

RESOLUTION 95- 123

A RESOLUTION OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS FOR THE PLACEMENT OF DREDGE MATERIAL ON THE BEACH AND A PROJECT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF BEACHES AND SHORES BEACH EROSION CONTROL PROGRAM.

WHEREAS, St. Johns County by Resolution #94-219 dated November 29, 1994 declared that a major disaster has occurred in St. Johns County along and adjacent to the Atlantic Ocean city limits of the City of St. Augustine Beach and that as a result thereof a state of local emergency exists for such area; and

WHEREAS, the Resolution declared an area of critical concern for 2.5 miles of shoreline beginning with Anastasia State Park and continuing southerly within the city of St. Augustine Beach; and

WHEREAS, the U.S. Army Corps of Engineers through an agreement with the St. Augustine Port, Waterway and Beach District has committed to maintenance dredging of the St. Augustine Inlet; and

WHEREAS, dredge material is available for the placement on the eroded area of the shoreline; and

WHEREAS; funds are available for up to 75% of the cost of placing the sand on the shoreline through the State of Florida Beach Erosion Control Program; and

WHEREAS, local matching funds are available from the Category III Tourist Development Tax Budget.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA;

Section (1). The Board of County Commissioners of St. Johns County, Florida approves the entering into of a memorandum of agreement between the U.S. Army Corps of Engineers and the St. Johns County, Florida Board of County Commissioners in substantially the form of that attached hereto and incorporated herein by reference, for the placement of beach quality sand dredged from the St. Augustine Inlet on the Atlantic Ocean shoreline in St. Johns County from 3rd Street to below F Street and to an area in Anastasia State Park North of Pope Road.

Section (2). That a project agreement for funding of said project described in Section (1) above be executed with the Florida Department of Environmental Protection Bureau of Beaches and Shores in substantially the form of Exhibit "B" attached hereto and incorporated herein by reference; and

Section (3). That the County Administrator is hereby authorized to execute the agreements referenced above in substantially the form of those agreements attached hereto.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, State of Florida, this 27 day of June, 19 .

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Barbara Ward
Its Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Rosemary Lewis
Deputy Clerk

MEMORANDUM OF AGREEMENT
FOR PLACEMENT OF SAND
AT ST. AUGUSTINE, FLORIDA

This Memorandum of Agreement entered into this the _____ day of _____ by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Corps"), acting by and through the District Engineer, Jacksonville, and ST. JOHNS COUNTY, FLORIDA (hereinafter referred to as "County") acting by and through its Board of County Commissioners,

WITNESSETH, THAT:

WHEREAS, the parties to this Agreement and others are interested in the placement of beach quality sand dredged from the Federal navigation project at St. Augustine Harbor onto the shores of St. Augustine Beach and Anastasia State Park; and

WHEREAS, the State of Florida and the County have requested that the Corps place sand along St. Augustine Beach and Anastasia State Park, consistent with County's obtained federal, state and local permits for such placement and in conjunction with the Corps maintenance dredging efforts at St. Augustine Harbor; and

WHEREAS, the County is willing to pay 100% of the cost of the additional cost of said placement over the least costly disposal alternative for the dredged sand; and

WHEREAS, it is in the interest of the Corps to assist the County in utilizing the natural resource in this manner and the Corps is authorized under Section 145 of the Flood Control Act of 1976 (33 U.S.C. 426j) to perform this work;

NOW, THEREFORE, the Parties agree as follows:

1. The Corps agrees to design and construct through its construction contracting procedures, the placement of sand onto St. Augustine Beach and Anastasia State Park consistent with County obtained federal, state and local permits for such placement and in conjunction with the Corps maintenance dredging efforts at St. Augustine Harbor (the "County Option").
2. The County shall pay 100% of all additional costs incurred in the design and construction of the County Option over the least costly disposal alternative for the dredged sand.
3. It is agreed that the funds provided under this MOA will be expended for the additional costs of placing the sand on St. Augustine Beach and Anastasia State Park over the least costly disposal alternative for this material. Any funds remaining after contract close out will be returned to the County.

4. The County shall provide without cost to the Corps all lands, easements, rights-of-way, including suitable borrow and dredged material disposal areas needed to construct these features. The County shall provide a right-of-entry for construction in a form acceptable to the Government.

