) from FDEP Range Monuments R-230 to the Lee-Collier County line (R-239) is a previously unrestored section of shoreline that was impacted by Hurricane Ian. Sand placement above MHW is proposed in a one-time event to offset the storm losses.

The OCS Borrow Area sand, located within Charlotte Harbor Block 606, is characterized by medium to fine-grained gray sand, which contains low silt content. A compatibility analysis was completed comparing the native beach data and OCS Borrow Area data which indicates that the sand from the OCS Borrow Area is compatible with the native beach sand. There are no hardbottom resources or seagrass beds within or adjacent to the OCS Borrow Area.

Title IV. Provisions

- A. BOEM authorizes the use of OCS sand resources, up to a total of three (3) mcy, from the Charlotte Harbor Block 606 OCS Borrow Area and transportation of the sand resources off the OCS via hopper dredges or cutterhead dredges using scow barges and a temporary pipeline to construct the Lovers Key, Bonita Beach, and South Bonita Beach Nourishment Project. The Lessee will extract, transport, and place such OCS sand resources from the borrow site in accordance with the terms and conditions set forth below and in accordance with the FDEP and USACE Permits. Except as provided above with regards to the type of dredging and transportation of sediment from borrow area to shore, the Parties agree that all other aspects of the Project's execution and completion remain as described in the final design report and the Plan (refer to Stipulation No. 1).
- B. Except as otherwise provided herein, all notices relating to this Lease or activities authorized hereunder by or among the Parties must be provided to the following addresses:

To BOEM:
Brian Cameron
Marine Minerals Coordinator
Bureau of Ocean Energy Management
Gulf of Mexico OCS Region
1201 Elmwood Park Blvd.
New Orleans, LA 70123
brian.cameron@boem.gov

To the County:
Stephen Boutelle
Marine Operations Manager
Lee County Natural Resources
1500 Monroe Street, 3rd Floor
Fort Myers, FL 33901
sboutelle@leegov.com

All electronic notifications, submissions, and deliverables to BOEM will be sent to dredgeinfo@boem.gov.

- C. This Lease applies only to the extraction, transportation, and placement of OCS sand resources, described above. The Lessee must ensure that anyone performing any activity under this lease is contractually bound to follow the obligations, terms, and conditions of this Lease. The Lease will terminate or expire upon the following, whichever occurs first:

(1) the Lessee sending written notice to the Regional Supervisor, BOEM, Office of Resource Evaluation, 1201 Elmwood Park Blvd., New Orleans, LA 70123, that the Lessee has received sufficient OCS sand resources to complete the Project, up to three (3) mcy; or

(2) the expiration, termination, or revocation of the FDEP Joint Coastal Permit (JCP) #0311811-001-JC, major modification #0311811-004-JM, and minor modification #0311811-

005-JN which expires June 24, 2028; or USACE Permit #SAJ-2012-00198(IP-MJD) and permit modification (MOD-SJF) which expires Sept 3, 2028.

Upon request by the Lessee, the Parties may agree to extend the terms of this Lease as necessary to provide the Lessee with additional time to complete the Project, subject to applicable law.

The Parties acknowledge that there may be a need for future OCS sand resources for periodic maintenance, augmentation, or construction purposes. BOEM and the Lessee may enter into subsequent agreements, for the use of OCS sand resources for the Project, consistent with each Party's responsibilities under applicable law.

- D. BOEM and the Lessee recognize that planning and coordination among the Parties will ensure that responsibilities under the OCSLA and other applicable Federal laws are carried out and accommodated in an efficient and timely manner so that the Project schedule is not unnecessarily delayed or compromised. All Parties recognize that BOEM, as a Bureau in DOI, has certain responsibilities for the orderly, timely, and efficient recovery of OCS minerals using the best available and safest technology while ensuring environmental stewardship and compliance. To these ends, and with respect to the Project, BOEM and the Lessee agree to the following stipulations below.

1. Plans and Performance Requirements

The Lessee will include this Lease as a reference document in the advertised "Construction Solicitation, Technical Specifications, and Drawings" (hereinafter referred to as the "Plan"). The Lessee will provide BOEM with a copy of the Plan at least two weeks prior to construction contract advertisement to allow sufficient time for BOEM to review and verify that all leasing terms and conditions and relevant environmental compliance requirements outlined in the Environmental Compliance Matrix (ECM) (to be provided pursuant to Stipulation 2) are incorporated into the Plan, as applicable. The Lessee will be responsible for implementation of all environmental compliance requirements, including those not addressed in the Plan. The Lessee will allow BOEM to review and comment on any modifications to the Plan that may affect the OCS Borrow Area or pipeline corridors on the OCS, including the use of submerged or floated pipelines to directly convey sediment from the Borrow Area to the placement site. BOEM will deliver these comments in a timely fashion so as to not unnecessarily delay the Lessee's construction contract or schedule. The Lessee will ensure that all operations at the OCS Borrow Area are conducted in accordance with the Plan and all terms and conditions in this Lease, as well as all applicable statutes, regulations, orders, guidelines, and directives specified or referenced herein intended to protect persons, property and the environment, and any relevant Project design criteria, terms and conditions, and reasonable and prudent measures of the latest biological opinions applicable to the activities authorized in this Lease.

