

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS
FOR MODIFICATION OF THE
HOUSTON SHIP CHANNEL AND THE ENTRANCE CHANNEL PORTION
OF THE GALVESTON HARBOR AND CHANNELS, TEXAS, PROJECTS
OF THE
HOUSTON-GALVESTON NAVIGATION CHANNELS, TEXAS

THIS AGREEMENT is entered into this 10th day of June, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Acting Assistant Secretary of the Army (Civil Works), and the Port of Houston Authority (PHA) of Harris County, Texas (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of the Port Commission of the PHA.

WITNESSETH, THAT:

WHEREAS, improvement of the Houston-Galveston Navigation Channels, Texas which consists of the Houston Ship Channel and Galveston Harbor and Channel Projects located in the Galveston Bay Area of Texas (hereinafter the "Authorized Project") was authorized by Public Law 104-303, Section 101(a)(30) of the Water Resources Development Act of 1996;

WHEREAS, the City of Galveston, Texas is the non-Federal sponsor for the existing Galveston Harbor and Channel project, and an agreement has been executed between the City of Galveston and the PHA whereby the PHA shall be the lead Non-Federal Sponsor for improving the jointly-used entrance channel portion of the Galveston Harbor and Channel project without relieving the City of Galveston of the City's responsibilities regarding the operation and maintenance of the Entrance Channel;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for improvements to the Houston Ship Channel and the Entrance Channel portion of the Galveston Harbor and Channels (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, all previous projects or parts of the projects not covered by this Agreement and not impacted by the construction of this Project shall be operated and maintained under the requirements of the agreements governing each project;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the navigation features of the Project, and Section 204 of the Water Resources Development Act of 1992, as amended by Section 207 of the Water Resources Development Act of 1996, specifies the cost-sharing requirements applicable to the environmental restoration features of the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, (codified as amended at 42 U.S.C. § 1962d-5b), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each Non-Federal Sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

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

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 Project in accordance with the terms of this Agreement;

WHEREAS, the Government and Non-Federal Sponsor in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and team work prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the completion of a successful project;

WHEREAS, the Non-Federal Sponsor has performed engineering and design work identified in the Limited Reevaluation Report (hereinafter the "LRR") and Final Supplemental Environmental Impact Statement (hereinafter the "FSEIS"), dated November 1995, and approved by the Assistant Secretary of the Army (Civil Works) on July 30, 1996, for which the Non-Federal Sponsor shall receive credit. Credit for the work performed by the Non-Federal Sponsor that the Government determined resulted in a reduction in Federal Appropriations during the preconstruction engineering and design phase and construction phases of the Project shall be afforded, subject to Government audit, towards the Non-Federal Sponsor's cash contribution required during construction. Upon execution of this Agreement, the credit, which is limited to \$5,400,000, for the Non-Federal Sponsor's effort as delineated in the LRR and FSEIS prior to the Water Resources Development Act of 1996 will be applied towards to Non-Federal Sponsor's required contribution;

WHEREAS, cash contributions in the amount of \$1,020,000 were made by the Non-Federal Sponsor that the Government determined resulted in a reduction in Federal

appropriations during the preconstruction engineering and design, and construction phases of the Project, and credit for this amount shall be afforded, subject to signing of the Agreement and Government audit, towards the Non-Federal Sponsor's required contribution. Receipt of these advanced funds was approved by the Assistant Secretary of the Army (Civil Works) and the Congress of the United States (hereinafter the "Congress") in a Memorandum of Agreement (hereinafter the "MOA") dated July 3, 1996;

WHEREAS, Section 148 of the Water Resources Development Act of 1976, authorizes the Secretary of the Army, acting through the Chief of Engineers, to undertake management activities to extend the useful life of dredged material disposal areas;

WHEREAS, Section 4 of the River and Harbor Act, approved March 4, 1915 (38 STAT 1053, 33 U.S.C. § 560), authorizes the Secretary, in his discretion, to receive and expend contributed funds for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation; and,

WHEREAS, the U. S. Army Engineer for the Galveston District (hereinafter the "District Engineer") has been delegated the authority by the Acting Assistant Secretary of the Army (Civil Works) to 1) accept items of work accomplished by the Non-Federal Sponsor which has been determined necessary to implement the Project; and, 2) identify the costs for credit toward the Non-Federal Sponsor's required contribution. This credit shall be subject to Government audit and the availability of Federal funds.

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 the general navigation features, environmental restoration features, and all lands, easements, rights-of-way, relocations, or removals that the Government, in accordance with Article III of this Agreement, determines to be necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, but shall not include aids to navigation or the local service facilities.

B. The term "general navigation features" shall mean:

1. Deepening of the existing Entrance Channel from the current depth of 42 feet to 47 feet (which includes two feet for wave allowance), with a bottom width of 800 feet, from Bolivar Roads extending offshore into the Gulf of Mexico for a distance of approximately 14.4

miles. Deepening will include two feet of advance maintenance and two feet of allowable overdepth dredging;

2. Deepening and widening of the existing Bay Reach, beginning at Morgans Point extending to Bolivar Roads (approximately 26 miles), to the Authorized Project depth of 45 feet and a bottom width of 530 feet; including boater access channels to a depth of 8 feet with varying bottom widths. Deepening will include two feet of advance maintenance and two feet of allowable overdepth dredging;

3. Deepening and widening of the existing Bayou Reach, beginning at Boggy Bayou to Morgans Point (approximately 13 miles), to the Authorized Project depth of 45 feet and a bottom width of 530 feet. Deepening will include advance maintenance dredging, which varies from two to four feet, and an allowable overdepth of two feet;

4. Dredged or excavated material disposal facilities at Lost Lake, Goat Island, Peggy Lake, Alexander Island, Spilmans Island, Cell 15, Cell 14, Offshore Berm, and Offshore Disposal Facility; and reconstruction of Redfish Island (subject to final design considerations and acceptance thereof), and;

5. Creation of approximately 118 acres of artificial oyster reef in Galveston Bay for mitigation of environmental impacts associated with the recommended general navigation features.

All as generally described in the LRR and FSEIS, dated November 1995, and approved by the Assistant Secretary of the Army (Civil Works) on July 30, 1996.

C. The term "environmental restoration features" shall mean:

1. Construction of 690 acres of tidal marsh, a colonial waterbird nesting island of 12 acres, using new work dredged material, and associated monitoring during construction (hereinafter the "initial environmental restoration features") as generally described in the LRR and FSEIS; and,

2. Incremental construction of an additional 3,560 acres of tidal marsh over the economic life of the general navigation features using maintenance dredged materials (hereinafter the "deferred environmental restoration features"), as generally described in the LRR and FSEIS.

The final size and configuration of the environmental restoration features both initial and deferred, except for the oyster reef mitigation, will depend on the actual quantities and characteristics of the new work and maintenance dredged materials.

D. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete. For environmental restoration features the term is limited to completed levee systems for each marsh cell, the development of the marsh within each cell, and the bird island. No portion shall be deemed complete and suitable for operation and maintenance until all construction is complete and, in the case of the development of a marsh within each cell, free exchange of tidal movement between marsh and the adjacent bay has been established.

E. The term "local service facilities" shall mean the facilities that are necessary to realize the benefits of the general navigation features, as generally described in, and required of the Non-Federal Sponsor by, the LRR and FSEIS. The local service facilities are the berthing areas for the private docks at Exxon, Shell, Oiltanking, Paktank, Houston Fuel Oil, Cargil, and Intercontinental Terminals, Inc.

F. The term "total cost of construction of the general navigation features" shall mean all costs incurred by the Government and the Non-Federal Sponsor in accordance with the terms of this Agreement, that are directly related to construction of the general navigation features. 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 including the value of the Non-Federal Sponsor's PED Coordination Team Activities; 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.1. of this Agreement; costs of historic preservation activities in accordance with Articles XIX.A. and XIX.E.1. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States and including the incremental cost of maintenance in accordance with the provisions of Article II.F. of this Agreement; costs of mitigation; costs of associated monitoring; supervision and administration costs including construction management costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; incidental costs of removals accomplished by the Non-Federal Sponsor before the end of the period of construction or during any subsequent period of construction in accordance with Article II.U. of this Agreement; direct and incidental costs of removals accomplished by the Government before the end of the period of construction or during any subsequent period of construction in accordance with Article II.T. of this Agreement; and costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, relocations; any Disposal Area Management Program (hereinafter the "DAMP") activities, except those demonstration and design studies

accomplished as part of the preconstruction engineering and design or advanced engineering and design; any costs of removals accomplished by the Non-Federal Sponsor other than incidental costs; any financial obligations for operation or maintenance of the general navigation features; all costs assigned to existing Federal navigation projects including maintenance dredging during construction pursuant to Article II.F. of this Agreement; any costs due to betterments; any costs of dispute resolution under Article VII of this Agreement; any costs of aids to navigation; or any costs of construction, operation, or maintenance of the local service facilities.

G. The term "total cost of construction of the environmental restoration features" shall mean all costs incurred by the Government and the Non-Federal Sponsor in accordance with the terms of this Agreement, that are directly related to construction of the initial environmental restoration features and the deferred environmental restoration features. 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 including the value of the Non-Federal Sponsor's PED Coordination Team activities; 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.1. of this Agreement; costs of historic preservation activities in accordance with Articles XIX.A. and XIX.E.1. of this Agreement; actual construction costs; the costs of mitigation; the costs of monitoring during a period of construction; supervision and administration costs, including construction management; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; incidental costs of removals accomplished by the Non-Federal Sponsor before the end of a period of construction in accordance with Article II.U. of this Agreement; direct and incidental costs of removals accomplished by the Government before the end of a period of construction in accordance with Article II.T. of this Agreement; the value of lands, easements, rights-of-way, and relocations necessary for the environmental restoration features for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include any financial obligations for operation, maintenance, repair, replacement, or rehabilitation of the environmental restoration features; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

H. The term "total cost of construction of the initial environmental restoration features" shall mean that portion of the total cost of construction of the environmental restoration features that the Government assigns to the initial environmental restoration features.

I. The term "total cost of construction of the deferred environmental restoration features" shall mean that portion of the total cost of construction of the environmental restoration features that the Government assigns to the deferred environmental restoration features.

J. The term "financial obligation for construction" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in the total cost of construction of the general navigation features or in the total cost of construction of the environmental restoration features.

K. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.H. and II.I. of this Agreement to total financial obligations for construction, as projected by the Government.

L. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for either issuance of the solicitation for the first contract for construction of the general navigation features or the initial environmental restoration features or commencement of construction of the general navigation features or the initial environmental restoration features using the Government's own forces, to the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the general navigation features and the initial environmental restoration features are complete, except for construction of any dredged or excavated material disposal facility identified in Article I.B. of this Agreement for which a construction contract has not been awarded at the time of the written notice.

M. The term "subsequent period of construction" shall mean a period of time after the period of construction beginning with the date that the Government first notifies the Non-Federal Sponsor in writing of the scheduled date for either issuance of the solicitation for the contract or commencement using the Government's own forces of construction of a dredged or excavated material disposal facility that is part of the general navigation features as defined in Article I.B. of this Agreement or of construction of deferred environmental restoration features that is part of the environmental restoration features as defined in Article I.C. of this Agreement and ending with the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that construction is complete. There may be more than one subsequent period of construction.

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

O. The term "bridge over navigable waters of the United States" shall mean a lawful bridge over the navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

P. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway, railroad (including a bridge thereof), or public facility excluding existing bridges over navigable waters of the United States, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, 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 demolition of the affected facility or part thereof.

Q. The term "removal" shall mean eliminating an obstruction (other than a bridge over the navigable waters of the United States) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, including the borrow of materials or the disposal of dredged or excavated material associated therewith; 2) elimination must be accomplished before the end of the period of construction or during a subsequent period of construction; and 3) the Non-Federal Sponsor, the State of Texas, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof. The term shall also mean the elimination of an obstruction to the construction, operation, or maintenance of the general navigation features or environmental restoration features when such elimination is specifically provided for, and is identified as a removal, in the authorizing legislation for the Project or any report referenced therein.

R. 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.

S. The term "betterment" shall mean a change in the design and construction of an element of the general navigation features or environmental restoration features, accomplished at the request of the Non-Federal Sponsor, 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.

T. The term "dredged or excavated material disposal facility" shall mean the improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with the construction, operation, or maintenance of the other general navigation features. Such improvements may include but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes, and other activities beyond regularly recurring management activities.

U. The term "over-depth" shall mean additional depth required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies.

V. The term "utility" shall mean any facility owned by a public or private entity which is obligated either by law or practical necessity to continue to maintain and operate said facility as reasonably necessary to the public welfare.

W. The term "PED Coordination Team Activities" shall mean the oversight of issues and work efforts related to preconstruction engineering and design, including scheduling of report and work products; development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project; and other related matters.

X. The term "value of the Non-Federal Sponsor's PED Coordination Team Activities" shall mean the reasonable, allowable, and allocable costs incurred by the Non-Federal Sponsor after October 1, 1996 for PED Coordination Team Activities as determined by the Government and subject to an audit in accordance with Article X of this Agreement.

Y. The term "Disposal Area Management Program" (DAMP) shall mean recurring activities associated with the management of a dredged or excavated material disposal facility to maximize capacity and extend its useful life, including, but not limited to: operation and maintenance, including replacement, of weirs and spillboxes; maintenance and repair of dikes, embankments and associated access features; operation and maintenance of pumps and pipes, including replacement; vegetation and vector control; coordination of material placement; routine raising of levees and dikes, excavation of ditches, installation of drains or other activities to facilitate dewatering, settlement and consolidation of dredged material to achieve maximum capacity and life; and, engineering monitoring studies, designs and geotechnical investigations, regulatory compliance activities and administrative activities, all deemed necessary to operate and maintain the confined dredged or excavated material disposal facilities.