5. All federal, state and local permits needed to construct the County Option shall be provided by the County. Notwithstanding anything herein to the contrary, the Corps shall provide the water quality certification for the dredging.

6. The County shall hold and save the Corps free from all damages arising from the design, construction, operation and maintenance of the County Option features. It is specifically understood for purposes of this Agreement that damages resulting from the negligence or fault of the contractor while it is placing the material as requested by the County are not the responsibility of the Corps.

7. It is specifically understood that the portion of all costs for placement of the sand in accordance with the County Option are the County's responsibility, including directly related cost overruns and contract claims.

All claims and disputes by contractors arising under or relating to contracts awarded by the Corps shall be resolved in accordance with Federal law and the terms of the individual contract. The Corps shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The Corps shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. In any such matter where the County may be liable for additional costs under this Agreement, the Corps shall promptly provide the County with notice of any such claim or dispute and shall further provide the County with the opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

8. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither is to be considered the officer,

agent, or employee of the other.

9. 100% of all funds needed for design and placement of the sand pursuant to the County Option will be paid upon request of the Corps. The Corps request for funds will be made in compliance with Corps regulations.

The County retains the right to terminate this Agreement prior to the Corps entering into a contract for the construction of the County Option and upon providing notice of termination pursuant to paragraph 10 hereof. In such event, the Corps shall promptly refund all monies paid by the County pursuant to this paragraph, less those costs identified as directly related to incorporation of the County Option into the documents for the overall project and costs incurred by the Corps due to deletion of the County Option.

10. Notices. 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-prepaid), registered, or certified mail, as follows:

If to the County:

County Administrator
St. Johns County, Florida
P.O. Drawer 349
St. Augustine, Florida 32085

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 in the manner provided in this Article.

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

11. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the work

contain any hazardous substances regulated under CERCLA, the County and the Corps shall provide prompt notice to each other, and the County shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

The Corps and the County shall determine whether to initiate construction of the work, or if already in construction, to continue with construction of the work, or to terminate construction of the work for the convenience of the Corps in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the placement of the County Option. Should the Corps and the County determine to proceed or continue with construction after considering any liability that may arise under CERCLA, as between the Corps and the County, the County shall be responsible for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. In the event the County fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Corps, the Corps may either terminate or suspend the work or proceed with further work. In the event the Corps and the County determine not to proceed or continue with construction of the work after considering any liability that may arise under CERCLA, as between the Corps and the County, the Corps shall refund to the County all monies paid by the County pursuant to paragraph nine hereof, less those costs expended and incurred to the date of termination for the County Option.

The County and the Corps shall consult with each other to assure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to the above paragraph shall not relieve any party from any liability that may arise under CERCLA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall become effective upon the date it is signed by the District Engineer, Jacksonville.

THE DEPARTMENT OF THE ARMY

ST. JOHNS COUNTY, FLORIDA

BY: _____
Terry L. Rice
Colonel, Corps of Engineers
District Engineer

BY: _____
Nicholas Meiszer
County Administrator

DATE: _____

DATE: _____

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: _____

Nicholas Meiszer
County Administrator
St. Johns County, Florida

CERTIFICATE OF AUTHORITY

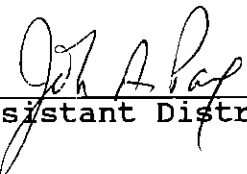
I, Jim Cisco, do hereby certify that I am the principal legal officer of St. Johns County, Florida; that St. Johns County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and St. Johns County, Florida and that the person who has executed this Agreement on behalf of the St. Johns County, Florida has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 19__.

Jim Cisco
Attorney for
St. Johns County, Florida

CERTIFICATION OF LEGAL REVIEW

The draft Section 145 Memorandum for Agreement for the St. Augustine Harbor, Florida for placement of dredged material on St; Augustine Beach and Anastasia State Park has been fully reviewed by the Office of Counsel, USAED, Jacksonville, and is legally sufficient.


