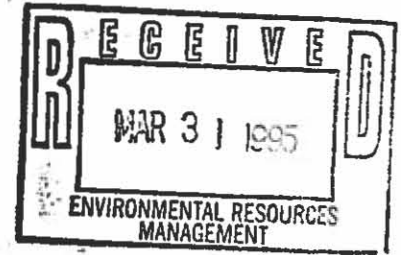


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PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
PALM BEACH COUNTY, FLORIDA
FOR CONSTRUCTION OF THE
JUPITER/CARLIN SEGMENT
OF THE
PALM BEACH COUNTY, FLORIDA
SHORE PROTECTION PROJECT



THIS AGREEMENT is entered into this 21st day of March 1995, by and between the DEPARTMENT OF THE ARMY, (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and PALM BEACH COUNTY, FLORIDA (hereinafter the "Non-Federal Sponsor"), represented by the chairperson of its Board of County Commissioners.

WITNESSETH THAT:

WHEREAS, construction of the shore protection project for Palm Beach County, Florida from Martin County line to Lake Worth Inlet and from South Lake Worth Inlet to Broward County Line (hereinafter the "Authorized Project") at Jupiter/Carlin Park was authorized by Section 101 of the River and Harbor Act of October 23, 1962 (Public Law 87-874) in accordance with the recommendations of the Chief of Engineers as set forth in House Document No. 164, 87th Congress;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Jupiter/Carlin segment of the Palm Beach County, Florida Shore Protection Project (hereinafter the "Project", as 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, 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; 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 in accordance with the terms of this Agreement.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean initial construction, surveillance, and periodic nourishment for the authorized periodic nourishment period, as generally described in the General Design Memorandum entitled "Palm Beach County, Florida, From Martin County Line to Lake Worth Inlet and From South Lake Worth Inlet to Broward County Line, Shore Protection Project, General Design Memorandum Addendum for Jupiter/Carlin Segment, with Supplement to the Environmental Impact Statement", dated June 1991, revised through September 1994, (hereinafter the "GDM"), approved by the Assistant Secretary of the Army (Civil Works) on 23 February 1995;

B. The term "initial construction" shall mean placement of approximately 513,000 cubic yards of advanced suitable beach and dune fill material between Florida Department of Natural Resources Mounuments R13 and T19, approximately 1.1 miles, with a general width of 180 feet at the mean highwater line with a berm elevation of plus 9.0 feet NGVD, as generally described in the GDM.

C. The term "periodic nourishment" shall mean the placement of suitable beach and dune fill material within the area of initial construction, or any functional portion of the initial construction on the Project area, as generally described in the GDM unless the Government, after consultation with the Non-Federal Sponsor, determines that such periodic nourishment is either not technically necessary or economically justified at that time.

D. The term "surveillance" shall mean monitoring of the beach to determine when future nourishment must be accomplished to maintain the Project. Surveillance includes, but is not limited to, performing beach profile surveys, aerial photography, sediment sampling, hydrographic surveys, tidal data, environmental data, analysis, and preparation of any needed report.

E. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 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.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value, as determined in accordance with Article IV of this Agreement, 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 construction, operation, and maintenance of the Project; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs for periodic nourishment incurred after the authorized periodic nourishment period; any costs due to betterments; any costs for establishment of the erosion control line; any costs of dispute resolution under Article VII of this Agreement; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas previously provided as an item of cooperation for another Federal project; or the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas to the extent such items are provided using Federal funds unless the Federal granting agency verifies in writing that the use of such funds for such purpose is expressly authorized by statute.

F. The term "period of initial construction" shall mean the time from the effective date of this Agreement 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 the initial construction is complete.

G. The term "authorized periodic nourishment period" shall mean the authorized duration for Federal participation in periodic nourishment for a period of 10 years from the completion of the period of initial construction.

H. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

I. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (including any bridge thereof) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided 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.