Z. The term "monitoring during a period of construction" refers to the collection, review, and documentation of data to ensure the environmental restoration features or functional portion of the Project are achieving their intended purpose and shall be deemed complete when the items which define the end of the period of construction or any subsequent period of construction, as appropriate are satisfied. Monitoring during a period of construction consists of the following:

1. Levees

a. Surveys and analyses necessary to establish the settlement and consolidation of the levees are consistent with those used in the design calculations.

b. Inspection of levee vegetation to verify adequate coverage to protect the levees from non-catastrophic events.

2. Marsh

a. Surveys and analyses of the dredged material to establish that settlement and consolidation of the fill material is consistent with the design calculations to achieve the target elevation range for Spartina alterniflora marsh.

b. Inspection of the vegetation to verify the specified survival, growth and coverage as specified in the construction contract documents is being achieved.

c. Inspection of the internal channels to verify they are achieving the anticipated exchange of water between the bay and the marsh cell.

AA. The term "existing project" shall mean the Galveston Harbor and Channel, Texas, and the Houston Ship Channel, Texas, projects as authorized by the River and Harbors Acts of 1971 and 1958, as presently being operated and maintained as of the date of this Agreement.

BB. The term "10 percent amount" shall mean an amount equal to 10 percent of the total cost of construction of the general navigation features.

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

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the general navigation features and environmental restoration features (including alteration, lowering, raising, or replacement and attendant removal of existing bridges over navigable waters of the United States), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project and the local service facilities. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. The Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the

contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the general navigation features and environmental restoration features (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction and during any subsequent period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for a contract for the general navigation features or environmental restoration features prior to contractor notification. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but issuance of the Notice of Acceptance on the general navigation features or environmental restoration features (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

B. The Government shall afford the Non-Federal Sponsor credit for the following items subject to signing of this Agreement, Government audit and availability of Federal funding:

1. The Non-Federal Sponsor shall receive credit for engineering and design work identified in the LRR and FSEIS which the Government determined resulted in a reduction of Federal appropriations during the preconstruction engineering and design phase of the Project. Credit for this work is limited to \$5,400,000 and shall be applied to the Non-Federal Sponsor's required contribution and apportioned between the general navigation features and the environmental restoration features, as appropriate.

2. The Non-Federal Sponsor shall receive credit for cash contributions in the amount of \$1,020,000 that the Government determined reduced the need for Federal appropriations pursuant to a MOA executed between the parties on July 3, 1996. This credit shall be applied to the Non-Federal Sponsor's required contribution and apportioned between the general navigation features and the environmental restoration features, as appropriate.

3. The Non-Federal Sponsor shall receive credit for the costs associated with additional engineering studies and field demonstrations on the operations and management of the Project's dredged and excavated material disposal facilities to the extent the Government determined resulted in a reduction of Federal appropriations beginning during advanced engineering and design through completion of the studies, demonstrations and final report in an amount not to exceed \$2,600,000. This credit shall be applied to the Non-Federal Sponsor's required contribution and apportioned between the general navigation features and the environmental restoration features, as appropriate.

4. The Non-Federal Sponsor shall receive credit for the costs associated with other work items accomplished by the Non-Federal Sponsor which have been determined by the District Engineer as necessary to implement the Project and which have or shall result in a

reduction of Federal appropriations during the advanced engineering and design, the preconstruction, engineering and design, the engineering and design, and the construction phases of the Project as authorized by Section 101(a)(30) of the Water Resources Development Act of 1996, Public Law 104-303. These credits shall be applied to the Non-Federal Sponsor's required contribution and apportioned between the general navigation features and the environmental restoration features, as appropriate.

5. As Federal appropriations are made available to pay the Federal share of construction of the Project, the Government shall afford credit for funds contributed during the period of construction in accordance with paragraph II.J. of this Article against the Non-Federal Sponsor's required cash contribution and the 10 percent amount. The Government shall credit this amount, contributed during the period of construction, toward the Non-Federal Sponsor's 10 percent amount and the required cash contribution which will be apportioned between the general navigation features or the initial environmental restoration features or both as may be appropriate for the remainder of the period of construction. If after the final accounting at the end of the period of construction, it is determined that the Non-Federal Sponsor has contributed funds in excess of its required cash contributions for the general navigation features constructed during the period of construction and the initial environmental restoration features and the principal amount as determined by Article II.M. of this Agreement equals \$0, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds contributed during the period of construction (hereinafter the "excess contributed funds") in accordance with paragraph II.J. of this Article unless specifically directed by Congress in appropriations acts.

6. As Federal appropriations are made available to pay the Federal share of construction of the Project, the Government shall afford credit for the aforesaid excess contributed funds or for funds contributed during a subsequent period of construction in accordance with paragraph II.J. of this Article against the Non-Federal Sponsor's required cash contribution and the 10 percent amount. The Government shall credit this amount toward the Non-Federal Sponsor's 10 percent amount and required cash contribution which will be apportioned between the general navigation features constructed during the subsequent period of construction or the deferred environmental restoration features or both as may be appropriate for the remainder of the subsequent period of construction. If after reconciling the final accounting at the end of a subsequent period of construction in accordance with Article VI.E.5. of this Agreement, it is determined that the Non-Federal Sponsor has contributed funds in excess of its required cash contributions for the general navigation features constructed during the subsequent period of construction or the deferred environmental restoration features and the principal amount as determined by Article II.M. of this Agreement equals \$0, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds contributed during the period of construction or during a subsequent period of construction in accordance with paragraph II.J. of this Article unless specifically directed by Congress in appropriations acts.

C. 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.C. of this Agreement.

D. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, or rights-of-way that the Government determines the Non-Federal Sponsor must provide for the construction, operation, or maintenance of the general navigation features or environmental restoration features, including the borrowing of material or the disposal of dredged or excavated material associated therewith, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features. *

E. The Non-Federal Sponsor may request the Government to provide lands, easements, or rights-of-way, or to perform relocations for the general navigation features, environmental restoration features or the local service facilities on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services 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 of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, or rights-of-way or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.D. of this Agreement.

F. The Government shall assign all costs associated with the dredging of material from the dimensions, including over-depth, of any existing Federal navigation project to the costs of operation and maintenance of the existing Federal navigation project. The Government shall pay 100 percent of the cost of maintenance dredging during construction to remove material accumulating in completed portions of the general navigation features that would normally have accumulated in the existing (40-foot) project. This cost shall not be included in the total cost of construction of the general navigation features. The incremental cost of maintenance to remove material from completed portions of the general navigation features that are over and above historic maintenance costs, adjusted if necessary to reflect the impact of low probability occurrences such as a hurricane or major flood, shall be allocated to the total cost of construction

of the general navigation features. The removal of the residual material from the general navigation features associated with slope adjustment and any incidental maintenance material shall be removed prior to the reaches of the general navigation features being operated and maintained by the Government. The costs of this removal shall be allocated to the total cost of construction of the general navigation features. However, the Government, in consultation with the Non-Federal Sponsor, shall evaluate the relative cost of deferring this removal until the first maintenance cycle for the Project. If it is determined to be less costly to defer the removal, then the removal shall be deferred and the incremental cost of maintenance for that first maintenance cycle above historical maintenance cost shall be allocated to the total cost of construction of the general navigation features as described above. The Government, in accordance with Federal laws, regulations, and policies, shall assign all costs included or to be included in the total cost of construction of the general navigation features to one or more of the following depth increments: dredging to a depth not in excess of 20 feet; and dredging to a depth in excess of 20 feet but not in excess of 45 feet. The Government shall include any costs associated with over-depth dredging accomplished as part of the general navigation features in the costs assigned to the Project depth.