Assistant District Counsel

DEP Contract No. 95SJ1

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL RESOURCE PERMITTING
FLORIDA BEACH EROSION CONTROL ASSISTANCE PROGRAM

Grant Agreement

THIS AGREEMENT is entered into this ____ day of _____, 1995, between the Florida Department of Environmental Protection, Division of Environmental Resource Permitting (hereinafter referred to as the "DEPARTMENT") and St. Johns County (hereinafter referred to as the "LOCAL SPONSOR") for the PROJECT described herein.

In consideration of the mutual benefits to be derived herefrom, the DEPARTMENT and LOCAL SPONSOR do hereby agree as follows:

1. The LOCAL SPONSOR agrees to implement the erosion control project known as St. Augustine Inlet Sand Transfer Project, (hereinafter referred to as the PROJECT); as defined herein, and to complete said PROJECT upon the terms and conditions set forth in this Agreement and in accordance with requisite environmental permits.

2. The LOCAL SPONSOR agrees to construct, or cause to be constructed, eligible PROJECT items as identified below. The PROJECT consists of the sand transfer of approximately 292,000 cubic yards of beach quality material from the St. Augustine Inlet channel. The material shall be placed on the downdrift beaches located at St. Augustine Beach (between 400' north of R146 and 200' south of R148) and Anastasia Island State Park (between 300' north of R139 and 100' south of R141).

The DEPARTMENT and the LOCAL SPONSOR agree that the estimated costs of the PROJECT are as follows:

<u>Eligible Project Item</u>	<u>Estimated Project Costs</u>			
	<u>Federal</u>	<u>State</u>	<u>Local</u>	<u>Total</u>
Inlet Sand Transfer	\$3,000,000	\$90,446	\$30,149	\$3,120,595

Funding for this PROJECT is subject to the release of funds appropriated to the DEPARTMENT for the fiscal year 1994-95. The DEPARTMENT's financial obligation shall not exceed the sum of \$90,446 for this PROJECT or 75% of the nonfederal PROJECT cost, whichever is less. The LOCAL SPONSOR shall be responsible for all other costs.

3. The DEPARTMENT agrees to provide its federal cost sharing funds up to the cost limitation of \$90,446, to the LOCAL SPONSOR

upon execution of this Agreement. The LOCAL SPONSOR agrees to forward the \$90,446, within 20 days of receipt, to the U.S. Army Corps of Engineers (COE). In the event that the actual PROJECT cost at completion is less than the original estimated PROJECT cost resulting in a return by the COE of excess funds to the LOCAL SPONSOR, the LOCAL SPONSOR agrees to return the DEPARTMENT's proportionate share of such excess funds to the DEPARTMENT within 20 days of the LOCAL SPONSOR's receipt of such excess funds. In the event that any interest whatsoever is earned on funds disbursed to the LOCAL SPONSOR by the DEPARTMENT, the LOCAL SPONSOR agrees to return such interest to the DEPARTMENT together with data to fully explain how such interest was computed and under what circumstances interest was earned. Any and all interest that may have been earned on DEPARTMENT funds must be returned to the DEPARTMENT prior to the final PROJECT certification of completion by the LOCAL SPONSOR.

4. The LOCAL SPONSOR agrees to provide the DEPARTMENT a full accounting of all PROJECT costs at PROJECT completion within 20 days of receipt of such data from the COE. Such accounting data shall include actual cost of PROJECT construction and all cost expended for mobilization, engineering and design, and supervision and administration.

5. Upon completion of the PROJECT, the LOCAL SPONSOR agrees to submit to the DEPARTMENT a certification of such completion, attached hereto as Exhibit "A". A final PROJECT certification inspection will be made by the DEPARTMENT within 60 days after the PROJECT is certified complete by the LOCAL SPONSOR.

6. In connection with this Agreement, it is acknowledged that at all times the LOCAL SPONSOR is not acting as an employee of the State of Florida and neither the LOCAL SPONSOR nor its employees are entitled to accrue any benefits and any other rights or privileges connected with employment in the Florida Career Service.

7. The LOCAL SPONSOR shall submit to the DEPARTMENT quarterly progress reports during the period the project is underway which detail what work has been accomplished. Progress reports shall be submitted no later than January 15, April 15, July 15, and October 15, of each year in which the project is underway.

