

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE HARRIS COUNTY FLOOD CONTROL DISTRICT
FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE
BRAYS BAYOU (HOUSTON), TEXAS PROJECT

THIS AGREEMENT is entered into this 3rd day of March, 2000, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the Harris County Flood Control District (hereinafter the "Non-Federal Sponsor") represented by the Harris County, Texas, Commissioners Court acting by and through the Harris County Judge, as authorized by an official resolution entitled *Order Authorizing Execution on Behalf of Harris County Flood Control District of Project Cooperation Agreement Between Harris County Flood Control District and Department of the Army for Design and Construction of the Detention Element of the Brays Bayou (Houston), Texas Project* passed by the Commissioners Court of Harris County, Texas, on 8th day of February, 2000, a copy of which is attached hereto (Exhibit A).

WITNESSETH, THAT:

WHEREAS, construction of the Buffalo Bayou and Tributaries project (hereinafter the "Authorized Project") at Houston, Texas, was authorized by the Water Resources Development Act of 1990 (WRDA 1990) (Public Law 101-640, Section 101(a)(21)) in accordance with the Report of the Chief of Engineers, dated February 12, 1990;

WHEREAS, the Brays Bayou project is one of six tributary plans included in the Authorized Project;

WHEREAS, the Brays Bayou project contains two separable elements referred to as the "Detention" and "Diversion" separable elements, as identified in a Limited Reevaluation Report dated January, 1995;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Detention Separable Element of the Brays Bayou project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

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

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Non-Federal Sponsor shall not be entitled to reimbursement for work it performs in accordance with Section 211 of Public Law 104-303, as amended, until it has entered into a written agreement to furnish its required cooperation for the Project or separable element;

WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662, as amended, establishes the maximum amount of costs for the Authorized Project, and sets forth procedures for adjusting such maximum amount;

WHEREAS, Section 211(d) of the Water Resources Development Act of 1996, Public Law 104-303 (hereinafter "WRDA 96"), as amended, authorizes non-Federal interests to undertake studies, design and construction activities for flood control projects pursuant to a favorable recommendation from the Secretary;

WHEREAS, Section 211(e)(2)(A) of WRDA 96, as amended, further provides that for projects described in Section 211(f) the Secretary shall, subject to the availability of appropriations, reimburse, without interest, the non-Federal interest an amount equal to the estimated Federal share of the cost of such work if such work is later recommended by the Chief of Engineers and approved by the Secretary;

WHEREAS, Section 211(f) of WRDA 96 specifically names the Brays Bayou, Texas project as a project to demonstrate the potential advantages and effectiveness of non-Federal implementation of flood control projects, and provides that the Secretary shall enter into an agreement, pursuant to Section 211 of WRDA 96, as amended, with the non-Federal interests for development of that project;

WHEREAS, the Non-Federal Sponsor has proposed to perform work which falls under the authority of Section 211 of WRDA 96, as amended;

WHEREAS, the Non-Federal Sponsor intends to construct the Brays Bayou project and understands that a separate design agreement will be required for the development of an alternative to the Diversion Separable Element;

WHEREAS, the Non-Federal Sponsor has initiated construction of the Project;

WHEREAS, the Non-Federal Sponsor has the design capability and resources to design and construct the Project; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the design and construction of the Project in accordance with the terms of this Agreement.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean construction of a regional detention basin in the mid-reach of Brays Bayou near Sam Houston Parkway with a storage capacity of about 2,500 acre-feet; construction of a regional detention basin near Old Westheimer Road with a storage capacity of about 2,400 acre-feet; construction of a regional detention basin near Eldridge Road with a storage capacity of about 3,200 acre-feet; and enlargement of 3.7 miles of Brays Bayou extending from stream mile 24.7 to stream mile 28.4 (State Highway 6). The features of this element are as generally described in the Letter Report "Brays Bayou (Houston), Texas, Flood Damage Prevention, Detention Separable Element" dated December, 1998, and approved by the Chief, Planning Division, Directorate of Civil Works, U.S. Army Corps of Engineers, on March 18, 1999.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project including those reasonable, allowable, and allocable to this Project which were incurred by the Non-Federal Sponsor prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation investigation in accordance with Article XVIII.A. of this Agreement; costs of developing National Environmental Policy Act of 1969, as amended, (hereinafter "NEPA") documentation; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit toward the total project costs in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation,

maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "Federal share" shall mean total project costs, less the non-Federal share, described in paragraph D. of this Article.

