

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE VIRGINIA PORT AUTHORITY
AND
THE CITY OF VIRGINIA BEACH**

This Memorandum of Understanding ("MOU") entered into this ___th day of _____, 2021, between the Virginia Port Authority, a body corporate and political subdivision of the Commonwealth of Virginia ("VPA"), and the City of Virginia Beach (the "City") (collectively referred to as the "Parties") provides as follows:

WHEREAS, the VPA is a body corporate and political subdivision of the Commonwealth of Virginia vested with certain powers set forth in Title 62.1, Chapter 10 of the Code of Virginia (1950) as amended;

WHEREAS, the VPA, through its participation in the Norfolk Harbor Dredging Project in the Thimble Shoals Channel and Atlantic Ocean (the "Work"), will generate a volume of dredge material, and the Parties believe a portion of such dredge material will be useful for beach nourishment (the "Beach Quality Sand");

WHEREAS, the City has certain capital improvement projects requiring Beach Quality Sand, and the timeline for the City's need for Beach Quality Sand lines up with the VPA's anticipated prosecution of the Work;

WHEREAS, because of the Parties believe there are benefits to coordination of the Work and the City need for Beach Quality Sand, the Parties desire to move forward with a partnership (the "Partnership"), a timeline to accept the Beach Quality Sand from the Norfolk Harbor Dredging Project, and to apportion the costs related thereto (collectively, the Partnership, the anticipated timeline, and the apportionment of costs shall be referred to as the "Project");

WHEREAS, the Parties wish to establish mutually agreeable parameters for this partnership herein as the MOU or the "Partnership Agreement";

NOW THEREFORE the City and the VPA agree to the mutual understanding set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Joint Responsibilities of the Parties

The Parties shall jointly have the following responsibilities:

- a. Designate primary points of contact for coordination on the proposed operational dialogue; and
- b. Participate in calls necessary for the coordination of effort, such calls to occur at least monthly and may occur more frequently as needed.

2. General Timeline

Actual project schedule shall not be available until bidding occurs, but an anticipated timeline is as follows:

- | | |
|-------------------|--|
| 1. January 2021 | Agreement executed between VPA and the City. |
| 2. March 21, 2021 | Permits acquired by the City |
| 3. July 2021 | Project advertised by VPA Procurement |
| 4. August 2022 | Chesapeake Bay beaches replenished |
| 5. Fiscal 2023 | Big Beach replenished (if applicable) |

3. Responsibilities of VPA

1. The VPA shall act as the contracting authority (the “Contracting Authority”) for the purposes of entering into an agreement with a contractor (the “Contractor”) for performance of the Work.
 - a. VPA will seek and obtain input from the City in relation to the Work, inclusive of submittals and payment applications.
 - b. VPA will include a bid alternative for beach placement of Beach Quality Sand.

4. Responsibilities of the City

1. The City shall not enter into any contractual arrangement with the Contractor regarding the Work without specific approval by the VPA.
2. The City shall notify the VPA within 72 hours of bid opening if the bid alternative price is accepted, and the City shall have the discretion to approve or not the bid alternative.
3. The City acknowledges the requested volume and quality of Beach Quality Sand is not guaranteed.
4. The City commits to an amount not exceeding the funds currently appropriated, \$6,356,088 (the “City Commitment”), and by signing this MOU, the City staff will pursue appropriation of additional funds in the FY2022 budget process necessary for a maximum City contribution of \$8,900,000 for the Project. Upon presentation of invoice or other such request for payment from the VPA, the City shall review the invoice and, if the invoice is in accordance with the Project Agreement, the City shall remit payment to the VPA for its portion of the Work.
5. The City Commitment is based on the following cost items:
 - a. The cost difference established by the bid alternative. The City shall reimburse the VPA for the total cost difference between ocean placement and beach placement.
 - b. City shall reimburse the VPA for the total mobilization and demobilization costs associated with the deployment of land-based equipment and procurement of material for beach placement. The costs of 1) mobilization and demobilization and 2) beach placement material procured shall be covered regardless of actual volume placed.

- c. In addition to the cost difference as bid, the City will reimburse the VPA \$0.10 per cubic yard for VPA expenses incurred during design and construction, and such amount shall not exceed \$100,000. This reimbursement is inclusive of the VPA efforts for the Project.
6. Permits and plans and specifications detailing proposed beach nourishment placement and related effort shall be at the City's sole expense and responsibility and shall be obtained by March 21st, 2021. If the City cannot obtain such permits by March 21st, 2021, the City shall forthwith communicate such inability to obtain permits and provide a revised schedule for obtaining permits and a reasonable timeline for the acquisition of such permits.

5. Standard Terms and Conditions

This MOU is effective upon signature by the parties and shall continue indefinitely unless terminated. Either party may terminate this MOU by providing written notice to the other party 30 days prior to the effective date of such termination. Nothing herein authorizes the expenditure of funds not previously appropriated by an elected body, and the failure to appropriate sufficient funds shall not be a ground upon which one of the Parties may be liable. This MOU may be supplemented or amended only by a writing signed by all of the Parties. This MOU shall constitute the entire MOU between the Parties, and it supersedes any prior understanding, agreement, or representation by or between the Parties. This MOU is for the exclusive benefit of, and may only be enforced by the Parties, and this MOU is not intended to benefit or confer any rights on any other person, organization, or entity. If any part of this MOU shall be found by a court of competent jurisdiction to be unlawful, such part shall be severed from this MOU, and the remainder of this MOU shall remain in full force and effect. The parties represent and warrant that the undersigned are authorized to enter into this MOU and that this agreement is binding and enforceable against the parties. Notwithstanding any other provision of this MOU and whether or not a party has foreseen, been advised of, or is aware of the possibility of any of the losses or damages described in this Section, no party to this MOU shall be liable under any theory of recovery whether based in contract, in tort (including negligence and strict liability), or any other legal or equitable theory, for (i) any consequential, special, punitive, exemplary, moral, indirect or incidental losses or damages whatsoever or for any other loss, damage or cost of a similar kind, or (ii) any of the following, whether characterized as direct or indirect damages or losses: loss of data or information, cost of capital, loss of goodwill, loss of opportunity, loss of interests, loss of revenues or profit or the loss of use thereof; each party hereby releases the other parties from any such liability and acknowledge that no party has the expectation of receipt of any such damage, loss or cost.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties to this Memorandum of Understanding have caused it to be executed pursuant to their express authority this ___ day of _____, 2021.

Virginia Port Authority

By: _____ (SEAL)
John F. Reinhart,
CEO / Executive Director

The City of Virginia Beach

By: _____ (SEAL)
Name:
Title:

City approvals:

Content: _____
Director of Public Works or designee

Funding sufficiency: _____
Director of Finance or designee

Legal sufficiency: _____
Senior/Associate City Attorney