★ G. The Non-Federal Sponsor shall contribute a share of the total cost of construction of the general navigation features as follows: 10 percent of that portion of the total cost of construction of the general navigation features assigned to dredging to a depth not in excess of 20 feet; plus 25 percent of that portion of the total cost of construction of the general navigation features assigned to dredging to a depth in excess of 20 feet but not in excess of 45 feet.

H. If the Government projects that the value of the Non-Federal Sponsor's PED Coordination Team Activities assigned to the total cost of construction of the general navigation features, contributions under paragraph U. of this Article, and Articles V, X.B., X.C., and XV.A.1. of this Agreement plus any credits afforded in accordance with Article II.B. of this Agreement and not otherwise applied against other required contributions will be less than its share required by paragraph G. of this Article, the Non-Federal Sponsor shall provide a contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to the amount required by paragraph G. of this Article.

★ I. The Non-Federal Sponsor shall contribute 25 percent of the total cost of construction of the environmental restoration features in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the environmental restoration features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, or maintenance of the environmental restoration features.

GENERAL NAVIGATION FEATURES
Shallow DRAFT 10%
Deep DRAFT 25%

Environmental FEATURES
25%

2. If at any time the Government projects that the value of the Non-Federal Sponsor's PED Coordination Team Activities assigned to the total cost of construction of the environmental restoration features, contributions under paragraphs U. and I.1. of this Article, and Articles V, X.B., X.C., and XV.A.1. of this Agreement plus any credits afforded in accordance with Article II.B. of this Agreement and not otherwise applied against other required contributions will be less than 25 percent of the total cost of construction of the environmental restoration features, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of the total cost of construction of the environmental restoration features.

3. If at any time, the Government determines that the value of the Non-Federal Sponsor's PED Coordination Team Activities assigned to the total cost of construction of the environmental restoration features, contributions under paragraphs U. and I.1. of this Article, and Articles V, X.B., X.C., and XV.A.1. of this Agreement plus any credits afforded in accordance with Article II.B. of this Agreement and not otherwise applied against other required contributions has exceeded 25 percent of the total cost of construction of the environmental restoration features, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 25 percent of the total cost of construction of the environmental restoration features or, at the request of the Non-Federal Sponsor, apply all or a portion of such excess to the Non-Federal Sponsor's required contributions for deferred environmental restoration features or general navigation features to be constructed after this determination.

J. The Non-Federal Sponsor may offer in writing to prepay a portion or all of its required cash contribution and the 10 percent amount during the period of construction or a subsequent period of construction, as applicable to the Government for construction of the Project. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Non-Federal Sponsor's required cash contribution and the 10 percent amount for the Project, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor. Upon receipt of such offer or offers, the Government may elect to accept such funds. Any funds contributed by the Non-Federal Sponsor pursuant to this paragraph shall be contributed gratuitously and without any expectation of reimbursement by the Government unless specifically directed by Congress in appropriations acts. As Federal appropriations are made available to pay the Federal share of construction of the Project, the Government shall afford credit for any such contribution against the Non-Federal Sponsor's required cash contribution and the principal amount. Any contributed funds which are not expended by the Government on the Project shall be refunded to the Non-Federal Sponsor, subject to the availability of funds. If the Government elects to accept such funds it shall notify the Non-Federal Sponsor of such acceptance in writing that sets forth any applicable terms and conditions, including use of such funds by the Government, and that is consistent with this

Agreement. In the event of a conflict between this Agreement and any such writing, this Agreement shall control.

K. The amount of credit afforded in accordance with Article II.B. of this Agreement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price level between the signing of this Agreement and the time the credit is afforded.

L. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the value of the Non-Federal Sponsor's PED Coordination Team Activities, the Non-Federal Sponsor contributions provided in accordance with paragraphs B., C., E., H., I., and U. of this Article and the Non-Federal Sponsor contributions provided in accordance with Articles V, X.B., X.C., and XV.A.1. of this Agreement, and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs C., E., G., and I., of this Article. The final accounting also shall determine the 10 percent amount. In the event there is a subsequent period of construction, the Government shall reconcile the final accounting in accordance with Article VI.E.5. of this Agreement.

M. Before furnishing the Non-Federal Sponsor with the results of the final accounting pursuant to paragraph L. of this Article, the Government shall afford credit against the 10 percent amount for the value, as determined in accordance with Article IV of this Agreement, of lands, easements, or rights-of-way, relocations, and the value of the Non-Federal Sponsor's credits described in Article II.B.1. through Article II.B.5. of this Agreement and not otherwise applied against other required contributions which were provided for the general navigation features before the end of the period of construction; provided, however, that such credit shall not exceed the 10 percent amount. In accordance with Article VI.E. of this Agreement, the Non-Federal Sponsor shall, over a period not to exceed 30 years, pay an amount equal to the 10 percent amount reduced by such credit (hereinafter the "principal amount"), with interest. In accordance with Article VI.E.4. of this Agreement, the Government also shall afford credit against the principal amount for the value, as determined in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, relocations; and the value of the Non-Federal Sponsor's credits afforded in accordance with Articles II.B.1. through II.B.6. of this Agreement and not otherwise applied against other required contributions for the general navigation features provided after the period of construction. In the event there is a subsequent period of construction and the Government reconciles the final accounting pursuant to Article VI.E.5. of this Agreement, the Non-Federal Sponsor, in accordance with Article VI.E.5. of this Agreement, shall pay any additional portion of the principal amount that is outstanding as a consequence of the reconciled final accounting.

N. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct or cause to be constructed the local service facilities, and shall be responsible for taking all actions to enable such construction. The Government shall have no responsibility under this Agreement for the construction of the

local service facilities or the construction of any other facilities provided by the Non-Federal Sponsor or a third party.

O. In accordance with Article VIII.A. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain or cause to be operated and maintained the local service facilities. The Government shall have no responsibility under this Agreement for the operation or maintenance of the local service facilities or the operation or maintenance of any other facilities provided by the Non-Federal Sponsor or a third party.

P. The Government shall operate and maintain the general navigation features in accordance with Article VIII.B. of this Agreement.

Q. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, replace, and, rehabilitate the environmental restoration features in accordance with Article VIII.A. of this Agreement.