D. The term "non-Federal share" shall mean the contributions required by Article II.J. of this Agreement.

E. The term "period of construction" shall mean the time from August 16, 1994 (the award date of the construction contract for the first discrete segment) to the date that the U.S. Army Engineer for the Galveston District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

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

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. 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.

I. The term "discrete segment" shall mean a physical portion of the Project, as described in design documents, in keeping with the project purpose, that is environmentally acceptable, is complete, will not create a hazard, and functions independently enough for the Non-Federal Sponsor to operate and maintain in advance of completion of the entire project or separable element, all as determined by the District Engineer after consultation with the Non-Federal Sponsor.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "Section 211 work" shall mean construction of discrete segments of the Project by the Non-Federal Sponsor in accordance with Article II of this Agreement. The term

shall also mean work performed by the Non-Federal Sponsor subsequent to October 1, 1993 that is incidental to its construction of discrete segments of the Project including but not limited to engineering, pre-design, design, construction management, construction surveying, and construction. The Section 211 work does not include any work associated with construction of betterments, or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the Section 211 work.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. In order to expedite construction of the Project, the Non-Federal Sponsor desires to carry out Section 211 work. After consultation with the Government, the Non-Federal Sponsor shall determine what Section 211 work it intends to carry out and shall provide written notice to the Government that identifies the nature and scope of that Section 211 work. Within a mutually agreed upon time thereafter, the Non-Federal Sponsor shall submit its detailed plans for carrying out such work to the Government for approval. Such plans shall include, but are not necessarily limited to, planning and design documents, environmental documentation, real estate requirements including relocations and P.L. 91-646 assistance benefits, cost estimate, schedule for the further design and construction of the Section 211 work, and operations and maintenance requirements.

B. Following receipt of the Non-Federal Sponsor's plans for carrying out the Section 211 work, the District Engineer shall expeditiously review such plans in consultation with the Non-Federal Sponsor. If the District Engineer determines that the Section 211 work proposed in such plans represents a discrete segment of the Project and is consistent with the authorization for the Project and its overall economic justification, and that completion of the work in the manner and time frame proposed is compatible with completion of the Project in a timely manner and would not create a potential hazard, the District Engineer shall provide a written determination to the Non-Federal Sponsor to such effect together with written approval of such plans as the basis for carrying out that Section 211 work by the Non-Federal Sponsor. In the event that the District Engineer cannot provide the written determination and approval due to areas of disagreement with the submitted plans, or for other reasons, the District Engineer shall provide a written notice to the Non-Federal Sponsor that describes the areas of disagreement or specific issues that must be resolved before approval shall be provided. When such issues have been resolved to the satisfaction of the District Engineer, he shall then provide the written determination and the written approval of the plans to the Non-Federal Sponsor as the basis for carrying out the proposed Section 211 work. The District Engineer shall not unreasonably withhold approval of the plans for such Section 211 work.

