

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF HICKMAN, KENTUCKY
FOR CONSTRUCTION OF THE
HICKMAN BLUFF, KENTUCKY PROJECT

THIS AGREEMENT is entered into this 25th day of March, 1996, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District, Memphis (hereinafter the "District Engineer"), and the CITY OF HICKMAN, KENTUCKY (hereinafter the "Non-Federal Sponsor"), represented by the MAYOR OF HICKMAN.

WITNESSETH, THAT:

WHEREAS, construction of the HICKMAN BLUFF, KENTUCKY PROJECT at HICKMAN, KENTUCKY, was authorized by the DEFENSE SUPPLEMENTAL APPROPRIATIONS ACT dated 10 April 1995 (Public Law 104-6);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the HICKMAN BLUFF, KENTUCKY PROJECT (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, the cost sharing requirements applicable to the Project shall consist of the following: (1) The Non-Federal Sponsor shall provide all lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for the construction, operation, and maintenance of the Project; (2) Operate, maintain, repair, replace and rehabilitate the entire Project or the functional portion of the Project after the period of construction; and (3) Pay for all costs of the Project which exceed \$3,000,000;

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

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 construction of the Project in accordance with the terms of this Agreement.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction of measures to prevent slope instability, consisting generally of clearing and grubbing, an embankment berm, subsurface drainage features, surface drainage features, erosion protection features, wetland mitigation, and finished dressing and sodding, as generally described in the HICKMAN BLUFF, KENTUCKY LETTER REPORT, dated 27 December, 1995 and approved by the Director of Civil Works on 22 February, 1996.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; the Government's cost of participation in the Project Coordination Team in accordance with Article V of the Agreement; costs of contract dispute settlements or awards; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any Non-Federal Sponsor's costs for acquiring lands, easements, rights-of-way, relocations and suitable borrow and dredged or excavated material disposal areas; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government other than an obligation pertaining to the provision

of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Memphis District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

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

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

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

H. 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.

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

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), 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. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent 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, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the 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 each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for total project costs would exceed \$3,000,000, the Government and the Non-Federal Sponsor may agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than

three years. However, in accordance with Article XIX, the Non-Federal Sponsor is responsible for all project costs in excess of \$3,000,000.

B. 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 a conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.B. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

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

E. In accordance with Article XIX of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of \$ 3,000,000. If the Government determines that the total project costs will exceed \$3,000,000, the Non-Federal Sponsor shall provide the required cash payments in accordance with Article VI.

F. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations 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.B. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas 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.C. of this Agreement.

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

H. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's requirements to meet its cash contributions when total project costs exceed \$3,000,000 or to provide lands, easements, rights-of-way, disposal areas and relocations unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

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

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

authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

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

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

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation

and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

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

In accordance with the cost sharing requirements of this Agreement, the Non-Federal Sponsor's costs for acquiring lands, easements, rights-of-way, disposal areas and relocations are not included in the total project costs; therefore no credit will be afforded to the Non-Federal Sponsor for providing the lands, easements, rights-of-way, relocations and disposal areas necessary for the construction, operation and maintenance of the Project.

ARTICLE V - PROJECT COORDINATION TEAM

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

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

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the 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 matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The Government's costs of participation in the Project Coordination Team shall be included in total project costs. Each party shall bear its costs in participating in the Project Coordination Team.

ARTICLE VI - METHOD OF PAYMENT

To be included in Memorandum

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.E., and II.F. of this Agreement. On the effective date of this Agreement, total project costs are projected to be less than \$3,000,000 and the Non-Federal Sponsor's cash contribution required under Article II.E. of this Agreement is projected to be \$0. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.F. of this Agreement or in the event the Government determines that the total project costs will exceed the Government's \$3,000,000 cost limitation as defined in Articles II.E. and XIX of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Memphis District" to the District Engineer.

C. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final

accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs provided in accordance with Articles II.B., II.E. and II.F. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs provided in accordance with Articles II.B., II.E., and II.F. of this Agreement.

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

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. Subject to the Government's total project costs limitation as defined in Articles II.E. and XIX, the parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

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

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

ARTICLE IX - INDEMNIFICATION

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

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

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

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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

ARTICLE XI - FEDERAL AND STATE LAWS

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

ARTICLE XII - RELATIONSHIP OF PARTIES

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

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

seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, 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.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures 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. 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 the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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.C. 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 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. The costs to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project shall be cost shared in accordance with the following provisions.