The dredging and conveyance methods for removing sand from the OCS Borrow Area and transport off the OCS will be consistent with those methods identified in the Project proposal analyzed in supporting NEPA documents, authorizing documents, as well as Project permits. If dredging, bottom disturbing activities, and/or conveyance methods are not wholly consistent with those evaluated in relevant NEPA and associated consultation documents prepared by the Lessee, BOEM, and/or the USACE, those adopted by BOEM for this Project, and those authorized by USACE and FDEP permits, additional environmental review may be necessary. If the additional NEPA, consultations, or permit modifications would impact or otherwise require modification of the provisions of the Lease, an amendment may be required.

Prior to the commencement of construction, the Lessee will electronically provide BOEM with a summary of the construction schedule. The Lessee, at the reasonable request of BOEM, will allow access to the site of any operation subject to safety regulations to any authorized Federal inspector and will provide BOEM any documents and records that are pertinent to occupational or public health, safety, environmental protection, conservation of natural resources, or other uses of the OCS as may be requested. The Lessee agrees to facilitate access to the site of any operation to BOEM and to scientists conducting sampling or observations associated with research conducted or funded by BOEM, where practicable and deemed safe by the Lessee and contractor(s), including, but not limited to, dredges, support equipment, fill areas, and turtle relocation trawlers.

2. Environmental Responsibilities and Environmental Compliance

The Lessee will prepare an ECM and provide it to BOEM for review and comment at least two weeks prior to Lessee's construction contract advertisement. The purpose of the ECM is to document and demonstrate adherence to all environmental compliance measures required to avoid and/or minimize environmental impacts prior to, during, and after construction. The ECM will identify the specific requirements that apply during activities that occur on the OCS. Additionally, the ECM will identify roles and responsibilities to ensure adherence to all environmental compliance measures prior to, during, and after construction. The ECM will identify where in the Plan the relevant environmental compliance measures are addressed.

USACE and BOEM are the lead or co-lead agencies on behalf of the Federal Government that ensures the Project complies with applicable environmental laws, including, but not limited to, ESA, MSFCMA, NHPA, MMPA, and CZMA, and any consultations or limitations imposed thereunder. BOEM is a joint consulting Federal agency for ESA Section 7 consultations concerning protected species under the purview of the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The Lessee will instruct its contractor(s) to implement all environmental compliance measures, as required by the USFWS, NMFS, FDEP, USACE, and BOEM pursuant to applicable Federal and State laws and regulations prior to commencement of activities authorized under this Lease, including extraction, transportation, and placement of sand resources from the OCS Borrow Area.

Construction will not commence until the preconstruction requirements have been completed as outlined in the ECM, relevant consultation documents, and these Lease provisions. Electronic copies of all relevant correspondence, monitoring data, and reports related to the activities covered by this Lease will be provided to BOEM within fourteen (14) days of issuance at dredgeinfo@boem.gov (including, but not limited to, observer and dredging reports, and reports required by relevant Project permits) unless the reports are required sooner by this Lease or applicable law, the permits, or the consultations.

3. Other Responsibilities

BOEM does not warrant that the OCS sand resources used in this Project are suitable for the purpose for which they are intended by the Lessee. BOEM's responsibility under this Lease is limited to the authorization of access to OCS sand resources from the OCS Borrow Area as described herein, and therefore BOEM disclaims any and all responsibility for the physical and financial activities undertaken, damages or liabilities, incidents or injuries, or negligence by the other Parties in pursuit of the Project.

To the extent permitted by law, the Lessee hereby indemnifies BOEM for, and agrees to hold BOEM harmless from, any claims for loss, costs, damages, injuries to persons, or expenses caused by or resulting from any operation under this lease. However, the Lessee is not responsible to BOEM

for any loss, cost, damage, injury, or expense that directly results from (1) the sole negligence of BOEM or (2) the Lessee's non-negligent compliance with a BOEM order or directive imposed under this Lease.

The participation of BOEM in this Lease is not intended to place BOEM or its representatives in a position of incurring liability arising from an action of any other Party, or their agents, contractors, or employees. Each Party is responsible for any injury or damage caused by negligence of its contractors, agents, or employees acting within the scope of their employment/official duty subject to such limitations as may be prescribed by applicable laws.

The Lessee or its contractor(s) must notify BOEM of any encounter of hazards on the OCS and any OCS sediment placed on the beach that has characteristics that are unsuitable relative to native sediment characteristics where it is placed (e.g., grain-size, color, composition). The specific location where unsuitable sediment was dredged, or where hazards were encountered, within the OCS Borrow Area must be delineated and said location must be provided to BOEM in shapefile format, with applicable metadata detailing why it is recommended for avoidance, for future planning purposes. Additionally, any encounter of an ordinance will be reported to BOEM using the process outlined in Stipulation No. 11.

