


MEMORANDUM THRU OFFICE OF COUNCIL

FOR DISTRICT ENGINEER

SUBJECT: Dauphin Island Shoreline, Alabama - Local Cooperation Agreement--FOR SIGNATURE

1. PROBLEM. Project authorization was officially received on 29 September 1993. The Local Cooperation Agreement (LCA) was sent to the non-Federal sponsor with the East End Dauphin Island LCA, however, the attached agreement was not signed since they did not have funds for the non-Federal share of the cost. The Alabama Department of Economic and Community Affairs (ADECA) has since committed to supplying the funds required (copy of ADECA letter attached). The non-Federal sponsor and their lawyer have now signed and this LCA is ready for signature by the District Council and the District Engineer.
2. RECOMMENDATION. That the District Council (red tabs) and the District Engineer (white tabs) sign the attached LCA.
3. BACKGROUND AND DISCUSSION. The funds to be supplied by ADECA are from their FY 1994 appropriation. They believe that they will be able to transmit the estimated amount of \$120,000 on or about 15 October 1993.
4. IMPACTS. Completion of this LCA and receipt of the non-Federal share of costs will complete the requirements for local cooperation.
5. COORDINATION. All appropriate offices approved the final LCA before it was sent to the non-Federal sponsor for signature.

PD-F	Concur/Nonconcur	<i>Kenneth W. Cannon</i>	( )	<u>6 October 1993</u>
PD	Concur/Nonconcur	<i>Walter W. Burdin</i>	( )	<u>6 Oct 93</u>
OC	Concur/Nonconcur	<i>John J. ...</i>	( )	<u>12 OCT 93</u>
DX	Concur/Nonconcur	<i>out</i>	( )	
DD	Concur/Nonconcur	<i>W.H. ...</i>	( )	<u>13 OCT 93</u>

  
 ELAINE H. WILLIS  
 Chief, Plan Development Section

Walter W. Burdin, P.E.  
 Project Manager  
 East End Dauphin Island  
 PD-FP/2772



## Alabama Department of Economic And Community Affairs

JIM FOLSOM  
GOVERNOR

DAVID HOOKS  
DIRECTOR

September 21, 1993

Mike Henderson  
Executive Director  
Dauphin Island Parks & Beach Board  
P O Box 97  
Dauphin Island, AL 36528

Dear Mr. Henderson:

I am pleased to notify you that the Alabama Department of Economic & Community Affairs has committed \$120,000 to assist in the protection and restoration of the East End and Main Public Beach areas of Dauphin Island - referenced as EAST END DAUPHIN ISLAND and DAUPHIN ISLAND SHORELINE in the U S Army Corps of Engineers, Mobile District Section 14 Project. A contract to cover the transfer of these funds and the scope of services will be forthcoming as quickly as possible.

It is a pleasure to be able to assist in this project which will benefit not only your area but the entire State of Alabama.

Sincerely,

  
David Hooks

UNITED STATES ARMY CORPS OF ENGINEERS  
CONTINUING AUTHORITIES PROGRAM

SECTION 14  
SINGLE PURPOSE  
EMERGENCY STREAMBANK OR SHORELINE PROTECTION WORKS  
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LOCAL COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DAUPHIN ISLAND PARK AND BEACH BOARD

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[FULL NAME OF LOCAL SPONSOR]

FOR CONSTRUCTION OF THE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DAUPHIN ISLAND SHORELINE, ALABAMA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[FULL NAME OF PROJECT]

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, by and between the DEPARTMENT OF THE ARMY (hereinafter  
referred to as the "Government"), acting by and through  
the Mobile District Engineer, U.S. Army  
[LOCATION OF DISTRICT] [DISTRICT/DIVISION]

Corps of Engineers, and the Dauphin Island Park and Beach Board

[LOCAL SPONSOR]

(hereinafter referred to as the "Local Sponsor"), acting by and through Elizabeth A. Gebesen, as Chairman

