

RESOLUTION 99-182

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF THE PROJECT COOPERATION AGREEMENT BETWEEN THE COUNTY AND THE DEPARTMENT OF THE ARMY WHEREBY THE DEPARTMENT OF THE ARMY AGREES TO REMOVE THE EXISTING PALM VALLEY BRIDGE AND DESIGN AND CONSTRUCT THE NEW FOUR LANE PALM VALLEY BRIDGE AND THE COUNTY AGREES TO PAY FOR A PORTION THEREOF, TO ACCEPT OWNERSHIP OF THE NEW BRIDGE AFTER IT IS CONSTRUCTED AND TO MAINTAIN, OPERATE, REPAIR, REHABILITATE AND REPLACE THE NEW BRIDGE AS NEEDED.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA (the "Board) as follows:

Section 1. The Chairman of the Board is authorized and directed to sign and deliver the Project Cooperation Agreement between the County and the Department of the Army in substantially the form attached hereto which provides for the removal of the existing Palm Valley Bridge and the design and construction of the new four lane Palm Valley Bridge by the Department of the Army with a portion thereof to be paid by the County and with the operation, maintenance, repair, rehabilitation and replacement of the new bridge to be paid for and performed by the County after it is constructed.

Section 2. The County Attorney is authorized to sign the Certificate of Authority pertaining to the Project Cooperation Agreement.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 30th day of November, 1999.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: CHERYL STRICKLAND, CLERK

By: Patricia De Grande
Deputy Clerk

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
ST. JOHNS COUNTY, FLORIDA
FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF THE
PALM VALLEY BRIDGE REPLACEMENT PROJECT
INTRACOSTAL WATERWAY
ST. JOHNS COUNTY, FLORIDA

THIS AGREEMENT is entered into this 8th day of December, 1999, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and ST. JOHNS COUNTY, FLORIDA (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of its Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the Atlantic Intracoastal Waterway, Palm Valley Bridge Replacement Project at St. Johns County, Florida, (hereinafter the "Project" as defined in Article I.A. of this Agreement) was authorized by Section 101(a)(9) of the Water Resources Development Act of 1996, Public Law 104-303, and constitutes a Water Resources Development Project under the jurisdiction of the Secretary of the Army;

WHEREAS, Section 101(a)(9) of the Water Resources Development Act of 1996, Public Law 104-303, specifies the cost sharing requirements applicable to the Project;

WHEREAS, on January 27, 1998 the Non-Federal Sponsor requested the Government to add an additional two lanes to the replacement bridge (hereinafter the "betterment" as defined in Article I.F. of this Agreement);

WHEREAS, the Government agrees to construct the betterment and the Non-Federal Sponsor shall pay 100 percent of the costs of the betterment;

WHEREAS, the Florida Department of Environmental Protection has stated in a letter dated October 11, 1999 to the U.S. Army Engineer District, Jacksonville that it is familiar with the formulation of the Project and betterment and considers it in its present state of development to be implementable in accordance with the requirements of Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the Project and betterment;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Project and sets forth procedures for adjusting such maximum amount; and

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

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the design, acquisition, and construction of a two lane, high-level, fixed span bridge and related approaches, and removal and disposal of the existing Highway 210 bridge (hereinafter the "bridge replacement features") and restoration of low to moderate value wetlands to high value wetlands on State of Florida owned lands within the Guana River Wildlife Management Area (hereinafter the "mitigation features") all as generally described in the Report of the Chief of Engineers, dated June 24, 1994.

B. The term "total project costs" shall mean the costs, as determined by the Government, that the Government would have incurred had the Project been completed and constructed. Such costs shall consist of all costs the Government would have incurred in the construction of the Project, including but not necessarily limited to continuing planning and engineering costs incurred after 1 October 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.B. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; estimated removal and construction costs of the Project, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of contract dispute settlements or awards; and the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas that the Government determines, pursuant to Article III of this Agreement, to be required for the Project. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation of the Bridge and mitigation features; any costs due to betterments; any costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, of the scheduled date for issuance of the solicitation for the first contract for construction of the bridge replacement features, mitigation features, or betterment to the date that the U.S. Army Engineer for the Jacksonville District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the bridge replacement features, mitigation features, and betterment are complete.

D. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway, railroad (including any bridge thereof), or public facility when such action is authorized, in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

E. 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.

F. The term "betterment" shall mean a change in the design and construction of one or more elements of the bridge replacement features accomplished at the request of the Non-Federal Sponsor resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element. Such betterment shall include, but not necessarily be limited to, widening the bridge replacement features from two lanes to four lanes.

G. The term "Bridge" shall mean the completed replacement of the existing Highway 210 bridge with a four lane, high-level, fixed-span bridge and related approaches.

H. The term "dredged or excavated material disposal areas" shall mean the lands, easements, or rights-of-way together with the improvements necessary on those lands, easements, or rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, or maintenance of the bridge replacement features, mitigation features, or betterment.

I. The term "borrow areas" shall mean the lands, easements, or rights-of-way together with the improvements necessary on those lands, easements, or rights-of-way to enable the borrowing of material for the construction, operation, or maintenance of the bridge replacement features, mitigation features, or betterment.

J. The term "functional portion of the Project and betterment" shall mean a portion of the Project and betterment that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project and betterment. For a portion of the Project and betterment to be suitable for tender, the District Engineer must notify the Non-

Federal Sponsor in writing of the Government's determination that a portion of the Project and betterment is complete and can function independently and for a useful purpose, although the balance of the Project and betterment is not complete.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor for the costs of the betterment, shall expeditiously perform and construct the Project and betterment (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project and betterment. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project and betterment (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project and betterment.

B. The Non-Federal Sponsor has requested the Government to accomplish a betterment to widen the bridge replacement features from two lanes to four lanes and provide all additional lands (approximately 1.7 acres), easements, rights-of-way, relocations, utility relocations, and suitable borrow and dredged or excavated material disposal areas that the Government determines are necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the betterment. The Government agrees, upon receipt of funds from the Non-Federal Sponsor, to accomplish the betterment in accordance with this Agreement. The Non-Federal Sponsor shall be solely responsible for all costs of the betterment and shall pay all such costs in accordance with Article VI.B. of this Agreement.

C. When the District Engineer determines that the entire Project and betterment is complete or that a portion of the Project and betterment has become a functional portion of the Project and betterment, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project and betterment or the functional portion of the Project and betterment that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project and betterment or the functional portion of the Project and betterment in accordance with Article VIII of this Agreement.

D. The Government shall be solely responsible for total project costs and the costs of all interests in real property determined by the Government to be necessary for the Project acquired during the period of construction.

E. The Government shall perform a final accounting in accordance with Article VI.C. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraph B. of this Article and to determine whether the Non-Federal Sponsor has met its obligations under paragraph B. of this Article.

F. Upon completion of construction of the Project and betterment or functional portion of the Project and betterment, the Government shall transfer to the Non-Federal Sponsor by appropriate instruments, subject to approval of the Secretary of the Army, and the Non-Federal Sponsor shall accept, ownership of the Project features and betterment, together with such lands, easement, and rights-of-way the Government determines to be necessary to operate, maintain, repair, replace and rehabilitate the Project and betterment subject to existing easements and such rights as the Government determines it must reserve to operate, maintain, repair, replace and rehabilitate the Intracoastal Waterway. The property rights, title and interest to be transferred to the Non-Federal Sponsor shall be subject to the Government's paramount right to operate, maintain, repair, replace and rehabilitate the Intracoastal Waterway.

G. For so long as the Project remains authorized, the Non-Federal Sponsor shall insure that the Bridge remains toll-free.

H. After the period of construction, the Non-Federal Sponsor shall, at no cost to the Government, provide all additional lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform or ensure performance of relocations, that the Non-Federal Sponsor determines to be necessary for the operation, maintenance, repair, replacement, and rehabilitation of the Project and betterment.

I. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND
PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project and betterment, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government shall delineate which of the required lands, easements, and rights-of-way are necessary for the Project and the betterment. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines are required for the Project and betterment. Prior to the end of the period of construction, the Government shall acquire all lands, easements, and rights-of-way set forth in such descriptions for the Project and betterment. The Government shall acquire by direct purchase or by use of its authority of eminent domain all lands required for the Project and betterment. Costs associated with the acquisition of lands, easements, or rights-of-way required for the Project shall be the responsibility of the Government. Should the Non-Federal Sponsor own any lands or interests in lands required for the Project and betterment, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way over these lands prior to the issuance of the solicitation for each construction contract for the Project and betterment.

1. The Non-Federal Sponsor shall be responsible for contributing an allocable percentage (currently estimated at approximately six (6) percent) of the cost of the following items, including, but not limited to Government in-house labor costs, associated with the acquisition of the lands required for the betterment, excluding, however, the land costs set forth in paragraph A.2. of this Article. The estimated total cost of these items is \$657,900, with the Non-Federal Sponsor's cost estimated at \$39,500.

- a. Preparation or contracting to obtain a right-of-way survey, which shall show the lands required for the Project and the betterment.
- b. Preparation or contracting to obtain individual parcel legal descriptions for all parcels to be acquired.
- c. Obtaining Preliminary title insurance commitments from a Title Insurance Company for all the parcels to be acquired and preparation and obtaining all curative material for title exceptions set forth on the preliminary title insurance commitments.
- d. Obtaining Individual parcel appraisal reports for the parcels to be acquired for the Project and betterment. The appraisal reports will disclose the valuation difference between the lands required for the Project and the betterment. The Government shall be responsible for review and approval of all appraisal reports.
- e. Performance of all negotiations with landowners and acquiring by direct purchase the lands required for both the Project and the betterment in the name of the

United States of America, including preparation of all closing papers and related documents.

f. Labor costs associated with the performance by the Government of acquisition by its exercise of the Federal power of eminent domain in the name of the United States, including Government preparation of all condemnation assemblies.

g. Any litigation expenses of the Department of Justice (hereinafter the "DOJ") in the handling of the Condemnation actions.

h. Preparation of a quitclaim to the Secretary of the Army requesting approval and signature for transfer of the acquired lands

i. Performance of all relocations and providing all relocation assistance as required by Public Law 91-646, as amended, for all tracts acquired by the United States.

j. Preparation and negotiation of all utility relocation contracts for utilities, which have to be relocated due to the construction of the Project and the betterment.

2. For the following items, the Government shall secure or perform the items and the Non-Federal Sponsor shall provide the actual costs of each.

a. The appraisal reports obtained by the Government will disclose the valuation difference between the lands required for the Project and the betterment. The Non-Federal Sponsor shall provide the appraised fair market value for the lands required for the betterment.

b. The Government shall secure final title insurance policies after acquisition of the required lands. The Government shall determine the additional cost of the final title insurance policy over and above what the Government would have paid had it acquired the lands required for the Project only. The Non-Federal Sponsor shall pay this excess cost.

B. The Government and DOJ shall litigate any condemnation action to the final disposition (including appeals filed by the landowner or which the U.S. Solicitor General determines to file) of all interests acquired, or obtain a settlement of the condemnation action. The Non-Federal Sponsor shall be consulted and kept informed at all phases of the litigation or settlement process.

C. For the condemnation of those lands, easements, or rights-of-way, located within the lands required for the betterment, the Non-Federal Sponsor shall be responsible for the payment of a percentage of any award or settlement, including any awards and interest, made pursuant to the Equal Access to Justice Act (EAJA), and court costs, including any incidental proceeding such as a request for writ of assistance as well as any appeal by the Government or any other party to the action. The Government shall immediately notify the Non-Federal Sponsor of any judgment obtained in a condemnation action. The Government shall determine the costs associated with the award or settlement and allocable to the betterment and the Non-Federal Sponsor shall pay to the Government, no later than 45 days after receipt of written notice to pay

its portion of the deficiency judgment. The percentage required to be paid by the Non-Federal Sponsor shall be determined by the ratio of the appraised fair market value of each parcel of the lands required for the betterment to the appraised fair market value of the entire parcel so condemned. Final authority to recommend settlements shall rest with the Government. This includes the right to revest property, revise estates and issue Government permits or consents. Authority and discretion to recommend an appeal to the DOJ shall rest with the Government.