1. The Government shall be responsible for all investigations necessary to identify hazardous substances when the total project costs are less than \$3,000,000.

2. In the event the total project costs exceed \$3,000,000 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 substance. However, for lands that the Government determines to be subject to the navigational servitude, only the Government shall perform such investigations, said costs to be reimbursed by the Non-Federal Sponsor, 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.

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal

Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for all costs related to clean-up and response to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

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

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

ARTICLE XVI - NOTICES

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

If to the Non-Federal Sponsor:

City of Hickman, Kentucky
Attn: Mayor John Shuff
202 Jackson Street
P.O. Box 230
Hickman, Kentucky 42050

If to the Government:

U.S. Army Corps of Engineers, Memphis
Attn: CELMM-DD-P
167 North Main Street, Room B-202
Memphis, Tennessee 38103-1894

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

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

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

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

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. 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 total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the non-Federal cost sharing requirements defined in Articles II.E. and XIX of this Agreement.

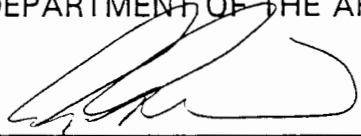
ARTICLE XIX - LIMITATION ON GOVERNMENT COSTS

The Government's financial participation in the Project is limited to \$3,000,000. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

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

THE DEPARTMENT OF THE ARMY

THE CITY OF HICKMAN, KENTUCKY

BY: 

BY: 

GREGORY G. BEAN
District Engineer
U.S. Army Engineer District,
Memphis

JOHN SHUFF
Mayor
City of Hickman, Kentucky

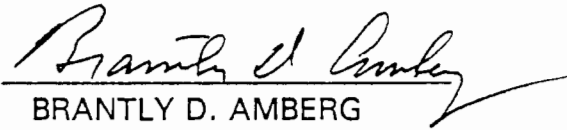
DATE: 3/25/96

DATE: 3/25/96

CERTIFICATE OF AUTHORITY

I, BRANTLY D. AMBERG, do hereby certify that I am the principal legal officer of the City of Hickman, Kentucky, that the City of Hickman, Kentucky is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Hickman, Kentucky in connection with the Hickman Bluff, Kentucky 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 City of Hickman, Kentucky have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 25TH day of MARCH 1996.



BRANTLY D. AMBERG
City Attorney
City of Hickman, Kentucky

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.



JOHN SHUFF

Mayor

City of Hickman, Kentucky

DATE: 3/25/96

AMENDMENT NUMBER 1
OF THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF HICKMAN, KENTUCKY
FOR CONSTRUCTION OF THE
HICKMAN BLUFF, KENTUCKY PROJECT

THIS AMENDMENT is entered into this ^{3rd} 1st day of October, 1996, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the CITY OF HICKMAN, KENTUCKY (hereinafter the "Non-Federal Sponsor"), represented by the MAYOR OF HICKMAN.

WITNESSETH, THAT:

WHEREAS, construction of the HICKMAN BLUFF, KENTUCKY PROJECT at Hickman, Kentucky, was authorized by the Defense Supplemental Appropriations Act dated April 10, 1995 (Public Law 104-6);

WHEREAS, on March 25, 1996 the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the HICKMAN BLUFF, KENTUCKY PROJECT (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, the Energy and Water Appropriations Act dated September 30, 1996 (Public Law 104-²⁰⁴127) modified the Project Authorization as follows: "Provided further, That notwithstanding the funding limitations as set forth in Public Law 104-6 (109 Stat. 85), the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to use additional funds appropriated herein or previously appropriated to complete remedial measures to prevent slope instability at Hickman Bluff, Kentucky,"

WHEREAS, the Non-Federal Sponsor cost sharing requirements applicable to the Project shall consist of the following:
(1) Provide all lands, easements, rights-of-way, relocations, and suitable borrow and dredging or excavated material disposal areas for the construction, operation, and maintenance of the Project; and (2) Operate, maintain, repair, replace and rehabilitate the entire Project or the functional portion of the Project after the period of construction.

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

1. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

In line 15 of paragraph B., insert the word "Government's" before the phrase "cost of audit".

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

a. In line 3 of paragraph A., delete the phrase "and funds provided by the Non-Federal Sponsor".

b. Delete paragraph A.3. in its entirety.

c. Delete paragraph E. in its entirety and renumber paragraphs F., G., and H. as E., F., and G., respectively.

d. In lines 3 and 5 of renumbered paragraph F., replace the phrase "B., E., and F." with the phrase "B. and E.".

e. In lines 1, 2 and 3 of renumbered paragraph G., delete the phrase "to meet the Non-Federal Sponsor's requirements to meet its cash contributions when total costs exceed \$3,000,000 or".