4. *Pre-Construction Notification of Activity in or Near the Borrow Areas*

The Lessee will invite BOEM to attend a pre-construction meeting with the Lessee and its contractor that describes the Lessee's Plan and schedule to construct the Project.

The Lessee will notify BOEM at dredgeinfo@boem.gov at least 72 hours prior to the commencement of and no later than 24 hours after termination of operations at the OCS Borrow Area.

5. *Dredge Positioning*

During all phases of the Project, the Lessee will ensure that the dredge and any bottom-disturbing equipment is outfitted with an onboard global positioning system (GPS) capable of maintaining and recording location within a horizontal accuracy range of no more than plus or minus three (3) meters (10 feet). For cutterhead dredges, the GPS will be installed as close to the draghead or cutterhead as practicable or use appropriate instrumentation to accurately represent the position of the cutterhead. Whenever dredging operations are underway, the location of the dredge will be continuously monitored and its position within the OCS Borrow Area will be recorded in real time, in North American Datum of 1983 (NAD83), at intervals not to exceed two (2) minutes. During dredging operations, the County will immediately notify BOEM at dredgeinfo@boem.gov and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact if dredging occurs outside of the approved OCS Borrow Area.

Anchoring, spudding, disposal, or other bottom-disturbing activities on the OCS are not authorized outside of the approved OCS Borrow Area and associated pipelines corridors, unless there are immediate concerns regarding safety, navigation risks, or emergency situations.

The Lessee, in collaboration with the designated USACE regulatory point of contact, will coordinate with the National Dredging Quality Management (DQM) program in advance of construction commencement to provide appropriate project-specific information, inform them of BOEM's role in the Project and relevant Lease stipulations, and develop a coordination plan to ensure that all DQM-certified deliverables in accordance with this Lease are internally reviewed and delivered to BOEM on time and in accordance with BOEM formatting requirements. The Lessee and/or its agents will provide to BOEM the DQM data acquired during the Project using procedures jointly developed by the USACE's National DQM Data Program Support Center and BOEM. The Lessee and/or its agents will

submit the DQM data, including draghead, cutterhead, or other hydraulic or mechanical dredging device depth every 2 weeks to BOEM at dredgeinfo@boem.gov. If available, the Lessee and/or its agents will also submit Automatic Identification System (AIS) data for vessels qualifying under the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea.

6. Dredge Operation

The Lessee will ensure that any contractors conduct all dredging operations in accordance with the ECM. The final approved Plan (required pursuant to Stipulation 1) will include provisions designed to balance efficiency and conservation of the resource during the removal of sand from the OCS Borrow Area. Any modification to this Plan will be coordinated with BOEM for approval prior to commencement of dredging. The purpose of these provisions is to conserve and avoid wasting sand in the OCS Borrow Area that could be used to nourish the beach now and in the future.

The lessee will conduct all dredging operations in accordance with requirements outlined in the ECM. Any modification to this Plan will be submitted to BOEM for review prior to commencement of dredging (pursuant to Stipulation No.2).

7. Pipeline Corridor Monitoring and Maintenance

All pipelines will be kept in good condition at all times, and any leaks or breaks along the length of the pipeline will be promptly repaired to avoid accidental discharge of OCS sand resources outside of the authorized nourishment areas and to prevent the potential development of navigation hazards due to shoaling. If a pipe leaks or bursts, all pumping operations must cease immediately until the pipeline has been repaired. The Lessee is responsible for coordinating with permitting agencies on sand resources or other material deposited outside of the nourishment areas. The Lessee will notify BOEM of any occurrences and remedial actions and provide copies of reports of the incident and resultant actions at dredgeinfo@boem.gov and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact.

The temporary, dredge-pipeline, conveyance corridor will be routinely monitored with side scan sonar, multibeam bathymetry, or swath bathymetry for movement, breakage, or leaks resulting in OCS sand resources discharge on the water bottom. The monitoring surveys shall be conducted every 500,000 cubic yards of excavation/placement. Additional surveys may be requested at the discretion of BOEM and will be conducted immediately upon detection of any loss of pressure indicative of leaks, the passage of a major storm, and/or evidence of pipeline disturbance by other activities, including but not limited to fishing vessels. Inspection survey reports with quality control analysis (refer to Stipulation 13) will be submitted to BOEM for concurrence within 30 working days of completion of the survey.

8. Submittal of Production and Volume Information

The Lessee, in cooperation with the dredge contractor, will submit to BOEM a summary of the dredge track lines, outlining any deviations from the Plan, every two weeks. This will include a color-coded plot of the draghead, cutterhead, or other hydraulic or mechanical dredging device, showing any horizontal or vertical dredge violations. The dredge track lines must show dredge status: hoteling, dredging, transiting, or unloading. This map will be in Adobe PDF format.

