



County of Santa Cruz 157

DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060-4070
(631) 454-2160 FAX (831) 464-2385 TDD (831) 464-2123

JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS

AGENDA: August 10, 1999

July 29, 1999

SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street
Santa Cruz, California 95060

SUBJECT: COST SHARE AGREEMENT WITH THE ARMY CORPS OF ENGINEERS

Members of the Board:

Staff has been working with the Army Corps of Engineers (Corps) on studies related to a proposed coastal protection project along East Cliff Drive between Thirty-third Avenue and Thirty-sixth Avenue. The project would stabilize the eroding cliffs in this area, allowing the restoration of East Cliff Drive as well as the construction of improved pedestrian and bicycle facilities and improved beach access. It has been identified as a project which could receive up to \$2,000,000 in federal funding under the Corps' Continuing Authorities Program (CAP).

The Corps has substantially completed a Detailed Project Report (DPR), which examines design alternatives, costs and environmental impacts of the potential project. Completion of the DPR will provide the information necessary to complete the community design process. However, the maximum amount which can be spent on the DPR under the CAP program is \$100,000, and the Corps has reached this limit.

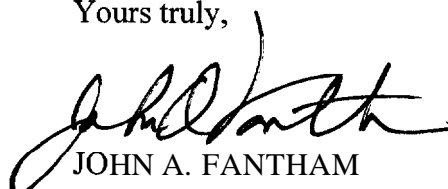
In order for work to continue on the DPR, it is necessary for the County to share the remaining costs equally with the Corps. An agreement between the County and the Corps to do so is attached for your consideration. The cost to complete the study, including the inclusion of one additional alternative requested by the County, is estimated to be \$44,000. The agreement provides for the County to provide half of that amount, \$22,000.

Funding for this agreement is available in the Live Oak Transportation Improvement Fund in the 1999-2000 Public Works budget.

It is recommended that the Board of Supervisors take the following action:

1. Approve the cost share agreement with the Army Corps of Engineers to complete the Detailed Project Report for the East Cliff Drive Coastal Protection Project:
2. Authorize the Director of Public Works to sign the agreement on behalf of the county.
3. Direct the Clerk of the Board to send the signed agreement to the U. S. Army Corps of Engineers, San Francisco District, CESP-PE-EH, 333 Market Street, 7th Floor, San Francisco, CA, 941052197, Attn: Eric Bluhm, for signature by the Corps' District Engineer.

Yours truly,

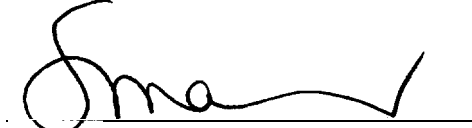


JOHN A. FANTHAM
Director of Public Works

CDR:cdr

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Corps of Engineers
Redevelopment Department
Public Works Department

AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND
THE COUNTY OF SANTA CRUZ
FOR THE EAST CLIFF DRIVE SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this _____ day, of August, 1999, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the County of Santa Cruz (hereinafter the "Sponsor"),

WITNESSETH, that

WHEREAS, the Congress has authorized U.S. Army Corps of Engineers, San Francisco District to conduct studies of shoreline protection along East Cliff Drive pursuant to the authority provided by Section 103, 1962 RHA (P.L. 87-874); and

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study of shoreline erosion along East Cliff Drive in the County of Santa Cruz pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the "Study") is required to fulfill the intent of the study authority and to assess the extent of the Federal interest in participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study;

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

WHEREAS, the Sponsor and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor, and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and

Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsor.

D. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers San Francisco District of initial Federal feasibility funds following the execution of this Agreement and ending with the Chief of Engineers' acceptance of the study.

E. The term "PSP" shall mean the Project Study Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsor.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the PSP.

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

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsor may, consistent with applicable law and regulations, contribute up to 25 percent of Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor shall pay a **fifty** (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such

temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsor, cumulative financial obligations of the Government and the Sponsor would result in excess Study Costs, the Government and the Sponsor agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsor agree to proceed. Should the Government and the sponsor require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the sponsor have not reached an agreement to proceed by the end of their 6 month period, the Agreement may be subject to termination in accordance with Article X.

F. No Federal funds may be used to meet the Sponsor's share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

G. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$44,000 and the Sponsor's share of estimated Study Costs is \$22,000. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$22,000. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PSP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsor by April 1 of each year of the estimated funds that will be required from the Sponsor to meet the Sponsor's share of Study Costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, SAN FRANCISCO" to the District Engineer.

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II.C. of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsor shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the funds provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 60 calendar days after receipt of such notice, the Sponsor shall make the full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, other than excess Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs other than excess Study Costs.

D. The Sponsor shall provide its cash contribution for excess Study Costs as required under Article II.C. of this Agreement by delivering a check payable to "FAO, USAED, SAN FRANCISCO" to the District Engineer as follows:

1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years of the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the study, the Sponsor shall pay its share of excess costs on that date (5 years after the date of the Chief of Engineers or 2 year after the date of the termination of the study).

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsor and the Government shall appoint named senior representatives to an Executive Committee. Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PSP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE V - DISPUTES

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. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping 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 Study Costs. 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 Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. 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 shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - 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 IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the 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 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article II.E. of this agreement, or upon the failure of the sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. and III.D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, San Francisco District.