D. The Non-Federal Sponsor shall accept upon delivery a quitclaim deed from the United States for title to each tract of land acquired pursuant to this Agreement. Neither the termination of this Agreement nor the presence of any contamination, whether or not regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601-9675g, shall be grounds for refusing to accept upon delivery a quitclaim deed from the United States.

E. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and betterment and that were provided by the Government or the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

F. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project and the betterment. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government shall delineate which of the improvements are necessary for the Project and the betterment. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements necessary for the Project and the betterment. Furthermore, prior to issuance of the solicitation for each Government construction contract for the Project and the betterment, the Government shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Non-Federal for review. The Government shall provide such improvements in accordance with the approved plans and specifications.

G. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project and the betterment, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government shall delineate which of the relocations are necessary for the Project and the betterment. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations necessary for the Project and the betterment. Prior to the end of the period of construction, the Government shall perform or ensure the performance of all relocations as set forth in such descriptions for the Project and the betterment. Furthermore, prior to issuance of the solicitation for each Government construction contract for the Project and the betterment, the Government shall prepare or ensure the preparation of plans and

specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

H. The Government and Non-Federal 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 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project and the betterment, including those necessary for relocations, borrow materials, and dredged or excavated material disposal. The Government shall be responsible for informing all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV – MITIGATION FEATURES

A. The Government shall enter into a separate agreement with the Florida Fish and Wildlife Conservation Commission that provides all terms and conditions necessary for the Florida Fish and Wildlife Conservation Commission to construct the mitigation features. Pursuant to Section 906(a)(1) of the Water Resources Development Act of 1986, construction of the mitigation features shall be performed prior to or concurrently with construction of the bridge replacement features.

B. The Non-Federal Sponsor shall enter into a separate agreement with the Florida Fish and Wildlife Conservation Commission that provides all terms and conditions necessary for the Florida Fish and Wildlife Conservation Commission to operate, maintain, repair, replace, and rehabilitate the mitigation features for so long as the Project is authorized in accordance with Article VIII of this Agreement.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project and betterment, including but not necessarily limited to matters

related to design; plans and specifications; scheduling; real property, and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project and betterment or functional portions of the Project and betterment; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for operation, maintenance, repair, replacement, and rehabilitation of the Project and betterment; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project and betterment, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. Each party shall be solely responsible for its costs of participation in the Project Coordination Team.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the Non-Federal Sponsor and current projections of total project costs and costs of the betterment under Article II.B. of this Agreement until the Government furnishes the Non-Federal Sponsor with the results of the final accounting. On or before January 1, 2000 and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs and of costs of the betterment under Article II.B. of this Agreement. On the effective date of this Agreement, total project costs are estimated to be \$18,700,000, and costs of the betterment are estimated to be \$7,813,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the costs of the betterment required by Article II.B. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 days after execution of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of \$220,000 by delivering a check payable to "FAO, USAED, Jacksonville District" to the District Engineer. These funds shall be utilized for the acquisition of the lands, easements, rights-of-way, required for construction of the betterment.

2. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the costs of the betterment through the first fiscal year of

construction, including any costs of the betterment incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Jacksonville District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

3. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the costs of the betterment for that fiscal year. No later than 30 days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the any of the payment mechanisms specified in Article VI.B.2. of this Agreement.

4. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the costs of the betterment as they are incurred.

5. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the costs of the betterment for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 75 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.2. of this Agreement.