C. After the District Engineer provides the written determination and the written approval of the Non-Federal Sponsor's plans, the Non-Federal Sponsor shall prepare detailed plans and specifications and solicitations for construction contracts for implementation of that

Section 211 work and submit such documents to the District Engineer for review and approval. The Non-Federal Sponsor shall also submit such additional documentation as the District Engineer may require to reflect that the Non-Federal Sponsor has obtained all necessary Federal and State permits and to reflect compliance with all requirements of NEPA including those contained in Section 401 and Section 404 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1341 and Sec. 1344). Upon resolution of outstanding issues or areas of disagreement, if any, the District Engineer shall provide written approval to the Non-Federal Sponsor of the detailed plans and specifications and solicitation documents. In addition, the District Engineer shall also provide a written detailed estimate of the amount of costs that the Government would have incurred if the Government had designed and constructed such work, specifically including the estimated costs that the Government would have incurred for review, approval, and oversight of such work.

D. Upon receipt of the written approval and written detailed estimate pursuant to paragraph C. of this Article, the Non-Federal Sponsor shall expeditiously construct that Section 211 work in accordance with the approved plans, plans and specifications, and permits. The Non-Federal Sponsor may perform Section 211 work with their own work forces or by contract. If performed by contract, the Non-Federal Sponsor shall secure competitive bids by advertising, and shall award all contracts to the lowest responsive, responsible bidder. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor shall also afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof.

E. Through exercise of the right to enter given pursuant to Article VIII.B. of this Agreement, the Government may regularly monitor and inspect all Section 211 work during the construction thereof to ensure that such construction is in compliance with the plans and specification approved by the Government and with applicable permits. The Government shall have no authority to direct the work performed by the Non-Federal Sponsor and the performance of all work shall be exclusively within the control of the Non-Federal Sponsor.

F. The Non-Federal Sponsor shall notify the District Engineer in writing when construction of each discrete segment of the Section 211 work is physically complete. The Non-Federal Sponsor shall furnish the Government with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual"), subject to review and approval by the Government. Thereafter, the Government shall inspect the completed work to verify that the Section 211 work was accomplished in a satisfactory manner and in accordance with the approved plans and specifications and applicable permits and is otherwise suitable for acceptance as part of the Project. When such verification is completed,

the District Engineer shall notify the Non-Federal Sponsor in writing that the discrete segment of the Section 211 work is accepted as part of the Project or that the entire Project is complete, as the case may be.

G. Upon receipt of the notification in paragraph F. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or discrete segment of the Project in accordance with Article VIII of this Agreement. However, costs incurred by the Non-Federal Sponsor in the repair, replacement, or rehabilitation of completed Section 211 work that are due to damages from a storm event or other Act of God that occurs prior to the acceptance of such work by the Government pursuant to paragraph F. of this Article shall be considered a project cost subject to cost sharing in accordance with the provisions of this Agreement.

H. After acceptance of Section 211 work as part of the Project pursuant to paragraph F. of this Article, the Non-Federal Sponsor shall submit such information as the Government may require to determine the amount of costs of the Section 211 work that shall be included in total project costs and the amount of reimbursement owed to the Non-Federal Sponsor for construction of such work. After an audit in accordance with Article X.C of this Agreement to determine reasonableness, allocability, and allowability of costs, and after consultation with the Non-Federal Sponsor, the Government shall determine the amount of costs of Section 211 work that shall be included in total project costs as based on either the actual costs incurred by the Non-Federal Sponsor in construction of that Section 211 work (including costs incurred for engineering, pre-design, construction management and construction surveying), plus the actual costs incurred by the Government for review, approval and oversight of the Non-Federal Sponsor's Section 211 work, or the Government's estimate determined pursuant to paragraph C. of this Article, updated to account for contract modification and change orders that the Government would have entered into if it had designed and constructed such work, whichever is less. The Government shall also determine the amount of reimbursement owed to the Non-Federal Sponsor which shall equal the amount of the Federal share of the costs of that Section 211 work as determined in accordance with the provisions of this Agreement, less the Federal share of any funds already contributed by the Government in its review, approval and oversight of the Section 211 work. The amount of reimbursement owed to the Non-Federal Sponsor shall not be subject to interest charges nor to adjustment to reflect changes in price levels between the dates of completion and reimbursement.