DEPARTMENT OF THE ARMY

THE COUNTY OF SANTA CRUZ

BY _____
Peter T. Grass
District Engineer
San Francisco District

BY _____
John A. Fantham
Director Public Works

APPROVED AS TO FORM:

BY D. McRae 7.30.99
Assistant County Counsel

Project Study Plan

The requested \$44,000 in additional funding is required to complete the Santa Cruz Seawall Detailed Project Report (DPR). The attached task/cost break down details the estimated expense for each Corps team member. The original budget of \$100,000 is insufficient to cover both past and present requests to investigate variations to the proposed alternatives and the most recent request to include an entirely new one. These additions and changes require that the engineering, economics, specifications and estimates, and environmental sections revise and update their respective sections of the draft DPR. In addition to the expenses for the actual work performed, the reformatting and printing of a "new" draft DPR will require funding. Also, additional funding will be needed to cover the incurred expenses due to lengthened study and design phase.

A list of major tasks that need to be completed to produce a final DPR is presented.

1. Perform additional engineering, cost engineering, and economic analysis on proposed addition of shotcrete to **cribwall** face.
2. Perform additional engineering, cost engineering, and economic analysis on proposed new alternative (wall design similar to ones on highway 92 between **Halfmoon Bay** and San Mateo).
3. Include changes from tasks 1 and 2 in the draft DPR.
4. Perform existing corrections and changes to the draft DPR that have already been listed by the County of Santa Cruz and the Corps' preliminary internal review.
5. Final reformatting of the draft DPR and printing of document.
6. Incorporation of changes and corrections listed during review process of the draft DPR.

It is expected that if the requested money were made available by late August the necessary work to finish the draft DPR would be completed by December 1, 1999. This seemingly late completion date is due to previous scheduling commitments by the Corps team members. It also must be realized that the draft DPR must be Quality controlled internally as well as reviewed by several outside agencies before a final DPR is produced.

Santa Cruz DPR Completion/Revision Estimate

7/15/99

Section	Employee	Task	Time (hr)	Cost (\$)
Tech. Man./Eng.	J. Winkelman	2 town meetings ?	40	3,400
		evaluation of new/revised alternatives	20	1,700
		revisions to DPR and finalization	80	6,800
		technical management	40	3,200
				15,100
Geotech	Chu Liu	evaluation of new/revised alternatives	24	2,040
Specs and Est.	J. Ide	new alternative and revisions to old	60	5,400
Economics	J. Kinberger	analysis for new alternative	16	1,360
Environmental	L. Ngim		40	3,400
Supervisors	Hernandez		10	1,000
	Miner		16	1,760
				2,760
Project Mgmt.	Bluhm & Hall	Supervision & Administration	40	4,400
Report Production				2,000
Q.C.	Team		40	3,200

subtotal 39,660
 contingency (15%) 3,966
total (rounded) 44,000

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

000168

TO: Board of Supervisors
County Administrative Officer
County Counsel
Auditor-Controller

FROM: PUBLIC WORKS (Dept.)
[Signature] (Signature) 7-26-99 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the COUNTY OF SANTA CRUZ (Agency)
US ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT, CESPEN-PE-EH
and, 333 MARKET STREET, 7TH FLOOR, SAN FRANCISCO, CA 94105-2197 (Name & Address)

2. The agreement will provide FOR COMPLETION OF THE DETAILED PROJECT REPORT FOR THE EAST
CLIFF DRIVE COASTAL PROTECTION PROJECT.

3. The agreement is needed BECAUSE THE WORK CAN BE DONE MOST EXPEDITIOUSLY BY CONTRACT.

4. Period of the agreement is from BOARD APPROVAL to JUNE 30, 2000

5. Anticipated cost is \$ 22,000.00 (~~Fixed amount; Monthly rate; Not to exceed~~)

6. Remarks: AGREEMENT: \$22,000.00; 7% OVERHEAD: \$1,540.00; TOTAL: \$23,540.00.

Agenda 8/10/99

7. Appropriations are budgeted in 6 2 1 1 0 0 ! 4 0 1 5 8 ! 3 6 6 5 ! (Index#) 3590 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74'

Appropriations are available and have been encumbered. Contract No. CO 91903 Date 7/29/99
are not will be

GARY A. KNUTSON, Auditor - Controller
By [Signature] Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the DIRECTOR OF PUBLIC WORKS to execute the same on behalf of the DEPARTMENT OF

PUBLIC WORKS (Agency).

County Administrative Officer

Remarks:
(Analyst)

BY [Signature] Date 7/30/99

Agreement approved as to form. Date _____

CDR:rw

- Distribution:
- Bd. of Supv. - White
 - Auditor-Controller - Blue
 - County Counsel - Green
 - Co. Admin. Officer - Conory
 - Auditor-Controller - Pink
 - Originating Dept. - Goldenrod

*To 29 Dept. if rejected.

State of California)
County of Santa Cruz) ss

I, _____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing request for approval of agreement was approved by said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered in the minutes of said Board on _____ 19_____.
County Administrative Officer
By _____ Deputy Clerk