

RESOLUTION 2001- 33

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF THE MODEL ESCROW AGREEMENT AMONG THE COUNTY, THE BANK OF ST. AUGUSTINE AND THE DEPARTMENT OF THE ARMY PERTAINING TO THE ST. JOHNS COUNTY SHORE PROTECTION PROJECT WHEREBY THE DEPARTMENT OF THE ARMY AGREED TO RESTORE A PORTION OF THE ATLANTIC OCEAN BEACH IN ST. JOHNS COUNTY.

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

The County Administrator is authorized and directed to sign and deliver a Model Escrow Agreement among the County, the Bank of St. Augustine and the Department of the Army in substantially the form attached hereto pertaining to the St. Johns County Shore Protection Project whereby the Department of the Army agreed to restore a portion of the Atlantic Ocean beach in St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 27th day of February, 2001.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Marc Jacalone
Marc Jacalone, Vice Chair

ATTEST: CHERYL STRICKLAND, CLERK

By: Patricia DeGrande
Deputy Clerk

MODEL ESCROW AGREEMENT

This Agreement, made and entered into this _____ day of _____, 2001, by and between St. Johns County, Florida (hereinafter referred to as the "Non-Federal Sponsor"), the Department of the Army (hereinafter referred to as the "Government"), and Bank of St. Augustine (hereinafter referred to as the "Bank"),

WITNESSETH THAT:

WHEREAS, on August 24, 2000, the Non-Federal Sponsor and the Government entered into a Project Cooperation Agreement for the construction of the St. Johns County, Florida Shore Protection Project; and,

WHEREAS, pursuant to the Project Cooperation Agreement, the Non-Federal Sponsor is required to contribute, over the period of construction of the Project, a cash contribution calculated in accordance with said Agreement; and,

WHEREAS, the Non-Federal Sponsor and the Government have agreed that the required contribution may be deposited into an escrow account and held therein until the Government withdraws the funds in accordance with the Project Cooperation Agreement; and,

WHEREAS, the Bank has agreed to serve as depository for the escrow account and to accept appointment as escrow agent under the following terms.

NOW, THEREFORE, the parties agree as follows:

1. The Bank is hereby appointed as the escrow agent for the Non-Federal Sponsor and is designated the depository for the monies delivered by the Non-Federal Sponsor pursuant to the aforementioned Project Cooperation Agreement. The Bank shall establish the "St. Johns County, Florida Shore Protection Project Construction Fund" (hereinafter referred to as the "Escrow Account"), into which shall be deposited the funds delivered by the Non-Federal Sponsor.
2. In accordance with the method of payment provisions of the Project Cooperation Agreement, the Non-Federal Sponsor shall absolutely and irrevocably deliver to the Bank the funds required to be provided to the Government during each construction period.
3. The funds held in the Escrow Account shall earn interest at the Bank of St. Augustine prevailing three month jumbo certificate of deposit rate, adjusted at the beginning of each calendar quarter during the term of the Agreement. To the extent the Non-Federal Sponsor authorizes the Bank to invest the funds in any instrument other than an interest-bearing account, savings certificate, or certificate of deposit of the Bank itself, such investment shall be only in direct obligations of the Government of the United States of America or in obligations of agencies or insurers that are guaranteed by the Government of the United States of America. Any instrument must be subject to redemption on or prior to the dates the funds will be needed by the Government. Interest on the funds deposited shall accrue and belong to the Non-Federal Sponsor, and shall be payable to the Non-Federal Sponsor as provided in paragraph 5 below.
4. The Government, acting pursuant to the terms of the Project Cooperation Agreement, shall have the sole and unrestricted right to draw upon all or any part of the principal funds deposited in the Escrow Account. A written demand for withdrawal shall be made to the Bank by the District Engineer, USAED, Jacksonville, or his designee, with a copy of said demand provided to the Non-Federal Sponsor. Within 10 days of receipt of the demand, the Bank shall pay to the Government the amount requested to the extent such amount does not exceed the balance available in the Escrow Account. All payments shall be in the form of bank drafts payable to the "FAO, USAED,

Jacksonville", and shall be mailed or otherwise delivered to the Government as specified below in paragraph 9. When the Government has received the full amount of the cash contribution from the Non-Federal Sponsor that is required for each construction effort under the Project Cooperation Agreement, the Government shall promptly deliver to the Bank, with a copy to the Non-Federal Sponsor, a signed certificate stating that the Government will make no further demand for payment under this Escrow Agreement during the current construction effort and will advise the Bank of when the next construction effort is anticipated.

5. Upon receipt of signed certification by the Government that no further demand for payment of money will be made under the current construction effort, the Bank shall complete a final accounting of all obligations required under this Agreement for the current construction effort, and pay over any remaining balance, including interest, to the Sponsor.

6. The Bank agrees that it will charge no fee to the Non-Federal Sponsor or to the Government for the Bank's services under this Agreement. Any monies owed to the Bank under this Agreement shall be the sole responsibility of the Non-Federal Sponsor. The Bank shall have no right to deduct monies from the principal escrow sum to pay for its services. In the event the Non-Federal Sponsor fails to make payment to the Bank for its services, all claims for such payment shall be directly against the Non-Federal Sponsor. The Government shall not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the Escrow Account.

7. Account statements shall be rendered by the Bank to the Non-Federal Sponsor and the Government once monthly, and shall show deposits, disbursements, and balances, and the dates thereof. Upon receipt by the Bank of the certification specified in paragraph 5 above, the Bank shall prepare a final accounting showing all transactions relating to the Escrow Account for that construction effort and provide said accounting to the Non-Federal Sponsor and the Government at the addresses shown in paragraph 9.

8. It is understood and agreed that the Bank shall not be liable or responsible to ascertain the terms or conditions of any provision of the aforementioned Project Cooperation Agreement between the Non-Federal Sponsor and the Government. It is further understood and agreed that if any controversy arises between the Government and the Non-Federal Sponsor, or with any other party with respect to the subject matter of this Agreement, the Bank is authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government in accordance with the terms of this Agreement.

9. 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 Non-Federal Sponsor:

St. Johns County, Florida
Financial Officer, Clerk of the Court
P.O. Box 300
St. Augustine, Florida 32085

If to the Government:

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

If to the Bank:

Bank of St. Augustine
President, H. Jeff Bell
120 State Road 312, West
St. Augustine, FL 32086

10. Nothing in this Agreement shall be considered as vesting title in the Bank to the amount deposited, except as Trustee for the Non-Federal Sponsor and the Government for the purposes set forth herein. Title to said funds shall not vest in the Government until payment to the Government is made as provided herein.

11. This Agreement shall take effect upon the initial deposit of funds into the Escrow Account by the Non-Federal Sponsor and shall continue in full force until a final certification is received by the Bank stating that the Project is complete and that no further demands of any nature will be made under the Escrow Agreement and the balance remaining is returned to the Non-Federal Sponsor, unless earlier terminated by the written mutual agreement of the Non-Federal Sponsor and the Government.

12. This Agreement may not be amended, except by written modification signed by the parties hereto.

IN WITNESS WHEREOF, the Non-Federal Sponsor, the Government, and the Bank have executed this Agreement on the date first above written.

Department of the Army

Date: _____

James G. May
U.S. Army, Colonel
District Engineer

St. Johns County, Florida

Date: _____

Ben W. Adams, Jr.
County Administrator

Bank of St. Augustine

Date: _____

H. Jeff Bell
President