At least every two weeks, the Lessee will electronically provide a report of the construction progress including estimated volumetric production rates to BOEM. The Project completion report, as described below in Stipulation 15, will also include production and volume information.

9. Local Notice to Mariners

The Lessee will place a notice in the USCG Local Notice to Mariners regarding the timeframe and location of dredging, the pipeline conveyance corridor, and construction operations in advance of commencement of dredging.

10. Marine Pollution Control and Contingency Plan

The Lessee will prepare for and take all necessary precautions to prevent discharges of oil and releases of waste and hazardous materials that may impair water quality. In the event of a discharge, notification and response will be in accordance with applicable requirements of 40 CFR part 300. All dredging and support operations will be compliant with USCG regulations and the U.S. Environmental Protection Agency's Vessel General Permit, as applicable. The Lessee will notify BOEM of any occurrences and remedial actions and provide copies of reports of the incident and resultant actions at dredgeinfo@boem.gov and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact.

11. Encounter of Ordnance

The encounter of ordnance is possible on the OCS, and it is the responsibility of the Lessee to proactively manage this risk and any resulting situations should the need arise. The Lessee must address how the encounter of ordnance will be handled in the Plan that is prepared pursuant to Stipulation No. 1. If any ordnance is encountered while conducting dredging activities at the OCS Borrow Area, the Lessee will report the discovery within 24 hours to the Regional Supervisor, Resource Evaluation, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region at (504) 736-2411 as well as dredgeinfo@boem.gov and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact.

12. Post-Construction Site Clearance

All construction equipment and material related to the Project, including but not limited to all temporary dredge pipe sections, or fittings, or other related obstructions, and debris, will be promptly removed from the OCS within 30 days following completion of OCS borrow activities. The Lessee will, within the same 30-day time period, conduct a site clearance verification survey with their contractor that covers the OCS project areas. Survey techniques are described in Stipulation No. 13. A report documenting the site clearance inspection survey results will be provided to BOEM for review and concurrence at dredgeinfo@boem.gov and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact and included in the Project Completion Report (Stipulation No. 15). If, prior to Project completion, the dredge plant and supporting equipment (e.g., booster pumps) are temporarily demobilized from the OCS project area for more than 14 days, the dredge pipe will be monitored using hydrographic survey techniques described in Stipulation No. 13 with a survey conducted within 21 days of temporary demobilization. BOEM reserves the right to require additional surveys in the wake of a severe storm event.

13. Bathymetric and Side Scan Sonar Surveys

As consideration, the Lessee will provide BOEM with pre- and post-dredging bathymetric surveys of the OCS Borrow Area. The Lessee will conduct a pre-dredging survey of the OCS Borrow Area within ninety (90) days prior to the commencement of dredging and will provide the data to BOEM for review via dredgeinfo@boem.gov, allowing for a minimum of seven (7) working days for BOEM to provide concurrence prior to the commencement of dredging. A qualified hydrographic surveyor, independent from the dredging/construction contractor must conduct, oversee, and approve the surveys before transmitting them to BOEM. The Lessee or its contractor will conduct a post-dredging survey of the OCS Borrow Area within 90 days after the completion of dredging.

The Lessee will perform surveys, error analysis, and reporting in accordance with the most recent edition of the National Oceanic and Atmospheric Administration's (NOAA's) Office of Coast Survey Hydrographic Survey Field Procedure Manual. Survey standards and requirements are specified and can be found here on the Coast Survey Document Library (https://nauticalcharts.noaa.gov/publications/docs/standards-and-requirements/specs/HSSD_2022.pdf).

BOEM recommends that the Lessee conduct additional surveys of the OCS Borrow Area both one (1) and three (3) years after the completion of dredging to document borrow area evolution and provide information to inform future decisions and consultations regarding use of OCS sand resources.

For bathymetric surveys, 100 percent coverage using multi-beam bathymetric survey methods is required. All bathymetric data will be roll, pitch, heave, and tide corrected using best practices. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor. Survey lines of the specific dredge area will be established at intervals necessary to provide 100 percent coverage. All survey lines will extend at least 100 meters (328 feet) beyond the edge of the limits of the OCS Borrow Area as defined in this Lease.

The Lessee will collect all data in such a manner that post-dredging surveys are compatible with the pre-dredging survey data to enable the latter to be subtracted from the former to calculate the volume of sand removed, the shape of the excavation, and the nature of post-dredging bathymetric change. The Lessee will conduct surveys using kinematic GPS referenced to a GPS base station occupying an established (NAVD 88 vertical control) monument within 24 kilometers (15 miles) of the survey area, a National Geodetic Survey real-time network, or a water-level gauge deployed within the vicinity of the OCS Borrow Area and referenced to an established monument (NAVD 88 vertical control), unless alternative methods are approved by BOEM. Pre- and post-dredging surveys will be referenced to the same water-level gauge, tide gauge, real-time network, benchmark, or BOEM-approved method. An uncertainty or error analysis will be conducted on the bathymetric dataset based on calculated differences of measured elevations (depths) at all transect crossings; other best practices typically employed to identify potential error or quantify uncertainty, such as daily bar-checks, will also be conducted and documented.