3. ARTICLE VI - METHOD OF PAYMENT

a. In line 8 of paragraph A., replace the phrase "II.B., II.E., and II.F." with the phrase "II.B. and II.E.".

b. Delete the next-to-the-last and last sentences of paragraph A. and replace them with the following:

"On the effective date of this Agreement, total project costs are projected to be \$6,750,000. Such amounts are estimates subject to adjustments by the Government and are not to be construed as the total financial responsibilities of the Government."

c. Delete paragraph B. in its entirety and substitute the following:

"In advance of the Government incurring any financial obligation associated with additional work under Articles II.B. or II.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Memphis District" to the District Engineer."

d. In lines 4 and 5 of paragraph C., delete everything in the second sentence after the phrase "total project costs".

e. In lines 3 and 7 of paragraph C.1., replace the phrase "II.B., II.E., and II.F." with the phrase "II.B. and II.E.".

f. In line 3 of paragraph C.2., replace the phrase "II.B., II.E., and II.F." with the phrase "II.B. and II.E."

4. ARTICLE VII - DISPUTE RESOLUTION

In lines 6 and 7, delete the phrase "Subject to the Government's total project costs limitation as defined in Articles II.E. and XIX,".

5. ARTICLE XV - HAZARDOUS SUBSTANCES

a. In line 1 of paragraph A. after the first word "The", insert the following phrase: "Government shall be responsible for all investigations and".

b. In lines 6 and 7 of paragraph A., delete the phrase "shall be cost shared in accordance with the following provisions".

c. Delete paragraphs A.1. and A.2. in their entirety.

6. ARTICLE XVIII - HISTORIC PRESERVATION

In paragraph C., replace the second sentence with the following: "Any costs of mitigation and data recovery that exceed the one per cent limit shall be included in total project costs."

7. ARTICLE XIX - LIMITATION ON GOVERNMENT COST

Delete the article in its entirety.

8. All other terms and conditions of the Agreement remain unchanged.

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

THE DEPARTMENT OF THE ARMY

THE CITY OF HICKMAN, KENTUCKY

BY: *H. Martin Lancaster*
H. MARTIN LANCASTER
Assistant Secretary of the Army
(Civil Works)

BY: *John P. Shuff*
JOHN SHUFF
Mayor
City of Hickman, Kentucky

DATE: 10-3-96

DATE: 10-01-96

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.



JOHN SHUFF
Mayor
City of Hickman, Kentucky

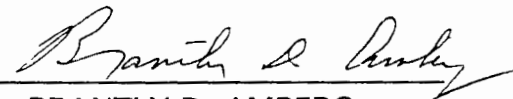
DATE: 10-01-96

CERTIFICATE OF AUTHORITY

I, BRANTLY D AMBERG, do hereby certify that I am the principal legal officer of the City of Hickman, Kentucky, that the City of Hickman, Kentucky is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Hickman, Kentucky in connection with the Hickman Bluff, Kentucky 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 City of Hickman, Kentucky have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

1ST day of OCTOBER 1996.



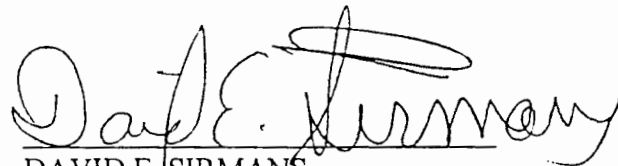
BRANTLY D. AMBERG

City Attorney

City of Hickman, Kentucky

CERTIFICATION OF LEGAL REVIEW

The amendment to the Project Cooperation Agreement for the Hickman Bluff, Kentucky project has been fully reviewed by the Office of Counsel, USAED, Memphis, Tennessee.

A handwritten signature in cursive script, reading "David E. Sirmans". The signature is written in black ink and is positioned above a horizontal line.

DAVID E. SIRMANS
District Counsel

AMENDMENT NUMBER 2
OF THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF HICKMAN, KENTUCKY
FOR CONSTRUCTION OF THE
HICKMAN BLUFF, KENTUCKY PROJECT

THIS AMENDMENT is entered into this 3rd day of April, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District, Memphis (hereinafter the "District Engineer"), and the CITY OF HICKMAN, KENTUCKY (hereinafter the "Non-Federal Sponsor"), represented by the MAYOR OF HICKMAN.