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

K. The term "functional portion of the Project" shall mean a portion of the Project that the Government determines is complete and can function independently and for a useful purpose although the balance of the Project is not complete.

L. The term "functional portion of the initial construction" shall mean a portion of the initial construction that the Government determines is complete and can function independently and for a useful purpose although the balance of the initial construction is not complete.

M. The term "betterment" shall mean a change in the design and construction of an element of the Project 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.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. The Non-Federal Sponsor shall expeditiously construct the Project (including surveillance and periodic nourishment at such times during the authorized periodic nourishment period as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified) applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

B. After the effective date of this Agreement the Non-Federal Sponsor shall not issue a solicitation for any contract until the Government has approved the relevant plans and specifications. After the effective date of this Agreement the Non-Federal Sponsor shall not award a contract, execute a contract modification, issue a change order, or resolve a contract claim without the prior written approval of the Government.

C. The Government shall review all plans and specifications, contract modifications, change orders, and contract claims submitted by the Non-Federal Sponsor.

D. The Government shall inspect all work accomplished by the Non-Federal Sponsor to ensure that such work is accomplished in accordance with the Project design criteria, as set out in the

GDM and in accordance with this Agreement.

E. As further specified in Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

F. The Non-Federal Sponsor shall ensure 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.

G. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas and other public use facilities, open and available to all on equal terms.

H. The Non-Federal Sponsor shall participate in and comply with applicable Federal flood plain management and flood insurance programs.

I. The Non-Federal Sponsor shall bear all costs incurred for the establishment of an erosion control line in the project area and all costs assigned by the Government to privately owned shore shores (where use of such shores is limited to private interests).

J. When the District Engineer determines that the entire Project is complete, or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the OMRR&R Manual"). Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project, or the functional portion of the Project in accordance with Article VIII of this Agreement.

K. 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.

L. The Government, in accordance with Federal laws, regulations, and policies, shall assign all costs included or to be included in total project costs to one or more of the following project purposes: hurricane and storm damage

reduction, recreation, or privately owned shores (where use of such shores is limited to private interests).

M. Throughout the period of initial construction and the authorized periodic nourishment period, but not later than 30 days after the completion of the authorized periodic nourishment period or termination of this Agreement under Article XIV of this Agreement, the Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to conduct a final accounting of the Project and determine the reimbursement. Upon receipt of such documents the Government shall conduct a final accounting of the Project, including determination of costs eligible for reimbursement.

N. Subject to the limitations of Article VI of this Agreement, the Government shall reimburse the Non-Federal Sponsor in an amount necessary to make the Federal contribution to the Project equal to 65 percent of total project costs assigned by the Government to hurricane and storm damage reduction plus 50 percent of the separable costs of the Project assigned by the Government to recreation.

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, including those required for relocations, borrow materials, and dredged or excavated material disposal. 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 the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under Article II.B. of this Agreement, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions that are required for the initial construction. Prior to the end of each iteration of periodic nourishment, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions that are required for that iteration of periodic nourishment. 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 that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. 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. 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 in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under Article II.B. of this Agreement, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall provide all improvements required to enable the proper disposal of dredged or excavated material associated with the initial construction. Prior to the end of each iteration of periodic nourishment, the Non-Federal Sponsor shall provide all improvements required to enable the proper disposal of dredged or excavated material associated with that iteration of periodic nourishment.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under Article II.B. of this Agreement, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions that are necessary for the initial construction. Prior to the end of each iteration of periodic nourishment, the Non-Federal Sponsor shall provide all relocations necessary for that iteration of periodic nourishment.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, and include such value in total project costs.

E. The 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, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. For the sole purpose of inclusion in total project costs in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor awards the first contract for initial construction. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second

appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good

faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, 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 Article III.E. of this Agreement.

B. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Florida would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

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 initial 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 authorized periodic nourishment period, the Project Coordination Team shall generally oversee the Project, including issues 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 or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and

rehabilitation of the Project; 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 costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - LIMITATIONS ON REIMBURSEMENT

A. Reimbursement for the work performed by the Non-Federal Sponsor is subject to the availability of appropriations for this Project and shall not take precedence over other pending projects of higher priority.