If data accuracy, coverage, quality, or other parameters for either pre- or post-dredging surveys are not sufficient to provide for accurate comparisons between the pre-dredge and post-dredge surveys (e.g., do not meet specifications and standards discussed or referenced above), BOEM may require the Lessee to conduct a new survey at the pre-dredge and/or post-dredge phase.

The delivery format for bathymetry data submission is an ASCII file (e.g., .xyz, .txt, .csv, .dat) containing x, y, z data and a digital elevation model (e.g., .bag, .tiff, .asc). The file name(s) of bathymetric data submissions will be unambiguous and as a recommendation should include the survey ID (e.g., USACE survey number) and/or borrow area name, bin spacing, acronym for vertical datum, units, and date of survey completion (the following should be used as an example file name: SURVEYID_BorrowArea_3x3AVG_NAVD88_ft_MMDDYYYY.xyz). The horizontal data will be provided in the NAD83 Florida State Plane West, U.S. survey feet. Vertical data will be provided in the NAVD88, U.S. survey feet unless otherwise specified. The Lessee must submit a survey completion report in Adobe PDF format, which includes descriptions of the area surveyed, survey methods (e.g., equipment, calibration, data acquisition and processing), vertical and horizontal survey control, results of the uncertainty analysis, and list of associated bathymetric data files submitted, as well as field notes and metadata record (Federal Geographic Data Committee

endorsed geographic metadata standard, e.g., ISO 19915) to BOEM with the processed bathymetric data products. An 8.5 x 11-inch plan view plot of the pre- and post-construction data will be provided showing the survey vessel navigation tracks, as well as contour lines at appropriate elevation intervals. A plot of the digital elevation model will also be provided. These plots will be provided in Adobe PDF format. Images and descriptions of any previously identified side scan sonar targets or newly identified bathymetric anomaly targets will be included and identified on an index map.

14. Archaeological Resources

There are no known archaeological resources in the OCS Borrow Area. If the Lessee discovers any previously unknown historic or archeological resources, all dredge and/or pump-out operations will be halted immediately and avoid the resource. The Lessee will report the discovery to the Regional Supervisor, Resource Evaluation, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region at (504) 736-2411 and the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact, electronically, in a timely manner. The Lessee will coordinate with BOEM on the measures needed to evaluate, avoid, protect, and, if needed, mitigate adverse impacts from an unanticipated discovery. If investigations determine that the resource is significant, BOEM will work with relevant parties to determine how best to protect it. The Lessee will coordinate with BOEM and other Federal and State agencies to initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

15. Project Completion Report

A project completion report will be submitted by the Lessee to BOEM within 120 days following completion of the activities authorized under this Lease. This report and supporting materials will be sent electronically to the designated BOEM Gulf of Mexico OCS Region, Marine Minerals Program's point of contact and to dredgeinfo@boem.gov. The report will contain, at a minimum, the following information:

- names and titles of the project managers overseeing the effort [for the Lessee, engineering firm/agent (if applicable), and the contractor], including contact information (phone numbers, mailing addresses, and email addresses);
- a narrative including the location and description of the Project, a narrative describing the final, as-built features, boundaries, and acreage, including the restored beach width and length;
- the final total volume of material extracted from the borrow areas and the volumes of material actually placed on the beach or shoreline (including a description of the volume calculation method used to determine these volumes);
- notation that the Lessee has confirmed that BOEM has received the full set of DQM data, in .csv files, containing the x, y, z coordinates and time stamp of the cutterhead or drag arm locations;
- a narrative discussing major construction sequences and activities, and, if applicable, any significant problems encountered and solutions implemented;
- a table showing major types of construction equipment used and the nature of their use by phase of the Project construction;
- a list and description of any safety-related issues or accidents reported during the life of the Project;
- a narrative and any appropriate tables describing any environmental monitoring associated with the Project;

- a narrative and any appropriate shapefiles defining areas of the OCS Borrow Area deemed unsuitable during the course of the Project;
- a table listing significant construction dates beginning with bid opening and ending with final acceptance of the Project by the Lessee;
- digital appendices containing the as-built Project footprint (.shp /.gdb), and bathymetric survey data outlined in Stipulation No. 13 above;
- metadata appropriate to geospatial deliverables; and
- any additional pertinent Project photo or video documentation in high-resolution format (including aerial or drone imagery or video).