WITNESSETH, THAT:

WHEREAS, construction of the HICKMAN BLUFF, KENTUCKY PROJECT at Hickman, Kentucky, was authorized by the Defense Supplemental Appropriations Act dated April 10, 1995 (Public Law 104-6);

WHEREAS, on March 25, 1996 the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the HICKMAN BLUFF, KENTUCKY PROJECT (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, the Energy and Water Development Appropriations Act for Fiscal Year 1997 (Public Law 104-204) and the Energy and Water Development Appropriations Act for Fiscal Year 1998 (Public Law 105-62) modified the Project Authorization as follows: "Provided further, That notwithstanding the funding limitations as set forth in Public Law 104-6 (109 Stat. 85), the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to use additional funds appropriated herein or previously appropriated to complete remedial measures to prevent slope instability at Hickman Bluff, Kentucky,";

WHEREAS, on October 3, 1996 the Government and the Non-Federal Sponsor entered into an Amendment to the Agreement;

WHEREAS, the Government and the Non-Federal Sponsor have identified a need to update the Agreement to reflect changes in the design and costs for constructing the Project;

WHEREAS, the Non-Federal Sponsor cost sharing requirements applicable to the Project shall consist of the following: (1) Provide all lands, easements, rights-of-way, relocations, and suitable borrow and dredging or excavated material disposal areas for the construction, operation, and maintenance of the Project; and (2) Operate, maintain, repair, replace and rehabilitate the entire Project or the functional portion of the Project after the period of construction.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to further amend the agreement as follows:

1. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

Delete paragraph A., and replace it with the following paragraph:

"A. The term "Project" shall mean those measures constructed to prevent slope instability, consisting generally of clearing and grubbing, an embankment berm, excavation along the face of the bluff, installation of soil nails, construction of a reinforced soil slope, installation of deep anchors, and erosion protection features as generally described in the HICKMAN BLUFF, KENTUCKY LETTER REPORT, dated December 27, 1995 and approved by the Director of Civil Works on February 22, 1996 and supplement to the letter report, dated January 28, 1998."

2. ARTICLE VI - METHOD OF PAYMENT

In the next-to-the-last sentence of paragraph A., replace "\$6,750,000" with "\$14,966,000".

3. ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

In the fourth and tenth sentences of paragraph B., replace "A-128" with "A-133".

4. ARTICLE XVI - NOTICES

If the Non-Federal Sponsor: replace "Mayor John Shuff" with "Mayor Richard White".

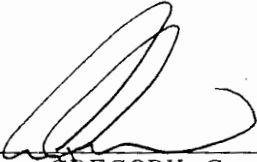
5. All other terms and conditions of the Agreement and Amendment Number 1 remain unchanged.

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

THE DEPARTMENT OF THE ARMY

THE CITY OF HICKMAN, KENTUCKY

BY:



GREGORY G. BEAN
District Engineer
U.S. Army Engineer District,
Memphis

BY:



DR. RICHARD WHITE
Mayor
City of Hickman, Kentucky

DATE:

4/3/98

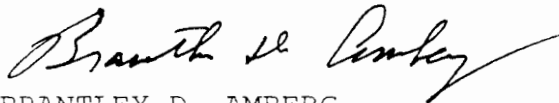
DATE:

4-3-98

CERTIFICATE OF AUTHORITY

I, BRANTLEY D. AMBERG, do hereby certify that I am the principal legal officer of the City of Hickman, Kentucky, that the City of Hickman, Kentucky is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Hickman, Kentucky in connection with the Hickman Bluff, Kentucky 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 City of Hickman, Kentucky have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of April 1998.



BRANTLEY D. AMBERG
City Attorney
City of Hickman, Kentucky

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.


DR. RICHARD WHITE

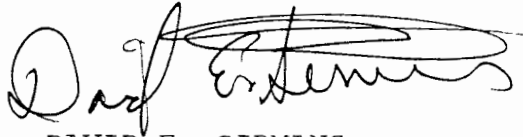
Mayor

City of Hickman, Kentucky

DATE: 4-3-98

CERTIFICATION OF LEGAL REVIEW

The second amendment to the Project Cooperation Agreement for the Hickman Bluff, Kentucky project has been fully reviewed by the Office of Counsel, USAED, Memphis, Tennessee.

A handwritten signature in black ink, appearing to read "David Sirmans", with a large, sweeping flourish at the end.

DAVID E. SIRMANS
District Counsel