I. After the Government determines the amount of reimbursement owed to the Non-Federal Sponsor for the construction of Section 211 work pursuant to paragraph H. of this Article, the Government shall make such reimbursement in accordance with such paragraph, subject to availability of appropriations. Section 211 work initiated or completed prior to the execution of this Agreement shall be eligible for reimbursement, subject to the applicable provisions in this Article, as determined by the District Engineer.

J. The Non-Federal Sponsor shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall contribute 5 percent in cash of total project costs.

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

3. If the value of the Non-Federal Sponsor's contributions under paragraphs J.1. and J.2. of this Article and Articles V, X, and XV.A. of this Agreement is less than 25 percent of total project costs, the Non-Federal Sponsor shall provide an additional contribution in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of total project costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs J.2. and J.3. of this Article and Articles V, X, and XV.A. of this Agreement exceeds 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

K. The Non-Federal Sponsor may request that the Government accomplish Section 211 work. Such request shall be in writing and shall describe the Section 211 work requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested Section 211 work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all such costs, subject to the provisions in paragraph H. of this Article, and shall pay all such costs in advance in accordance with Article VI.B. of this Agreement. Upon confirmation by the Government that the Section 211 work is part of the Project, the costs incurred herein shall be subject to reimbursement in accordance with the provisions of this Agreement.

L. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

M. The Government shall perform a final accounting in accordance with Article VI.C. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs J., K., and N. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs J., K., and N. of this Article.

N. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.B. of this Agreement.

O. In the event that the Non-Federal Sponsor elects to construct betterments during the period of construction, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to construct. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments, including costs associated with obtaining permits and shall pay all such costs directly to its contractor or contractors and without reimbursement by the Government.

P. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

Q. The Non-Federal Sponsor shall, within its authority, exact ordinances and promulgate regulations to prevent construction and encroachment on the channels and other project works that would reduce their flood-carrying capacity, or hinder maintenance and operations, and control development in the project area to prevent an undue increase in the flood damage potential.

R. The Non-Federal Sponsor shall, at least annually, inform affected interests regarding the limitations of the protection afforded by the Project.

S. The Non-Federal Sponsor shall publicize floodplain information in the areas concerned and provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the floodplain and in adopting such regulations as may be necessary to ensure compatibility between future development and protection levels provided by the Project.

T. The Non-Federal Sponsor shall comply with and include provisions consistent with all applicable Federal laws and regulations in all contracts issued in furtherance of the Project.

ARTICLE III -LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project,

including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article as well as that of any contribution provided for the Section 211 work prior to the effective date of this Agreement. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in the total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of the total project costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

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

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-

of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

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

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the contractor with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the Section 211 work completed prior to this Agreement, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awarded the first construction contract for the Section 211 work, or, if the Non-Federal Sponsor performed the construction with its own labor, the date that the Non-Federal Sponsor began construction of the Section 211 work. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

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

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

thereon, which shall be deemed to be the fair market value.

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

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

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

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

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

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

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

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

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

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

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

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of acquisitions, relocations, design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or discrete segments of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Non-Federal Sponsor after consultation with the Government.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for assuring construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

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

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By October 31st each year and periodically as needed thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions and reimbursements to the Non-Federal Sponsor provided to date and the current projections of total project costs, of total costs

due to betterments, of the maximum total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of each party's share of total project costs, of amounts required in accordance with Articles II.J., II.K., and II.N. of this Agreement, of the funds the Government projects it shall reimburse the Non-Federal Sponsor for the upcoming fiscal year, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$199,430,000, the Non-Federal share is projected to be \$70,180,000, and the amount of reimbursement by the Government is projected to be \$125,810,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. In advance of the Government incurring any financial obligation associated with additional work under Article II.K. and Article II.N. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 90 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED Galveston" to the District Engineer or provide an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 90 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through either of the payment mechanisms described above.

C. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, each party's required share thereof, and the amount of reimbursement. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.K. and Article II.N. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any additional work performed by the Government in accordance with Article II.K. and Article II.N. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs plus costs due to any additional work performed by the Government in accordance with Article II.K. and Article II.N. of this Agreement by delivering a check payable to "FAO USAED Galveston" to the District Engineer or

provide an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any additional work performed by the Government in accordance with Article II.K. and Article II.N. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

D. Limitations on Reimbursements:

1. Reimbursement for the design or construction of a discrete segment performed by the Non-Federal Sponsor shall be subject to the availability of funds for that purpose and shall not take precedence over other pending projects of higher priority.

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

3. The amount of reimbursement to the Non-Federal Sponsor is not subject to adjustment for interest charges, nor is it subject to adjustment to reflect changes in price levels between the dates of completion of a discrete segment and reimbursement.

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

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

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are

incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.F. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or discrete segment of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal Sponsor's audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis

of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans.

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner or any other public official representing the local sponsor, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.J., II.K., II.N., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

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

C. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the

Non-Federal Sponsor 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.

D. Should the Non-Federal Sponsor fail to complete the Project, it shall be required to refund all previously received reimbursements to the Government. However, if the Government and the Non-Federal Sponsor mutually agree either to not initiate construction or not continue construction of the Project, after considering any liability that may arise under CERCLA, as provided for in Article XV.C. of this Agreement, this shall not be considered a failure to complete this Project.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the

Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

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

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Director
Harris County Flood Control District
9900 Northwest Freeway
Houston, TX 77092

If to the Government:

District Engineer
Galveston District
U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77550

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

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

B. As specified in Section 7(a) of Public Law 93-291, 16 U.S.C. § 469c(a), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. § 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government.

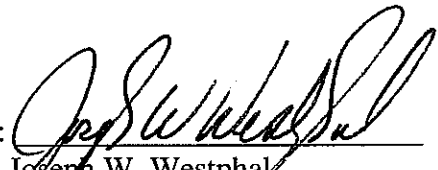
ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

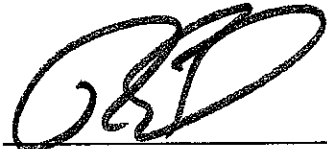
The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum cost of the Authorized Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Authorized Project financial obligation, make an Authorized Project expenditure, or afford credit or reimbursement toward total cost of construction of the Authorized Project for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, credit or reimbursement would result in total cost of construction of the Authorized Project exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$1,270,600,000, as calculated in accordance with ER 1105-2-100 using October 1, 1998 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of Public Law 99-662.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE HARRIS COUNTY FLOOD CONTROL DISTRICT, HARRIS COUNTY, TEXAS

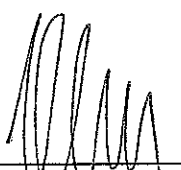
BY: 
Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

BY: 
Robert Eckels
County Judge
Harris County, Texas

DATE: 03 MAR 2000

DATE: FEB 08 2000

APPROVED AS TO FORM:

BY: 
Michael P. Fleming
County Attorney

CERTIFICATE OF AUTHORITY

I, Michael P. Fleming, do hereby certify that I am the principal legal officer of the Harris County Flood Control District, that the Harris County Flood Control District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Harris County Flood Control District in connection with the Detention Element of the Brays Bayou (Houston), Texas project and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as provided by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b) and that the persons who have executed this Agreement on behalf of the Harris County Flood Control District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 25th
day of January, 2000



Michael P. Fleming
County Attorney

CERTIFICATION REGARDING LOBBYING

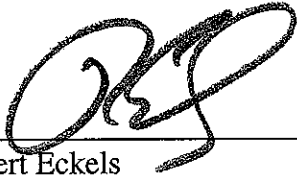
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.