R. The construction of levee systems and development of marsh within each cell of the environmental restoration features shall continue throughout the economic life of the Project or until termination of this Agreement, whichever occurs first.

S. The Non-Federal Sponsor shall not use Federal funds to meet its obligations for the Project under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

T. The Government shall accomplish all removals that neither the Non-Federal Sponsor or the State of Texas has the legal capability to accomplish where both the Non-Federal Sponsor and the State of Texas have made a written request for the Government to accomplish such removals, and shall accomplish all removals that the Government is expressly required to accomplish in the authorizing legislation for the Project or any report referenced therein.

1. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as a result of elimination of the obstruction, such removal shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, pursuant to Article II.D. of this Agreement.

2. All costs incurred by the Government in accomplishing removals shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and shared in accordance with the provisions of this Agreement.

U. The Non-Federal Sponsor shall accomplish all removals, other than those removals specifically assigned to the Government by paragraph T. of this Article, in accordance with the provisions of this paragraph.

1. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such removals, 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 accomplishing such removals. Unless the Government agrees to a later date in writing, prior to the issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features or construction of the environmental restoration features, or prior to the Government incurring any financial obligation for construction, operation, or maintenance of the general navigation features or construction of the environmental restoration features that it elects to perform with its own forces, the Non-Federal Sponsor shall accomplish all removals set forth in such descriptions that the Government determines to be necessary for that work.

2. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as a result of elimination of the obstruction, such removal shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, pursuant to paragraph D. of this Article.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing removals, shall be included in the total costs of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shared in accordance with the provisions of this Agreement. Incidental costs may include legal and administrative costs (such as owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the Non-Federal Sponsor in accomplishing removals, but shall not include any costs that the Non-Federal Sponsor or the State of Texas has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

V. The Government and the Non-Federal Sponsor shall continue to operate and maintain the remaining features of the existing project in accordance with Article XVI of this Agreement.

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

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, or rights-of-way necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, including those lands, easements, or rights-of-way necessary for the borrowing of material, the disposal of dredged or

excavated material relocations, and including those lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude for which no interest in land shall be requested and for which no credit shall be allowed if the Non-Federal Sponsor secures rights to land subject to the navigation servitude. The Government shall delineate which of the necessary lands, easements, or rights-of-way are necessary for the general navigation features and which are necessary for the environmental restoration features. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, or 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, or rights-of-way. Prior to the end of the period of construction, or the subsequent period of construction, as applicable, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way necessary for the construction of the general navigation features or environmental restoration features, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features or construction of the environmental restoration features, or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform with its own forces, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. For so long as the Authorized Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines are necessary for the operation and maintenance of the environmental restoration features and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Authorized Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government shall delineate which of the necessary relocations are necessary for the general navigation features and which are necessary for the environmental restoration features. 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. Unless the Government agrees to a later date in writing, prior to issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features or construction of the environmental restoration features or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform by its own forces, 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 work.

C. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting pursuant to Article VI.D. of this Agreement, or the credit afforded pursuant to Article II.M. of this Agreement equals the 10 percent amount, whichever occurs later, 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 paragraph A. or B. of this Article. Upon receipt of such documents the Government in a timely manner shall afford credit for the value of such contribution in accordance with Articles II.I.1. and II.M. of this Agreement, as appropriate.

D. 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, or rights-of-way necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

A. The Non-Federal Sponsor shall receive credit in accordance with Articles II.I.1. and II.M. of this Agreement, as appropriate, for the value of the lands, easements, or rights-of-way, 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, or relocations 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, or relocations to the extent that such items are provided or performed using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute. No credit for the costs of lands, easements, or rights-of-way shall be allowed if said lands are subject to the navigation servitude.

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 other than those the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.E. of this Agreement, 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 Government with authorization for entry thereto. 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. or B.4. 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 that real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest, or, in the event an authorization for entry is not required, no later than the end of the period of construction or the end of the subsequent period of construction, as applicable. 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, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, 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 necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, 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. In the event the Government modifies its determination

made pursuant to Article III.A. of this Agreement, the Non-Federal Sponsor shall receive credit for the documented incidental costs associated with preparing to acquire lands, easements, or rights-of-way identified in the original determination, 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.D. of this Agreement.

C. 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 that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.E. of this Agreement, 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. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. 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.

D. 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 or a utility, 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. For a relocation of a utility, the value shall be only that portion of relocation costs borne by the Non-Federal Sponsor 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.

4. 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.

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. Such representatives are not required to be employees of the Non-Federal Sponsor should the Non-Federal Sponsor choose to have a third party represent its interest and officially designate the representatives. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction and during each subsequent period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team. The Non-Federal Sponsor and the Government shall appoint an equal number of representatives to the Project Coordination Team, but in no case shall the number of representatives exceed four from each party.

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

C. Until the end of the period of construction, during each subsequent period of construction, and during performance of DAMP activities, the Project Coordination Team shall generally oversee the Project and DAMP activities, including but not necessarily limited to matters related to quality assurance; design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards, modifications, or claims; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; Three-Year DAMP Plan; anticipated requirements for operation and maintenance of the general navigation features and environmental restoration features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project, local service facilities, and DAMP activities. Oversight of the Project and DAMP activities shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on Project-related matters and matters associated with DAMP activities 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 construction of the Project and operation and maintenance of the general navigation features, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team related to construction of the Project shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and shared in accordance with the provisions of this Agreement. Each party shall be solely responsible for its costs of participation in the Project Coordination Team related to DAMP activities.

ARTICLE VI - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting for the Project, the Government shall maintain current records of contributions provided by the parties and current projections of the total cost of construction of the general navigation features, the total cost of construction of the initial environmental restoration features, the total cost of construction of the deferred environmental restoration features, and costs due to additional work under Article II.C. or Article II.E. of this Agreement. During the period of construction and any subsequent period of construction, the Government at least quarterly, but no less frequently than at the completion of a functional portion of the Project, shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the total cost of construction of the general navigation features, total cost of construction of the initial environmental restoration features, total cost of construction of the deferred environmental restoration features, of the portion of the total cost of construction of the general navigation features assigned to each depth increment in accordance with Article II.F. of this Agreement, of total costs due to additional work under Article II.C. or Article II.E. of this Agreement, of the maximum amount of the total cost of construction of the Authorized Project determined in accordance with Article XX of this Agreement, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.C., II.E., II.H., and II.I. of this Agreement, of the non-Federal proportionate share, of the funds required from the Non-Federal Sponsor for the upcoming fiscal year, of the credit to be afforded in accordance with Article II.B. of this Agreement, of the credit to be afforded in accordance with Article II.M. of this Agreement for the value of lands, easements, rights-of-way, or relocations contributed before the end of the period of construction for the Project and during any subsequent period of construction, of the 10 percent amount, of the principal amount, and of the installments to be paid in accordance with paragraph E.2. of this Article. Such a report shall also be furnished upon completion of the

general navigation features constructed during the period of construction. Thereafter, until the outstanding portion of the principal amount equals \$0, the Government, at least annually, shall provide the Non-Federal Sponsor with a report setting forth the outstanding portion of the principal amount and the current projection of the remaining installments to be paid in accordance with paragraph E.2. of this Article. On the effective date of this Agreement, the total cost of construction of the general navigation features is projected to be \$216,421,000, total cost of construction of the initial environmental restoration features is projected to be \$95,261,000, total cost of construction of the deferred environmental restoration features is projected to be \$216,726,000, and the Non-Federal Sponsor's contribution required under Articles II.H. and II.I. of this Agreement is projected to be \$54,063,000 for the general navigation features, \$23,815,000 for the initial environmental restoration features, and \$54,181,000 for the deferred environmental restoration features. These amounts are 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. The Non-Federal Sponsor shall provide the contributions required by Articles II.H. and II.I. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, or commencement of construction using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction and of such contributed funds the Government has agreed to accept in accordance with Article II.J. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited, the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of the period of construction or any subsequent period of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year and of such contributed funds the Government has agreed to accept in accordance with Article II.J. of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Nor

