

Duval County Beach Nourishment Project

# Project Cooperative Agreement

PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY OF JACKSONVILLE  
FOR EXTENSION OF FEDERAL PARTICIPATION  
IN CONSTRUCTION OF THE  
DUVAL COUNTY, FLORIDA  
SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this 7<sup>th</sup> day of July, 1994, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the CITY OF JACKSONVILLE, FLORIDA (hereinafter referred to as the "Local Sponsor"), acting by and through its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the shore protection project at Duval County, Florida, was authorized by Section 301 of the River and Harbor Act of 1965 (Public Law 89-298);

WHEREAS, the Duval County Shore Protection Project as originally authorized has been completely constructed with the Local Sponsor, and;

WHEREAS, the Assistant Secretary of the Army (Civil Works), pursuant to Section 156 of Public Law 94-587, as amended by Section 934 of Public Law 99-662, has authorized the extension of Federal participation in the Duval County Shore Protection Project, from St. Johns River to the Duval-St. Johns County line; and

WHEREAS, the Government and the Local Sponsor desire to enter into a Project Cooperation Agreement for the extension of federal participation in the Duval County, Florida Shore Protection Project (hereinafter referred to as the "Project" and defined in Article I.a. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project;

WHEREAS, the Government and the Local Sponsor have the legal authority and capability to perform as hereinafter set forth and intend to cooperate in the cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Local Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean the continued periodic nourishment of 53,000 feet of shore between the St. Johns River and the Duval-St. Johns County line to maintain the beach with a 60-foot-wide berm at plus 11 feet above mean low water, as generally described in the Section 934 Study entitled "Duval County, Florida, from St. Johns River to the Duval-St. Johns County Line, Shore Protection Project, Section 934 Study and Reevaluation Report with Environmental Assessment" dated October 1990, and approved by the Assistant Secretary of the Army (Civil Works), on 3 February 1992.

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project after 3 February 1993 (the date of extension of federal participation approval). Such costs may include, but will not necessarily be limited to: all continuing planning and engineering costs incurred after October 1, 1985; all advanced engineering and design costs; all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs, including the costs of constructing, relocating or modifying railroad bridges and approaches thereto; supervision and administration costs; costs of contract dispute settlements or awards; the value of lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and the value of utility and facility relocations, as may be required for the construction, operation, and maintenance of the Project; any costs of surveillance; and the cost of investigations to identify the existence of hazardous substances as identified in Article XVII.a.; but shall not include any costs for operation, maintenance, repair, replacement, or rehabilitation or increased costs for betterments nor include costs of placement of material on lands not open to the public.

c. The term "periodic nourishment" shall mean the placement of suitable beachfill material along the beach in the project area at such intervals of time during the authorized periodic

nourishment period as the Government and the Local Sponsor determine appropriate. It is currently estimated that periodic nourishment will require an average annual placement of 187,000 cubic yards of suitable beachfill material as generally described in the Project Reevaluation Report, and that periodic nourishment will be undertaken every four years.

d. The term "authorized periodic nourishment period" shall mean the authorized Federal participation in the periodic nourishment of the Project for a period of 50 years from the date of initiation of initial construction (1978). This period will end in the year 2028.

e. The term "surveillance" shall mean monitoring of the beach for the authorized periodic nourishment period to determine when future nourishment must be accomplished to maintain the Project and consists of performing beach profiles, aerial photography, sediment sampling, hydrographic surveys, tidal data, environmental data, analysis and preparation of a report, if needed.

f. The term "Contracting Officer" shall mean a representative of the Government with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

g. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Contracting Officer certifies in writing to the Local Sponsor that construction of the Project is complete. The Contracting Officer shall furnish to the Local Sponsor copies of the Government's Written Notice of Acceptance of Completed Work furnished to the contractor(s) for all contracts for the Project.

h. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

i. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads (excluding existing railroad bridges and approaches thereto), highways, and other bridges, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

j. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

k. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer in writing to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of the entire Project. To be suitable for tender, the Contracting Officer must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

l. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of, the Local Sponsor in accordance with standards which exceed the standards which the Government would otherwise apply for accomplishing the design and construction of the Project.

#### ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND LOCAL SPONSOR

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the Project (including construction, modification, or relocation of existing railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction of the Project can proceed, the Local Sponsor must concur in writing with issuance of the invitation for bids for the first construction contract. To the extent possible, the Local Sponsor thereafter also will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Local Sponsor of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Contracting Officer will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

b. After the Government determines that the Project or a functional portion of the Project is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the Project or functional portion of the Project over to the Local Sponsor, which shall accept the Project or functional portion of the Project and be solely responsible for

operating, maintaining, repairing, replacing, and rehabilitating the Project or functional portion of the Project in accordance with Article VIII hereof.

c. The Local Sponsor shall contribute through a combination of cash payments and the provision of Project lands, easements, rights-of-way and relocations, as herein specified and further specified in Article VI, 35 percent of the total project costs attributable to hurricane and storm damage reduction, 50 percent of the total project costs attributable to recreation, and 100 percent of the total project costs attributable to protection of privately owned lands. Based on current conditions of public ownership and public use of the shore, it is estimated that the Local Sponsor would make a contribution equal to 38.4 percent of total project costs.

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

e. The Local Sponsor may request the Government to provide lands, easements, or rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Local Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Local Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Local Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.b. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged material disposal areas or performance of relocations by the Government, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for the costs of cleanup and response in accordance with Article XVII.c. of this Agreement.

f. The Local Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Local Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and

this Agreement, this Agreement shall control. The Local Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.b. of this Agreement.

g. No Federal funds may be used to meet the Local Sponsor's share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

h. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

i. Not less than once each year the Local Sponsor shall inform affected interests of the limitations of the protection afforded by the Project.

j. The Local Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

k. The Local Sponsor shall perform the project surveillance through either its own forces or contract labor.

l. The Local Sponsor shall assure continued conditions of public ownership and public use of the shore upon which the amount of Federal participation is based during the economic life of the Project.

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

a. The Government shall provide, in coordination with the Local Sponsor, a written description of the anticipated real estate requirements for the Project. Thereafter, the Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way for the Project may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government

to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment of all relocations determined by the Government to be necessary for construction, operation and maintenance of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - VALUE OF LANDS AND RELOCATIONS

a. The Local Sponsor shall not receive any credit for lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for this or another Federal project nor shall the value thereof be included in total project costs. The value of the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award or in exceptional circumstances, upon request of the Local Sponsor and in the sole discretion of the Assistant Secretary of the Army for Civil Works, the actual purchase price paid by the Local Sponsor. The fair market value, if used, shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Local Sponsor and the Government.



2. If the lands, easements, or rights-of-way are acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the approved appraised fair market value, the Local Sponsor may be entitled to a credit for the actual purchase price paid provided that the purchase price is approved by the Government in writing.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than the Government determines are necessary for construction, operation, and maintenance of the Project, then only the value of such portions of those acquisitions as have been determined by the Government to be necessary for the construction, operation, and maintenance of the Project shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way acquired through eminent domain proceedings occurring after the date of this Agreement will be based on court awards for the real property interests taken, or on stipulated settlements or portions of stipulated settlements that have received written Government approval. The fair market value for the purposes of filing an eminent domain proceeding in court shall be based on an appraisal prepared and approved as specified in Article IV a.1. of this Agreement.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The Government shall provide the Local Sponsor with a written description of required relocations. The value of relocations which will be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined by the Government as set forth below:

1. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the State of Florida would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities, Structures and Improvements (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the increased cost of betterments. New materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs, nor credited toward the Local Sponsor's share.

#### ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication, the Local Sponsor and the Government shall, prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims, and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total project costs. The Project Coordination Team shall make recommendations concerning construction as it deems are warranted to the Contracting Officer, including suggestions to avoid potential sources of dispute.

c. The Contracting Officer shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement and rehabilitation of the Project. The Contracting Officer, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject, or modify the recommendations of such representatives.

#### ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the cash payments required under Article II of this Agreement. Total project costs are currently estimated to be \$201,617,000 and the Local Sponsor's share of total project costs is currently estimated to be \$77,424,000. In order to meet the

Local Sponsor's share, the Local Sponsor must provide a cash contribution currently estimated to be \$77,424,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, and anticipated inflation. Such costs estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide the Local Sponsor's required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by January 1 of each year of the estimated funds that will be required from the Local Sponsor to meet the Local Sponsor's share of total project costs for the upcoming fiscal year.

2. No later than 120 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of the total project costs required for the first fiscal year of construction, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 60 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow or other account

provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government prior to the initiation of construction.

d. During the period of construction, the Government shall provide quarterly financial reports on the status of total project cost and the status of contributions made by the Local Sponsor. Upon completion of each periodic nourishment construction event and resolution of all relevant contract claims and appeals, the Government shall compute the project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs.

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

2. In the event the total contribution by the Local Sponsor is more than the Local Sponsor's required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Local Sponsor. In the event existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

e. The Local Sponsor shall receive credit against its share of total project costs for its cost of performance of project surveillance. The credit shall be made upon the Government's letter of acceptance of the work on project surveillance and the performance of any audit deemed necessary to fulfill proper Governmental accounting for cost sharing participation.

#### ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, 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.

**ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT,  
AND REHABILITATION (OMRR&R)**

a. After the Contracting Officer has determined that construction of the Project or functional portion of the Project is complete and provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 calendar days from receipt of notice, the Local Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet the Local Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

c. In the event the Project is damaged or destroyed by storms or other natural forces prior to completion of construction of the Project, the Government and the Local Sponsor shall consult on necessary repairs and reconstruction efforts. The cost of any such repair or reconstruction efforts will be considered construction costs and will be cost shared as construction costs in accordance with Section 103 of Water Resources Development Act of 1986, Public Law 99-662. With respect to any functional portions of the Project, however, the Local Sponsor shall remain solely responsible for operating, maintaining, repairing, replacing, and rehabilitation of the functional portion in accordance with paragraph a. of this Article.

#### ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS

Within 60 days of the date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

#### ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of the Local Sponsor's costs for inclusion as credit against the Local Sponsor's share of total project costs.

#### ARTICLE XII - FEDERAL AND STATE LAWS

In the exercise of the Local Sponsor's rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

#### ARTICLE XIII - RELATIONSHIP OF PARTIES

The Government and the Local Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

#### ARTICLE XIV - OFFICIALS NOT TO BENEFIT

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

#### ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

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

#### ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work under this Agreement until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment 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.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party

may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate work under this Agreement pursuant to this Article or Article XVII of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement.

c. Notwithstanding any other provision of this Agreement, if the award of any contract for construction of the Project would, at the time of award, result in the total obligations for construction of the Project exceeding \$215,522,000 the award of that contract and subsequent contracts shall be deferred until such time as the Government and the Local Sponsor agree to resume construction of the Project.

#### ARTICLE XVII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

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



c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under Article V of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to Article XVII.c. of this Agreement shall not relieve any party from any liability that may arise under CERCLA.

e. As between the Government and the Local Sponsor, the Local Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Local Sponsor shall operate, maintain, repair, replace and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XVIII - NOTICES

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

If to the Local Sponsor:

Mayor  
City of Jacksonville  
220 East Bay Street  
Jacksonville, Florida 32202

If to the Government:

District Engineer  
U.S. Army Engineer District  
Jacksonville District  
P.O. Box 4970  
Jacksonville, Florida 32232-0019

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

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered or seven calendar days after it is mailed, as the case may be.

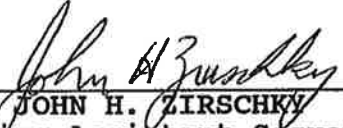
ARTICLE XIX - CONFIDENTIALITY

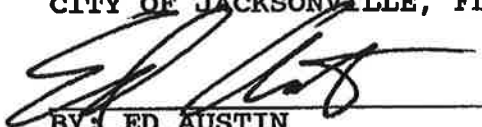
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

CITY OF JACKSONVILLE, FLORIDA

  
BY: JOHN H. ZIRSCHKY  
Acting Assistant Secretary  
of the Army (Civil Works)

  
BY: ED AUSTIN  
Mayor

DATE: 7/7/94

DATE: 6/29/94

ATTEST:   
Linnie C. Williams  
Corporation Secretary

DATE: 6/29/94

CERTIFICATION REGARDING LOBBYING

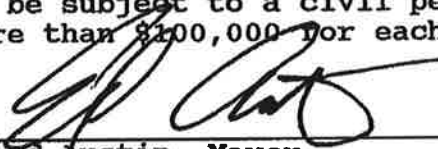
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 section 1352, title 31, U.S. Code. 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.



Ed Austin, Mayor  
City of Jacksonville

DATE: 6/29/94

ATTESTED: Linnia C. Williams  
Corporation Secretary

DATED: 6/29/94

CERTIFICATE OF AUTHORITY

I, John Delaney, do hereby certify that I am the principal legal officer of the City of Jacksonville, Florida, that the City of Jacksonville, 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 the City of Jacksonville, Florida in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611 and that the person who has executed the Agreement on behalf of the City of Jacksonville, Florida has acted within his statutory authority.


IN WITNESS WHEREOF, I have made and executed this certification this 29 day of JUNE 1999.



John Delaney  
General Counsel

**CERTIFICATION OF LEGAL REVIEW**

**The draft Local Cooperation Agreement for the Duval County Shore Protection Project has been fully reviewed by the Office of Counsel, USAED Jacksonville, and is legally sufficient.**

  
Assistant District Counsel