C. Upon completion of the Project and betterment or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine the total project costs and costs of the betterment under Article II.B. of this Agreement and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of costs of the betterment under Article II.B. of this Agreement, the Non-Federal 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 Non-Federal Sponsor's required share of costs of the betterment under Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of costs of the betterment under Article II.B.

of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project and betterment or the functional portion of the Project and betterment, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project and betterment for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project and betterment. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project and betterment for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project and betterment. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal 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 its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be solely the responsibility of the Non-Federal Sponsor.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be solely the responsibility of the Government.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws

and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 and 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 XII - RELATIONSHIP OF PARTIES

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

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B. or VI of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project and betterment 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.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its scheduled expenditures for the Project for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 75 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, the Government shall proceed to a final accounting in accordance with Article VI.C. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. 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.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines to be required for the construction, operation, and maintenance of the mitigation features and the betterment. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. After execution of this Agreement, the Government shall perform, or cause to be performed, any investigations for hazardous substances that the Government determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines to be necessary for the construction of the bridge replacement features.

C. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines to be required for the construction, operation, and maintenance of the Project and betterment, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Government shall not proceed with the acquisition of the real property interests until both parties agree.

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project and betterment, or, if already in construction whether to continue with construction of the Project and betterment, suspend future performance under this Agreement, or

terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines to be necessary for the construction, operation, and maintenance of the Project or betterment. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the Project and betterment after considering any liability that may arise under CERCLA, the Government shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination for any contamination occurring on lands required for the bridge replacement features prior to the end of the period of construction. Until such time as the end of the period of construction occurs the Non-Federal Sponsor shall have no obligation under this Agreement for the costs of any clean-up and response for any contamination occurring on lands required for the bridge replacement features. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the Project and betterment after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination for any contamination occurring on lands required for the mitigation features and the betterment. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project and betterment.

E. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph D. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project and betterment for purposes of CERCLA liability. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner so that liability will not arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

County Administrator
St. Johns County, Florida
4020 Lewis Speedway
St. Augustine, Florida 32095

If to the Government:

District Engineer
USAED, Jacksonville
Post Office 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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties for the Project, incurred before the end of the period of construction, shall be borne entirely by the Government. The costs of identification, survey and evaluation of historic properties for the betterment, incurred before the end of the period of construction, shall be borne entirely by the Non-Federal Sponsor.

B. The costs of identification, survey and evaluation of historic properties, incurred after the period of construction, shall be considered financial obligations for operation and maintenance of the Project and betterment and shall be borne entirely by the Non-Federal Sponsor.

C. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation for the Project shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for construction of the Project.

D. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph C. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation or make a Project expenditure, if such obligation or expenditure, would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$24,277,000, as calculated in accordance with ER 1105-2-100 using October 1, 1999 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XX - WATER QUALITY CERTIFICATION

Notwithstanding any provision of this Agreement, no construction shall commence on this Project and betterment until water quality certification is issued in accordance with Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

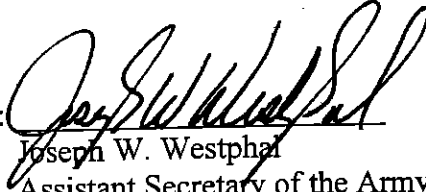
ARTICLE XXI - AMENDMENTS OR MODIFICATIONS


This Agreement may be modified by written amendments executed by the parties hereto.

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

ST. JOHNS COUNTY, FLORIDA

BY: 
Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

BY: 
James E. Bryant
Chairman
Board of County Commissioners

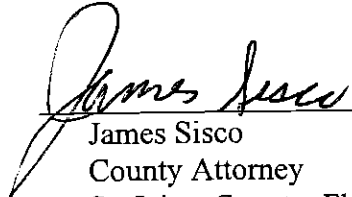
DATE: 08 DEC 1999

DATE: 11/30/99

CERTIFICATE OF AUTHORITY

I, James Sisco, do hereby certify that I am the principal legal officer of St. Johns County, Florida, that St. Johns County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and St. Johns County, Florida in connection with the Palm Valley Bridge Replacement Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of St. Johns County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
30 day of Nov. 1999.


James Sisco
County Attorney
St. Johns County, Florida

CERTIFICATION REGARDING LOBBYING

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

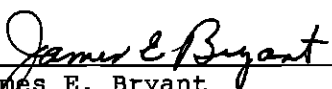
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection 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.

DATE: 11/30/99


James E. Bryant
Chairman
Board of County Commissioners
St. Johns County, Florida