Federal Sponsor shall make the required funds for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction or during any subsequent period of construction, as applicable; and (c) additional financial obligations for construction of the Project that can be liquidated with the funds contributed in accordance with Article II.J. of this Agreement as they are incurred during the period of construction or during any subsequent period of construction, as applicable.

4. If at any time during the period of construction or any subsequent period of construction the Government, after consideration of the funds contributed in accordance with Article II.J. of this Agreement and for which credit shall be afforded in accordance with Article II.B.5. or Article II.B.6. of this Agreement, determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanisms specified in paragraph B.1. of this Article.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.C. or II.E. of this Agreement, 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 verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the required funds to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the funds required to pay for such additional work, or provide an Electronic Funds Transfer to pay for such additional work 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 cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government the full amount of the additional required funds through the funding mechanisms specified above.

D. After completion of each of the following: (a) the general navigation features constructed during the period of construction; (b) the initial environmental restoration features; (c) the period of construction; (d) each subsequent period of construction; (e) any functional portion of the Project; (f) the end of the economic life of the Project; or termination of this Agreement, and upon resolution of all relevant proceedings, claims, and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of such final accounting.

1. The final accounting shall determine the total cost of construction of the general navigation features, total cost of construction of the initial environmental restoration features, total cost of construction of the deferred environmental restoration features, each party's contribution provided thereto (including any credits afforded to the Non-Federal Sponsor), and each party's required share thereof. This final accounting also shall determine total costs due to additional work under Article II.C. or II.E. of this Agreement, and the Non-Federal Sponsor's contribution provided pursuant to Article II.C. or II.E. of this Agreement.

a. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor (including any credits afforded the Non-Federal Sponsor) is less than its required share of the total cost of construction of the general navigation features and total cost of construction of the environmental restoration features plus costs due to additional work under Article II.C. or II.E. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make an additional contribution to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of the total cost of construction of the general navigation features and total cost of construction of the environmental restoration features plus costs due to additional work under Article II.C. or II.E. of this Agreement.

b. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor (including any credit afforded the Non-Federal Sponsor in accordance with Article II.B. of this Agreement) exceeds its required share of the total cost of construction of the general navigation features and total cost of construction of the environmental restoration features plus costs due to additional work under Articles II.C. or II.E. of this Agreement, the Government shall, subject to the availability of funds, refund the excess contribution to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete, except for the amount of excess contribution that was contributed in accordance with Article II.J. of this Agreement and for which credit was not afforded as required by Articles II.B.5. and II.B.6. of this Agreement. 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.

2. The final accounting also shall determine the 10 percent amount and the value, as determined in accordance with Article IV of this Agreement of lands, easements, rights-of-

way, relocations, provided for the general navigation features or environmental restoration features before the end of the period of construction, and the value of the Non-Federal Sponsor's credits described in Article II.B. of this Agreement and not otherwise applied against other required contributions.

E. The Non-Federal Sponsor shall pay the principal amount required by Article II.M. of this Agreement in accordance with the provisions of this paragraph.

1. Before furnishing the Non-Federal Sponsor with the results of the final accounting for the general navigation features constructed during the period of construction, the Government shall calculate the principal amount and the annual installments, which installments shall be substantially equal. At the time the Government furnishes the Non-Federal Sponsor with the results of the final accounting for the general navigation features constructed during the period of construction, the Government shall notify the Non-Federal Sponsor in writing of the principal amount and the annual installments. The Government shall recalculate the annual installments at five year intervals and shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. In calculating or recalculating the annual installments, the Government shall amortize the principal amount over a period of 30 years (hereinafter the "payment period"), beginning on the date the Government notifies the Non-Federal Sponsor of the principal amount, using an interest rate determined by the Secretary of the Treasury. In the case of the initial calculation, the interest rate shall be determined by the Secretary of the Treasury taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the payment period during the month preceding the fiscal year in which the Government awards the first contract for construction of the general navigation features, plus a premium of one-eighth of one percentage point for transaction costs. In the case of recalculations, the interest rate shall be determined by the Secretary of the Treasury taking into consideration such market yields during the month preceding the fiscal year in which the sixth installment is to be paid, and thereafter during the month preceding the fiscal year in which each fifth installment is to be paid, plus a premium of one-eighth of one percentage point for transaction costs.

2. The Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraph E.1. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the principal amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

3. Notwithstanding paragraph E.2. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the principal amount or amounts, in whole or in part, at any time including applying any credit afforded under Article II.B. of this Agreement and not otherwise applied to other required contributions. Notwithstanding paragraph E.1. of this Article, there

shall be no charges for interest on any portion of the principal amount prepaid prior to 90 days after the Government notifies the Non-Federal Sponsor of the principal amount.

4. After the Government furnishes the Non-Federal Sponsor with the results of the final accounting for the general navigation features constructed during the period of construction, the Government shall afford credit against the principal amount for the value, as determined in accordance with Article IV of this Agreement, of lands, easements, rights-of-way, relocations; and the value of the Non-Federal Sponsor's credits afforded in accordance with Articles II.B.1. through II.B.6. of this Agreement and not otherwise applied against other required contributions for the general navigation features; provided after the period of construction and for which the Non-Federal Sponsor has not received credit or reimbursement; provided, however, that the amount of credit afforded pursuant to this paragraph shall not exceed the principal amount. Credit shall be afforded against the portion of the principal amount that is outstanding at the time the credit is afforded. If the credit exceeds the portion of the principal amount outstanding at the time credit is afforded, the Government shall afford the excess credit against the portion of the principal amount that the Non-Federal Sponsor has paid at the time the credit is afforded, either by refunding such portion to the Non-Federal Sponsor, subject to the availability of funds, or by affording credit which has been approved by the Government toward required contributions for deferred environmental restoration features or general navigation features constructed during a subsequent period of construction at the option of the Non-Federal Sponsor. In the event existing funds are not available to refund such portion to the Non-Federal Sponsor and the Non-Federal Sponsor wishes to obtain a refund, the Government shall seek such appropriations as are necessary to make the refund.