16. Reporting Compliance

In addition to a point of contact identified in Title IV Provision (B) for receipt of notifications, the Lessee will designate, in advance of construction, a single Lessee point of contact (and preferably a back-up contact) who is responsible for facilitation of compliance with all lease requirements. The Lessee will provide this contact information to BOEM, electronically, at least 30 days in advance of dredging and construction operations.

Should there be an allegation of a failure to comply or failure to complete required reporting, the alleged failure will be corrected as soon as possible and/or resolved jointly between BOEM and the Lessee, including through the dispute resolution process identified in Stipulation No. 18.

17. Sharing of Information

Consistent with the purpose stipulated by the Parties in Title II, and to the extent allowed by law, policy and regulation, BOEM and the Lessee agree to (1) share all information needed for or generated from the Project, including the sharing of implementation and other applicable schedules; (2) provide such information to the requesting agency as expeditiously as possible; and (3) work to ensure that all required completion report information is received. The Lessee and BOEM agree to work to ensure that all required completion report information is received.

The Parties to this Lease acknowledge that information and reports required by and/or exchanged pursuant to the subject Project may include confidential business information, proprietary information, or other sensitive information that should be protected from disclosure.

Any Party, contractor, or agent of one of the Parties requesting that information or reports provided pursuant to this Lease be treated as confidential, will prominently mark the information and report as "Confidential" along with the basis for the claim of confidentiality. Any cover correspondence submitted with the information or report will likewise note the claim of confidentiality. To the extent practicable, a Party to this Lease may only request information that has been marked as "Confidential" and is in the possession of another Party to this Lease if the information is needed by the requesting Party to carry out their obligations under this Lease or if the information is necessary for the requesting Party to fulfill their obligations under the law. The Party in possession of the information requested may work with the requesting party to determine if the information may be shared without waiving the confidential nature of the material.

The Parties further agree that they will notify the other Party as soon as possible, in writing, of any request by any person seeking the release or disclosure of information marked "Confidential" in whole or in part, including, but not limited to, requests pursuant to Court orders, discovery, subpoenas, or other compulsory process, or public access requests under applicable Federal or State law. Notification will be considered timely if it provides the Parties or individuals claiming the information or report is confidential a reasonable opportunity to seek a Court order to prevent release or disclosure.

Any disputes among the Parties regarding requests for information or the confidential nature of the information requested will be resolved according to applicable law and through the dispute resolution process identified in Stipulation No. 18. With regard to third party requests for information produced or shared in accordance with this lease, the request will be addressed in accordance with applicable law. If the Party or individual claiming the information or report is confidential fails to obtain a timely Court order preventing the release or disclosure of the information, the Party in possession of the information will release it to the extent required by applicable law.

18. Resolution of Disputes

The Parties agree to make every attempt to settle any disputes regarding this Lease at the lowest operational level within seven (7) business days. In the case of (1) a substantial disagreement between BOEM and the Lessee with respect to any aspect of BOEM's authorization of the use of OCS sand resources in accordance with the terms and conditions as specified or (2) any alleged breach by a Party of the terms and conditions as specified herein, the party alleging the disagreement or breach will state the area(s) of disagreement or alleged breach in writing and present such statement to the other Party for consideration. If dispute resolution is not successful within thirty (30) calendar days and if appropriate under 30 CFR § 583.330 and 30 CFR § 583.350, BOEM may suspend or terminate the Lease, refer the matter to appropriate Federal or State agency for enforcement, or both.

19. Miscellaneous

This Lease may not be assigned or transferred, without the prior written consent of the other Party.

This Lease is not intended to affect any preexisting or independent relationships or obligations between DOI and the County, including any other relationships or obligations between BOEM and the Lessee, or any other units of the County or DOI. Nothing herein is intended or may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a Party to this Lease except for those rights that are conferred by law.

All rights in the Charlotte Harbor Block 606 OCS Borrow Area not expressly granted to the Lessee by this Lease are hereby reserved to BOEM. BOEM reserves the right to authorize other uses in the OCS Borrow Area that will not unreasonably interfere with activities authorized under this Lease. Given the ongoing interest in this OCS Borrow Area from known entities, BOEM will allow the Lessee to review and comment on any proposed authorizations for the use of OCS sand resources in the OCS Borrow Area while this Lease is in effect.

Nothing herein is intended to conflict with current State or Federal laws, rules, or regulations. If the terms of this Lease are inconsistent with the existing applicable laws, rules, or regulations of any of the Parties entering into this Lease, then those portions of this agreement that are determined to be inconsistent will be invalid, but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect. At the first opportunity for review of the Lease, all changes made necessary by the inconsistency with applicable laws, rules or regulations will be accomplished either by an amendment to this Lease or by entering into a new Lease, whichever is deemed expedient to the interest of the Parties. Any changes and/or amendments to this Lease will be effective only upon mutual written consent of the Parties.

This agreement may be executed in two (2) or more counterparts, each of which will be deemed an original. The signatures to this agreement may be executed on separate pages, and when attached to this Lease, will constitute one complete document.