Robert Eckels
County Judge
Harris County, Texas

DATE: FEB 08 2000

EXHIBIT A

ORDER AUTHORIZING EXECUTION ON BEHALF OF HARRIS COUNTY FLOOD CONTROL DISTRICT OF PROJECT COOPERATION AGREEMENT BETWEEN HARRIS COUNTY FLOOD CONTROL DISTRICT AND DEPARTMENT OF THE ARMY FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE BRAYS BAYOU (HOUSTON), TEXAS PROJECT

WHEREAS, Section 211 of the Water Resources Development Act of 1996, Public Law 104-303 (WRDA 96), as amended, authorized non-Federal interests to undertake flood control projects in the United States subject to obtaining any permits required pursuant to Federal and State laws in advance of actual construction;

WHEREAS, Section 211(f) of WRDA 1996 designated the Federally authorized Brays Bayou (Houston), Texas project for demonstrating the potential advantages and effectiveness of non-Federal implementation of flood control projects;

WHEREAS, Section 103 of WRDA 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Harris County Flood Control District has the authority and capability to furnish the non-Federal cooperation required by the federal legislation authorizing the Project and by other applicable law.


THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS, acting for and on behalf of the Harris County Flood Control District:

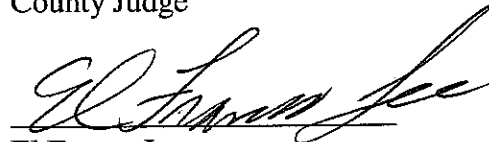
1. That County Judge Robert Eckels be authorized to execute, on behalf of the Harris County Flood Control District, an agreement entitled PROJECT COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE HARRIS COUNTY FLOOD CONTROL DISTRICT FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE BRAYS BAYOU (HOUSTON), TEXAS PROJECT, said agreement being incorporated herein for reference for all purposes as though fully set forth word for word; and
2. That during each year while there is any obligation or liability of the District under said Agreement, Commissioners Court shall compute and ascertain the amount of ad valorem tax,

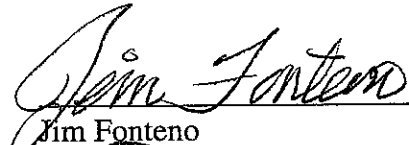
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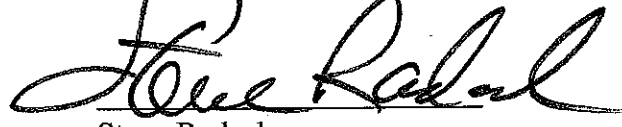
based on the latest approved tax rolls of the Harris County Flood Control District, with full allowances being made for delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to fulfill the obligations and liabilities of the District under said Agreement during any such year, in no instance to be less than two per cent (2%) of such obligations, together with all interest thereon. Said rate and amount of ad valorem tax is levied against all taxable property in said Harris County Flood Control District for each year while any obligations or liabilities of the District exist under said Agreement, and said ad valorem tax shall be assessed and collected each such year until all of the obligations under said agreement have been discharged and all liability thereunder discharged.

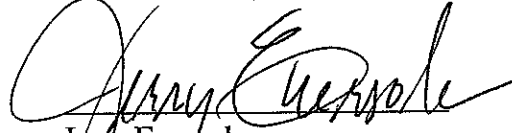
ADOPTED, PASSED AND APPROVED, this 8th day of February, 2000


Robert Eckels
County Judge


El Franco Lee
Commissioner, Precinct No. 1


Jim Fonteno
Commissioner, Precinct No. 2


Steve Radack
Commissioner, Precinct No. 3


Jerry Eversole
Commissioner, Precinct No. 4

ATTEST:

BEVERLY L. KAUFMAN
County Clerk

By 

CERTIFICATION OF LEGAL REVIEW

The draft Project Cost Sharing Agreement (PCA) for the Detention Element of the Brays Bayou, (Houston) Texas project has been fully reviewed by the Office of Counsel, USAED, Galveston.

2/14/2000

Thomas H Moore

TOM MOORE
District Counsel