[TITLE OF PERSON SIGNING THIS AGREEMENT]

WITNESSETH, THAT:

WHEREAS, the authority for the construction of the Dauphin Island Shoreline, Alabama

[NAME OF PROJECT]

at the Main Beach Park on Dauphin Island, Alabama

[SPECIFIC LOCATION OF PROJECT]

(hereinafter referred to as the "Project," as defined in Article I.a. of this Agreement) is contained in Section 14 of the Flood Control Act of 1946, as amended, 33 U.S.C. 701r; and

WHEREAS, Section 14 of the Flood Control Act of 1946, as amended, limits the amount the Federal Government may expend on a single project to \$500,000; and

WHEREAS, construction of the Project is described in a report entitled Dauphin Island Shoreline, Alabama

Detailed Project Report, Emergency Protection for Public Structures

prepared by USACE, Mobile District, dated May 1993, and approved by HQUSACE on July 6, 1993; [DATE]

and,

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

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

[ONLY ONE OF THE TWO FOLLOWING "WHEREAS" CLAUSES WILL APPLY;  
STRIKE THROUGH THE CLAUSE WHICH DOES NOT APPLY]

[OPTION 1:]

~~WHEREAS, the Project does not qualify for a reduction of the maximum non-Federal cost share pursuant to guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R. sections 241.1 - 241.6, entitled "Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision"; and the reduced maximum non-Federal cost share is determined by the ability to pay of the project participants derived as set forth in Part 1 of the Agreement, subject to the cost limitations placed on the Federal Government by Section 206 of the Flood Control Act of 1970, as amended;~~

[OPTION 2:]

WHEREAS, the Project does not qualify for a reduction of the maximum non-Federal cost share pursuant to guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R. sections 241.1 - 241.6, entitled "Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision"; and

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean construction of a 3-foot thick by 30-foot wide stone blanket beneath the full length of the public fishing pier and protection of the landward end of the pier with approximately 350 feet of heavy riprap placed at the waters edge and constructed to a trapezoidal section with 5-foot wide crest at elevation 7.0 NGVD.

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[DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL AS IS NECESSARY TO AVOID ANY CONFUSION OVER WHAT WORK IS, OR IS NOT INCLUDED; REFERENCE THE PROJECT REPORT, IF APPROPRIATE; IF MORE SPACE IS NEEDED, REFERENCE AND SECURELY ATTACH A SEPARATE SHEET AND HAVE ALL SIGNATORIES INITIAL IT WHEN THEY SIGN.]

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to, costs of applicable engineering and design, costs of preparation of contract plans and specifications, actual construction costs, costs of alterations or relocations of railroad bridges and approaches thereto, supervision and administration costs, costs of construction contract dispute settlements or awards, and the value of lands, easements and rights-of-way (to the extent that the lands, easements and rights-of-way are not already owned as part of the facility being protected), relocations, and suitable borrow and dredged material disposal areas provided for the Project by the Local Sponsor, but shall not include any costs for betterments, operation, repair, maintenance, replacement nor rehabilitation, nor Government costs for planning studies.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U. S. Army Engineer for the Mobile District or  
[LOCATION] [DISTRICT/DIVISION]  
his or her designee.

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

f. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

g. The term "functional portion of the Project" shall mean a completed portion of the Project determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

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

i. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

j. Words which appear between brackets, whether they appear between or within lines of text, do not constitute a part of this Agreement. They are intended only as instructions regarding the proper completion of this Agreement.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the Project (including alterations or relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. To the extent possible, the Local Sponsor also shall be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but contract awards, modifications, or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel) shall be exclusively within the control of the Government.

b. When the Government determines that the Project, or a functional portion of the Project, is complete, the Government shall turn the completed Project or functional portion over to the Local Sponsor, which shall accept the Project or functional portion and be solely responsible for operating, repairing, maintaining, replacing, and rehabilitating the Project or functional portion in accordance with Article VIII hereof.

c. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution of 5 percent of total project costs.

d. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, rights-of-way, including suitable borrow and dredged material disposal areas, and perform all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project. To the extent that any of the lands, easements, or rights-of-way provided under this paragraph are already owned as part of the facility or structure being protected, the value of such interests shall not be included in total project costs nor credited towards the Local Sponsor's contribution required under this Article. At its sole discretion, the Government may perform relocations in cases where it appears



that the Local Sponsor's contributions will exceed the maximum non-Federal cost share set out in Article VI.f., subject to the Federal limitation set out in Article II.f.

e. If the value of the allowable contributions provided under paragraphs c. and d. of this Article represents less than 25 percent of total project costs, the Local Sponsor shall provide during the period of construction an additional cash contribution in the amount necessary to make its total contribution equal to 25 percent of total project costs.

[ONLY ONE OF THE TWO FOLLOWING SUBPARAGRAPHS WILL APPLY;  
STRIKE THROUGH THE ONE WHICH DOES NOT APPLY]

[OPTION 1:]

f. The Government's participation in the Project, including all planning studies costs, has a statutory limitation of \$500,000. The Local Sponsor shall be responsible for all costs in excess of \$500,000, notwithstanding that the Project qualifies for a reduction of the maximum non-Federal cost share under the Ability to Pay Test.

[OPTION 2:]

f. The Government's participation in the Project, including all planning studies costs, has a statutory limitation of \$500,000. The Local Sponsor shall be responsible for all costs in excess of \$500,000.

g. The Local Sponsor shall comply with all items of local cooperation set out in the aforementioned report entitled

Dauphin Island Shoreline, Alabama, Detailed Project Report, Emergency

Protection for Public Structures

prepared by USAEC, Mobile District dated May 1993 and

approved by HQU SACE on July 6, 1993.

[DATE]

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

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646  
RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way shall be provided prior to the advertisement of any construction contract.

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

c. Upon notification from the Government, the Local Sponsor shall accomplish, or arrange for accomplishment at no cost to the Government, all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project.

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

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be included in total project costs and credited towards the Local Sponsor's share of total project costs will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

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

3. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior written Government approval.

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

b. The costs of relocations which will be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be that portion of the actual costs as set forth below and approved by the Government:

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

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

#### ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the amounts required under Articles II.c., II.e., and II.f. of this Agreement. Total project costs are presently estimated to be \$480,000. In order to meet its share, the Local Sponsor must provide a cash contribution presently estimated to be \$ 120,000 .

b. The required cash contribution shall be provided as follows: ~~THE LOCAL SPONSOR SHALL~~ 30 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within ~~THE LOCAL SPONSOR SHALL~~ 15 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "PAO, USAED, Mobile" to the Contracting Officer representing the Government. In the event that total project costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within ~~THE LOCAL SPONSOR SHALL~~ 45 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

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

d. Upon completion of the Project and final determination of the costs associated with all relevant contract claims and court actions, including appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs. In the event the total contribution by the Local Sponsor is less than its minimum required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its minimum required share of total project costs.

e. In the event the Local Sponsor has made cash contributions in excess of 5 percent of total project costs which result in the Local Sponsor having provided more than its required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations for that purpose, and subject to the \$500,000.00 Federal limitation set out in Article II.f., return said excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c. of this Agreement.

f. If the Local Sponsor's total contribution under this Agreement (including allowable credits for lands, easements, rights-of-way, relocations, and suitable borrow and dredged material disposal areas provided for the Project by the Local Sponsor) exceeds ~~NEITHER \$1,000,000 NOR ONE PERCENT OF THE PROJECT COSTS, OR THE APPROPRIATE ASSETTY TO PERCENTAGE OF THE PROJECT COSTS~~ 50 percent of total project costs, the Government shall, subject to the availability of appropriations for that purpose, and subject to the \$500,000.00 Federal limitation set out in Article II.f., refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

#### ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

#### ARTICLE VIII - OPERATION, MAINTENANCE, REPLACEMENT, AND REHABILITATION

a. After the Government has turned the completed Project, or functional portion of the Project, over to the Local Sponsor, the Local Sponsor shall operate, repair, maintain, replace, and rehabilitate the completed Project, or functional portion of the Project, in accordance with regulations or directions prescribed by the Government.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of

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

#### ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS

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

#### ARTICLE XI - GOVERNMENT AUDIT

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



ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, 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 XIII - RELATIONSHIP OF PARTIES

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

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

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

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

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

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Secretary of the Army determines that continuation of work on the Project is in the



interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project . Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement, pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event that either party elects to defer future performance under this Agreement, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or either party elects to terminate this Agreement.

#### ARTICLE XVII - NOTICES

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

If to the Local Sponsor:

Dauphin Island Park and Beach Board

Post Office Box 97

Dauphin Island, Alabama 36528

[ FULL ADDRESS ]

If to the Government:

Commander

United States Army Engineer District, Mobile

P. O. Box 2288, Mobile, AL 36628-0001

[FULL ADDRESS]

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 seven days after it is mailed, as the case may be.

#### ARTICLE XVIII - CONFIDENTIALITY

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

#### ARTICLE XIX - HAZARDOUS SUBSTANCES

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

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under

CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

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

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

e. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under CERCLA.

ARTICLE XX - APPROVAL OF AGREEMENT

The Mobile District Engineer.  
[LOCATION] [DISTRICT/DIVISION]

is authorized to execute this Agreement on behalf of the Government, provided no modification is made to this Agreement other than completion in accordance with the bracketed instructions. If any such modification is made, this Agreement shall be subject to the written approval of the Assistant Secretary of the Army (Civil Works) and is not binding on the Government until so approved.

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: Robert H. Griffin  
[SIGNATURE]

ROBERT H. GRIFFIN  
[TYPED NAME]  
Colonel, Corps of Engineers  
District Engineer

[SELECT ONE]  
District/Division  
Engineer

DATE: 14 OCT 93

THE LOCAL SPONSOR

BY: Elizabeth A. Geben  
[SIGNATURE]

ELIZABETH A. GEBEN  
[TYPED NAME]  
Chairman

\_\_\_\_\_  
[TITLE IN FULL]

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Tom Galloway, ~~SR.~~, do hereby certify that I am  
[TYPED OR PRINTED NAME] and Beach Board  
the Attorney of the Dauphin Island Park and that the Dauphin Island  
[TITLE] [LOCAL SPONSOR]  
Park and Beach Board is a legally constituted public body with full  
[LOCAL SPONSOR]  
authority and capability to perform the terms of the Agreement  
between the Department of the Army and the Dauphin Island Park and  
[LOCAL  
Beach Board in connection with the Dauphin Island Shoreline and  
SPONSOR] [NAME OF PROJECT]  
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(s) who has/have executed the Agreement on behalf  
of the Dauphin Island Park and has/have acted within their statutory  
[LOCAL SPONSOR] Beach Board  
authority.

IN WITNESS WHEREOF, I have made and executed this Certificate of  
Authority this 4<sup>th</sup> day of Oct., 1993.

[PLACE SEAL AND/OR  
ACKNOWLEDGMENT(S)  
IF NECESSARY  
FOR EXECUTION OF THIS  
DOCUMENT--THE DEPARTMENT  
OF THE ARMY DOES NOT  
REQUIRE EITHER.]

Tom Galloway  
[SIGNATURE]

TOM GALLOWAY, ~~SR.~~  
[TYPED NAME]

Attorney  
\_\_\_\_\_  
\_\_\_\_\_  
[TITLE IN FULL]

CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for Shorline Protection  
for the East End, Dauphin Island, Alabama  
[NAME OF PROJECT]

has been fully reviewed by the Office of Counsel, USAED,

Mobile  
[LOCATION]

  
District Counsel  
THOMAS BURT