8. This Agreement shall begin on the date of execution by both parties and end on April 30, 1996.

9. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

10. The LOCAL SPONSOR will not discriminate against anyone with regard to race, creed, color, sex, national origin, age, disability, or location of user's residence during or after construction of the PROJECT. The LOCAL SPONSOR will comply with all

federal, state, and local laws, ordinances, rules, and regulations regarding discrimination.

11. The LOCAL SPONSOR hereby insures that it has in force and shall maintain in force throughout the PROJECT period insurance coverage, which most nearly reflects the operation of the LOCAL SPONSOR, which is necessary for the PROJECT, and which is appropriate and allowable pursuant to Florida Statutes.

12. Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors, and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity and the limitations set forth in Section 768.28, Florida Statutes.

13. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

14. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to the recovery of its costs and a reasonable attorney's fee.

15. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

16. This Agreement is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.

17. This Agreement may be canceled by either party, with or without reason, by giving 30 days written notice to the other party. Said notice shall be sufficient if delivered personally or by certified mail to the address contained herein. In case of cancellation, only amounts accrued to the date of cancellation shall be due and payable.

18. The LOCAL SPONSOR will permit the DEPARTMENT's staff to examine all PROJECT records and grant them rights to audit any PROJECT books, documents, and papers during the PROJECT and following completion of the PROJECT. The LOCAL SPONSOR shall maintain the records, books, document, and papers for at least three (3) years following completion of the PROJECT.

19. This Agreement may be canceled by the DEPARTMENT without prior notice for refusal by the LOCAL SPONSOR to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL SPONSOR in conjunction with this Agreement.

20. Phil Flood, Environmental Specialist, or his successor is hereby designated the DEPARTMENT's Contract Manager for the purpose of this Agreement and shall be responsible for enforcing performance of the Agreement terms and conditions and shall serve as a liaison with the LOCAL SPONSOR.

21. The LOCAL SPONSOR will appoint a Liaison Officer to be responsible for the implementation of the provisions of this Agreement.

22. Any and all notices shall be delivered to the parties at the following address:

DEPARTMENT
Department of Environmental
Protection
3900 Commonwealth Blvd. MS 315
Tallahassee, FL 32399-3000

LOCAL SPONSOR
St. Johns County
P.O. Drawer 349
St. Augustine, FL 32085-0349

23. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provision of this Agreement. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

24. The LOCAL SPONSOR shall, at a minimum, comply with monetary limits for competitive acquisition of both materials and services as required by Chapter 287, Florida Statutes, is expressly made a part of this Agreement and is incorporated herein by reference as if fully set forth.

25. The provisions of Chapter 62B-36, Florida Administrative Code, entitled Beach Erosion Control Assistance Program, Chapter 16A-11, Florida Administrative Code, entitled Grant and Contract Accountability Policy, are expressly made a part of this Agreement and are incorporated herein by reference as if fully set forth.

26. Any inequities that may subsequently appear in this Agreement shall be subject to negotiation upon written request of either party, and the parties agree to negotiate in good faith as to any such inequities.

27. This Agreement represents the entire Agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing and signed by each of the parties hereto, and attached to the original of this Agreement.

28. This Agreement shall be executed in duplicate, each copy of which shall for all purposes be considered an original.

IN WITNESS WHEREOF, the parties have caused these present to be duly executed, the day and year first above written.

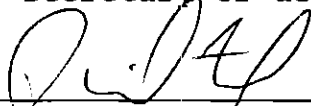
LOCAL SPONSOR

DEPARTMENT

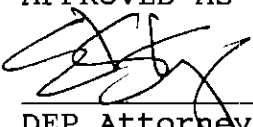
By: _____
County Administrator

By: _____
Secretary or designee

Witness



Contract Manager

APPROVED AS TO FORM AND LEGALITY:


DEP Attorney

EXHIBIT A

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL RESOURCE PERMITTING
FLORIDA BEACH EROSION CONTROL ASSISTANCE PROGRAM

PROJECT COMPLETION CERTIFICATION

Name of Project: _____

Grantee: _____ DEP Contract Number: _____

I hereby certify that the above mentioned project has been completed in accordance with the Project Agreement, including any amendments thereto, between the Department of Environmental Protection and grantee, and all funds expended for the project were expended pursuant to the Project Agreement.

Name of Project Administrator Signature of Project Administrator Date