B. No reimbursement shall be made unless and until the Government has certified that the work subject to reimbursement has been performed in accordance with this Agreement.

C. No reimbursement shall be made for any work which does not, in the judgement of the Government, conform to the descriptions set forth in Articles I.A., I.B., and I.C. of this Agreement or does not conform to approved plans and specifications, contract modifications, or change orders.

D. The amount of reimbursement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the Project is completed and the time that the reimbursement is afforded.

E. The amount of reimbursement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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.J. 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 or the functional portion of the Project, 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. Such operation, maintenance, repair, replacement and rehabilitation shall include, but is not limited to, beach berm reshaping; maintenance of storm drainage outfalls; and periodic nourishment for the economic life of the Project.

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 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 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 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 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 design, 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 authorized periodic nourishment period and resolution of all relevant claims arising from construction of the Project. 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-128 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 allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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 included in total project costs and cost shared in accordance with the provisions of this Agreement.

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), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 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 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 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 Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 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.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting.

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.

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, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. 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. All actual costs incurred by the Non-Federal Sponsor or the Government for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. 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, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, 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, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the

Non-Federal Sponsor determine to initiate or continue with construction 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. Such costs shall not be considered a part of total project costs. 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.

D. 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 C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to 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:

Chairperson
Board of County Commissioners
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

If to the Government:

District Engineer
U.S. Army Corps of Engineers
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 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

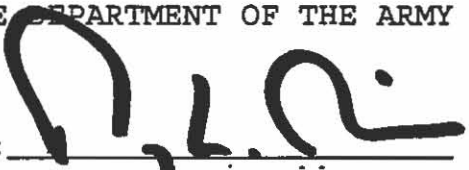
A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. 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 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 the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. 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 be included in total project costs and cost shared in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE DEPARTMENT OF THE ARMY

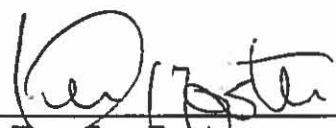
BY: 

Terry L. Rice
Colonel, U.S. Army
District Engineer

FOR THE ASSISTANT SECRETARY
OF THE ARMY (CIVIL WORKS)

DATE: MAR 21, 1995

PALM BEACH COUNTY, FLORIDA

BY: 

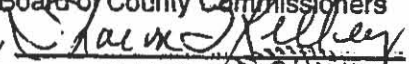
Ken L. Foster

Chairman
Board of County
Commissioners
Palm Beach County, Florida

DATE: MAR 15 1995

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DOROTHY H. WILKEN, CLERK
Board of County Commissioners

By 

DEPUTY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

COUNTY ATTORNEY



CERTIFICATION REGARDING LOBBYING

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

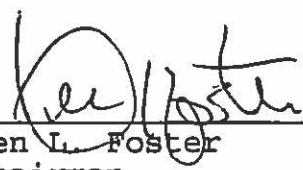
(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection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

DOROTHY H. WILKEN, CLERK
Board of County Commissioners


Ken L. Foster
Chairman

DEPUTY CLERK, PALM BEACH COUNTY

Board of County Commissioners
Palm Beach County, Florida

DATE:

MAR 15 1995

R95-352-0

CERTIFICATE OF AUTHORITY

I, Joe Mount, do hereby certify that I am the Principal Legal Officer of Palm Beach County, Florida and that the Palm Beach 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 the Palm Beach County, 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 Palm Beach County, Florida has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this 13 day of March 1995.


Joe Mount
County Attorney
Palm Beach County, Florida

R95 '352  MAR 15 1995

CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for the Jupiter/Carlin Segment of the 1962 Palm Beach County, Florida Shore Protection Project has been fully reviewed by the Office of Counsel, USAED Jacksonville, and is legally sufficient.

 3/20/95
Assistant District Counsel