5. In the event there is a subsequent period of construction, the Government, after completion of the construction of the applicable deferred environmental restoration features or dredged or excavated material disposal facility or facilities, and upon resolution of all relevant proceedings, claims, and appeals, shall reconcile the final accounting (including recalculating the 10 percent amount), recalculate the principal amount and the principal amount outstanding, and, if the payment period has not elapsed, recalculate the annual installments by amortizing the principal amount outstanding over the remaining portion of the repayment period, and shall furnish the Non-Federal Sponsor with the results of the reconciled final accounting and the aforesaid recalculations. Thereafter, if the payment period has not elapsed, the Non-Federal Sponsor shall pay the aforesaid recalculated installments in lieu of the previously calculated installments. If the payment period has elapsed, the Non-Federal Sponsor, not later than 90 days after being furnished the aforesaid results, shall pay to the Government any principal amount outstanding by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

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. Subject to applicable Federal laws and regulations and for so long as the Project remains authorized, at no cost to the Government, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the environmental restoration features following the period of construction or any subsequent period of construction in a manner compatible with the authorized purposes of the Project and shall operate and maintain or cause the operation and maintenance of the local service facilities commensurate with the Government's operation and maintenance of the general navigation features in a manner compatible with the authorized purposes of the Project. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance.

B. The Government, as it determines necessary, shall operate and maintain the general navigation features, or any functional portion of the general navigation features that allows benefits of the Project to accrue, in a manner compatible with the authorized purposes of the Project and shall be responsible for all financial obligations for operation and maintenance of the general navigation features. At the discretion of the Government, the Non-Federal Sponsor may carry out, or cause to have carried out, on behalf of the Government, that portion of the operation and maintenance of the dredged or excavated material disposal facilities, defined as DAMP activities in Article I.Y. of this Agreement, in accordance with Article XXI of this Agreement.

C. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the general navigation features. Nothing contained herein, however, shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

D. The Non-Federal Sponsor shall give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor, now or hereafter,

Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsor with the results of the final accounting 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 the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and 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. The Non-Federal Sponsor and the Government specifically agree to comply with Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XII - RELATIONSHIP OF PARTIES

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

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

owns or controls for access to the environmental restoration features of the Project for the purpose of inspection, and, if necessary after failure to perform by the Non-Federal Sponsor, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the environmental restoration features of the Project. No such activities by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation, or maintenance of the Project, any betterments, and the local service facilities, except for damages due to the fault or negligence of the Government or its contractors. The Non-Federal Sponsor shall satisfy its obligations under this Article using any sources of funds that are then legally available to liquidate such obligations. Should the Non-Federal Sponsor determine such available funds are insufficient in amount, the Non-Federal Sponsor shall be obligated to seek such enabling legislation or authority that may be necessary to authorize the Non-Federal Sponsor to raise additional revenue through the issuance of bonds, imposition of taxes, or other revenue measures. This provision does not affect any rights the Government may have independent of this Agreement and in executing this Agreement the Government expressly reserves any rights it may have under such independent sources of law.

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, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, or 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

contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.C., II.E., II.H., II.I., II.N., II.O., II.Q., or VI 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 general navigation features or environmental restoration features is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient, in addition to any contributed funds received in accordance with Article II.J. of this Agreement, to meet its share of scheduled expenditures for the general navigation features or environmental restoration features for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement unless additional funds are contributed in the interim in accordance with Article II.J. of this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as either the Government receives sufficient appropriations or sufficient contributed funds in accordance with Article II.J. of this Agreement, or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

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

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

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, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features. However, for lands, easements, or rights-of-way 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.

1. All actual costs incurred by the Non-Federal Sponsor or the Government before the end of the period of construction or during any subsequent period of construction for such investigations for hazardous substances shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and 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.

2. All actual costs incurred by the Non-Federal Sponsor after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances, necessary for the construction, operation, or maintenance of the general navigation features, shall be considered incidental costs under Article IV.B.4. and be credited pursuant to Article II.M. of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

3. All actual costs incurred by the Non-Federal Sponsor after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances, necessary for operation and maintenance of the environmental restoration features, shall be considered financial obligations for operation and maintenance of the environmental restoration features and shared in accordance with Article VIII.A. of this Agreement.

4. All actual costs incurred by the Government after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

B. The Non-Federal Sponsor may perform, or cause to be performed, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, or rights-of-way necessary solely for the construction, operation, or maintenance of the local service facilities. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this paragraph shall be borne entirely by the Non-Federal Sponsor. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

C. 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 necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features, the Non-Federal Sponsor and the Government shall, in addition to providing any other notice required by applicable law, 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. In the event it is discovered through any means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way necessary for the construction, operation, or maintenance of the local service facilities, the Non-Federal Sponsor and the Government shall, in addition to providing any other notice required by applicable law, provide prompt written notice to each other.

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction, operation, or maintenance of the general navigation features or environmental restoration features, or, if already in construction, operation, or maintenance, whether to continue with construction, operation, or maintenance of the general navigation features or environmental restoration features, 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 necessary for the construction, operation, or maintenance of the general navigation features or environmental restoration features. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction, operation, or maintenance 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 the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features. 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 general navigation features or environmental restoration features. The Government shall have no obligation under this Agreement for the costs of any clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the local service facilities.

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

F. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - AGREEMENTS NOT NEGATED

All features of the existing projects and those projects in the immediate vicinity which are beyond the limits impacted by this Project shall continue to be operated and maintained under the requirements of the agreements governing each project.

ARTICLE XVII - 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:

Executive Director
Port of Houston Authority
111 East Loop North
Houston, Texas 77029-4326

or

P.O. Box 2562
Houston, Texas 77252-2562

If to the Government:

District Engineer
USAED, Galveston
2000 Fort Point Road
Galveston, Texas 77550

or

P.O. Box 1229
Galveston, Texas 77553-1229

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 XVIII - 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 XIX - HISTORIC PRESERVATION

A. The costs of identification, survey, and evaluation of historic properties incurred before the end of the period of construction or during a subsequent period of construction shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and shared in accordance with Articles II.G., II.I, and II.M. of this Agreement.

B. The costs of identification, survey, and evaluation of historic properties for the general navigation features incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

C. The costs of identification, survey, and evaluation of historic properties for the environmental restoration features incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the environmental restoration features and shared in accordance with Article VIII.A. of this Agreement.

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

E. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph D. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)).

1. Any costs of mitigation and data recovery that exceed the one percent limit and are incurred before the end of the period of construction or during a subsequent period of construction shall be included in the total cost of construction of the general navigation features or total cost of construction of the environmental restoration features, as appropriate, and shall be shared in accordance with Articles II.G., II.I., and II.M. of this Agreement.

2. Any costs of mitigation and data recovery for the general navigation features that exceed the one percent limit and are incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

3. Any costs of mitigation and data recovery for the environmental restoration features that exceed the one percent limit and are incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the environmental restoration features and shared in accordance with Article VIII.A. of this Agreement.