(The remainder of this page was intentionally left blank. Signature pages to follow.)

**NEGOTIATED NONCOMPETITIVE LEASE
BETWEEN
THE BUREAU OF OCEAN ENERGY MANAGEMENT
OF THE DEPARTMENT OF THE INTERIOR
AND
LEE COUNTY, FLORIDA**

**REGARDING THE USE OF OUTER CONTINENTAL SHELF
SAND RESOURCES FOR THE LOVERS KEY, BONITA BEACH, AND SOUTH
BONITA BEACH FOR THE BEACH NOURISHMENT PROJECT IN
LEE COUNTY, FLORIDA**

BOEM Negotiated Agreement No. OCS-G 37966

Signatory Page 1 of 2

ATTEST:
KEVIN C. KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY

BY: _____
DEPUTY CLERK

CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
Office of the County Attorney

Matthew Wilson
Regional Supervisor
Office of Resource Evaluation
Bureau of Ocean Energy Management
Gulf of Mexico OCS Region

Date:

**NEGOTIATED NONCOMPETITIVE LEASE
BETWEEN
THE BUREAU OF OCEAN ENERGY MANAGEMENT
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Signatory Page 2 of 2

ATTEST:
KEVIN C. KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY

BY: _____
DEPUTY CLERK

CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
Office of the County Attorney

Matthew Wilson
Regional Supervisor
Office of Resource Evaluation
Bureau of Ocean Energy Management
Gulf of Mexico OCS Region

Date:

ATTACHMENT 1

OCS BORROW AREA MAP AND SAND PLACEMENT SITES

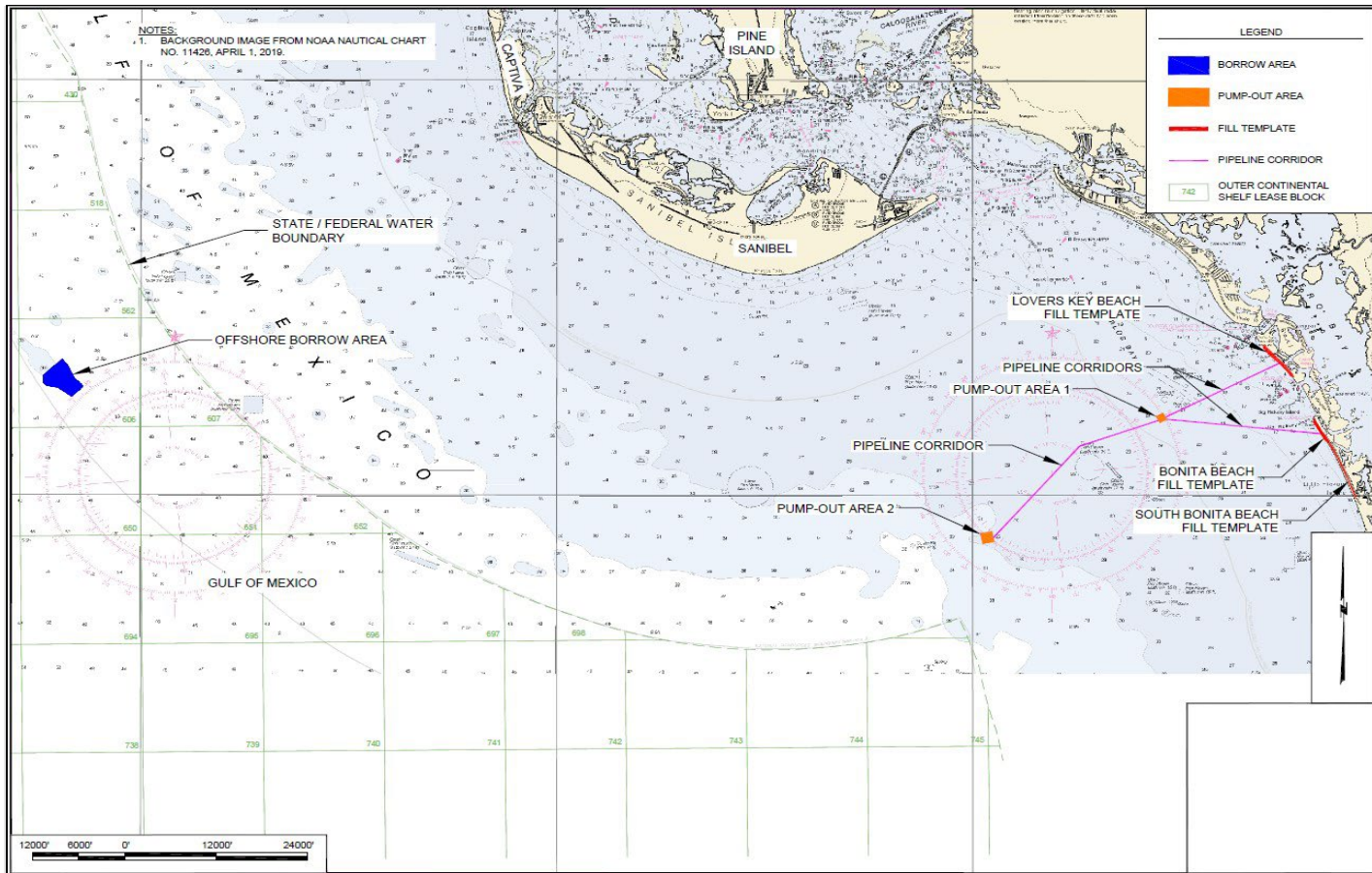


Figure 1. Overview of OCS Borrow Area and Sand Placement Sites for Lovers Key, Bonita Beach, and South Bonita Beach Nourishment Project.

Attachment 2 Detail of Charlotte Harbor Block 606 OCS Borrow Area

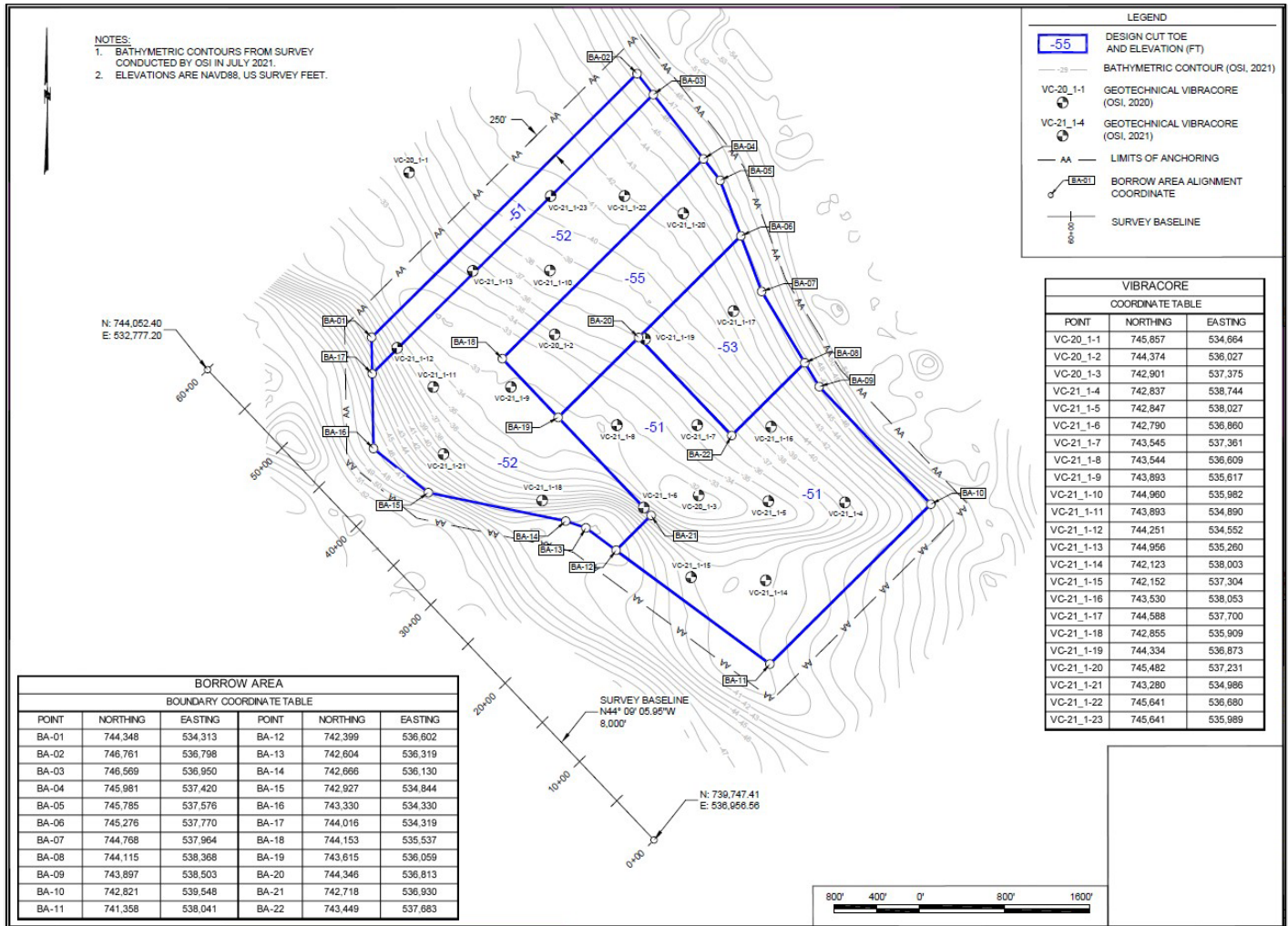


Figure 2. OCS Borrow Area for Lovers Key, Bonita Beach, and South Bonita Beach Nourishment Project.