ARTICLE XX - 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 and the local service facilities. 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 toward total cost of construction of the general navigation features or total cost of construction of the environmental restoration features for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in the total cost of construction of the general navigation features plus the value of any contribution provided by the Non-Federal Sponsor pursuant to Article III of this Agreement necessary for the general navigation features plus the total cost of construction of the environmental restoration features plus the costs of the local service facilities exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$642,426,000, as calculated in accordance with ER 105-2-100 using October 1, 1997 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XXI - DAMP ACTIVITIES

A. The Government has the legal authority and responsibility for operation, maintenance and management of dredged or excavated material disposal facilities required for the Project. To extend the useful life of the dredged or excavated material disposal facilities, it has been determined that accomplishment of DAMP activities is more desirable than construction of new dredged or excavated material disposal facilities.

B. The Government shall be responsible for all DAMP activities during periods associated with maintenance dredging of the general navigation features. At the discretion of the Government, DAMP activities to be accomplished between such dredging cycles may be performed by the Non-Federal Sponsor.

C. The Government, working with the Non-Federal Sponsor shall develop a Three-Year DAMP Plan to identify proposed future fiscal year funding requirements for operation, maintenance and management of dredged or excavated material disposal facilities. The Three-Year DAMP Plan shall be updated every year based on actual DAMP activities accomplished. The Government shall use the Three-Year DAMP Plan for development of future fiscal year budget requests.

D. To aid in the development of annual scopes of work, the Government shall notify the Non-Federal Sponsor in writing, no later than 90 calendar days prior to the end of the then current fiscal year, of the amount of anticipated appropriations for accomplishment of DAMP activities for the next fiscal year. The Government working jointly with the Non-Federal Sponsor shall develop a preliminary scope of work, including an estimate of costs, for accomplishment of scheduled DAMP activities based on the anticipated appropriations for the upcoming fiscal year. The Government shall have final approval of the preliminary scope of work and estimate of costs.

E. No later than 30 calendar days following receipt of appropriations for that fiscal year, the Government shall notify the Non-Federal Sponsor of the actual funds appropriated for accomplishment of DAMP activities. The Government working jointly with the Non-Federal Sponsor shall develop a final scope of work, including an estimate of costs, for accomplishment of DAMP activities associated with the operation and maintenance of the general navigation features. The Government shall have final approval of the final scope of work and estimate of costs for such DAMP activities to be accomplished for that fiscal year.

F. The Non-Federal Sponsor, in contracting for the performance of any DAMP activities under this Agreement, shall include provisions consistent with all applicable Federal laws and regulations.

G. The Non-Federal Sponsor shall not issue a solicitation for any contract for DAMP activities related to the operation and maintenance of the general navigation features until the Government has approved the relevant plans and specifications. The Non-Federal Sponsor shall not award a contract, execute a contract modification, issue a change order, or resolve a contract claim without the prior written approval of the Government.

H. The Government shall review all plans and specifications, contract modifications, change orders, and contract claims submitted by the Non-Federal Sponsor, and shall advise the Non-Federal Sponsor in writing of the results of its review.

I. The Government shall inspect all DAMP activities accomplished by the Non-Federal Sponsor under this Agreement to ensure that such work is accomplished in accordance with the approved final scopes of work, designs, and plans and specifications.

J. Not later than 90 days after the completion of the DAMP activities performed that fiscal year, the Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of the DAMP activities performed that fiscal year and determine the reimbursement. Upon receipt of such documents the Government shall conduct an accounting for the DAMP activities performed that fiscal year, to determine costs eligible for reimbursement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

K. Subject to the limitations in this Article and subject to the availability of funds, the Government shall reimburse the Non-Federal Sponsor an amount equal to the actual costs for accomplishment of DAMP activities, related to the operation and maintenance of the general navigation features, performed that fiscal year or the actual fiscal year appropriations identified for DAMP activities, whichever is less. The Government shall not reimburse the Non-Federal Sponsor for any costs which exceed the actual fiscal year appropriations for DAMP activities, nor shall the Government be obligated to seek any such additional appropriations from Congress.

L. No reimbursement shall be made for any DAMP activities which do not, in the judgment of the Government, conform to approved plans and specifications, contract modifications, or change orders.

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

N. DAMP activities costs associated with the use of dredged or excavated material disposal facilities by non-Federal entities shall be excluded from any reimbursement request. The Non-Federal Sponsor may collect fees for use of the dredged or excavated material disposal facilities by non-Federal entities. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs of improvements to the dredged or excavated material disposal facilities required as a result of the Non-Federal Sponsor allowing the use of the dredged or excavated material disposal facilities by non-Federal entities when such use results in a loss of capacity, as determined by the Government, in the dredged or excavated material disposal facilities required for the construction or operation and maintenance of the general navigation features.

O. No costs, whether approved by the Government or otherwise, incurred by the Non-Federal Sponsor for performance of DAMP activities can be used as a credit against the Non-Federal Sponsor's required contributions for construction of the Project.

P. The Government and the Non-Federal Sponsor may elect to enter into further agreements to reflect details regarding the accomplishment of DAMP activities by the Non-Federal Sponsor. Any such agreements shall be consistent with the provisions of this Agreement. In the event of a conflict, the provisions of this Agreement shall govern.

Q. The Government and the Non-Federal Sponsor shall consult with each other in accordance with Article V of this Agreement in an effort to ensure efficient accomplishment of DAMP activities to extend the useful life of the dredged or excavated material disposal facilities.

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

THE DEPARTMENT OF THE ARMY

THE PORT OF HOUSTON AUTHORITY OF
HARRIS COUNTY, TEXAS

BY: John H. Zirschky
JOHN H. ZIRSCHKY
ACTING ASSISTANT SECRETARY
OF THE ARMY (CIVIL WORKS)

BY: Ned S. Holmes
NED S. HOLMES
CHAIRMAN,
PORT COMMISSION OF THE
PORT OF HOUSTON AUTHORITY
OF HARRIS COUNTY, TEXAS

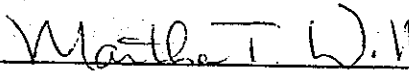
DATE: June 10, 1978

DATE: June 10, 1978

CERTIFICATE OF AUTHORITY

I, Martha T. Williams, do hereby certify that I am the principal legal officer of the Port of Houston Authority of Harris County, Texas (Port of Houston Authority), that the Port of Houston Authority is a legally constituted political subdivision of the State of Texas and a public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Port of Houston Authority in connection with the Houston-Galveston Navigation Channels, 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 required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Port of Houston Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
10th day of June 1998.



MARTHA T. WILLIAMS
GENERAL COUNSEL
PORT OF HOUSTON AUTHORITY

CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



NED S. HOLMES
CHAIRMAN,
PORT COMMISSION OF THE
PORT OF HOUSTON AUTHORITY
OF HARRIS COUNTY, TEXAS

DATE: June 10, 1998

