

**PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
PEMISCOT COUNTY PORT AUTHORITY
FOR EXPANSION OF THE
PEMISCOT COUNTY HARBOR, MISSOURI**

THIS AGREEMENT is entered into this 30th day of July 2001, by and between the Department of the Army (hereinafter the "Government"), represented by the U. S. Army Engineer, Memphis District (hereinafter the "District Engineer"), and Pemiscot County Port Authority (hereinafter the "Non-Federal Sponsor"), represented by the Executive Director of the Pemiscot County Port Authority.

WITNESSETH, THAT:

WHEREAS, the expansion of Pemiscot County Harbor, Missouri at the vicinity of Caruthersville, Missouri at Mississippi River Mile 849.0 (hereinafter the "Project") was approved for construction by the Commander, Mississippi Valley Division on May 29, 2001, in accordance with the authority contained in Section 107 of Public Law 86-645;

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

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 Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, (codified as amended at 42 U.S.C. § 1962d-5b) and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (codified as amended at 33 U.S.C. § 2211), 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 107 of Public Law 86-645, as amended, provides that no more than \$4,000,000 shall be allocated for the planning, design, and construction of any single small river and harbor improvement Project;

WHEREAS, in addition to the per project limitation as specified above, Federal expenditures for construction, operation, and maintenance, including the costs of the planning, design, and construction phases, are administratively limited to the greater of \$4,500,000 or 2.25 times the Federal costs of the Project;

WHEREAS, Section 324 of the Water Resources Development Act of 2000 authorized credit toward the Non-Federal share of the Project for the cost of construction work carried out for the Project after December 31, 1997, by the Non-Federal interest if the Secretary of the Army (Civil Works) determines that the work is integral to the Project.

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; and

WHEREAS, the Government and the 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.

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 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, but shall not include aids to navigation.

B. The term "general navigation features" shall mean expansion of the existing harbor along the Mississippi River at approximate river mile 849.0 from a 150-foot bottom width to a 225-foot bottom width channel along the lower 1,100-foot section of the existing harbor. The harbor will be constructed at a 9-foot depth, 2 feet overdrudge, with side slopes of 1 vertical on 3.5 horizontal, and protected with riprap. Dredged material will be placed in existing retention areas located along top bank. One of the retention areas has been utilized in the past but is only partially filled. Dredged material will be placed in this retention area and excess material deposited into adjacent retention areas, as generally described in the Detailed Project Report, Pemiscot County Harbor, Missouri, dated March 2001 and approved by the Commander, Mississippi Valley Division on May 29, 2001.

C. 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, Pemiscot County Harbor, Missouri Section 107 Detailed Project Report including, but not necessarily limited to, the disposal of dredged or excavated material associated with the construction, operation, and maintenance of the local service facilities. The local service facilities include, but are not necessarily limited to, providing adequate channel depths for the berthing, mooring and local access channels commensurate with the general

navigation features, utility service to the site, and storage facilities and handling equipment for transferring materials from truck, rail, or storage to barges..

D. The term "total cost of construction of the general navigation features" shall mean all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement 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; 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; cost of historic preservation activities in accordance with Articles XVIII.A. and XVIII.D.1. of this Agreement; actual construction costs (including any costs of construction of dredged or excavated material disposal facilities incurred prior to the end of the period of construction or during any subsequent period of construction and the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States); the credit amount for the creditable work performed by the Non-Federal Sponsor afforded in accordance with Article III. H. of this Agreement; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; 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.N. 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.M. 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 or relocations; 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; any costs assigned to an existing Federal navigation Project in accordance with Article II.E. of this Agreement; any costs due to betterments; any costs of dispute resolution under Article VII of this Agreement; or any costs of aids to navigation.

E. 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.

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

G. 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, as defined in Article I.B. of this Agreement, or commencement, using the Government's own forces, of construction of the general navigation features 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 is complete, except for any construction of a dredged or excavated material disposal facility, or any expansion (including raising of dikes) of such a facility, that will contain material from maintenance, but not the construction, of the other general navigation features.

H. The term "subsequent period of construction" shall mean a period 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, or any expansion (including raising of dikes) of such a facility, that will contain material from maintenance, but not the construction, of the other general navigation features and ending with the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that such construction or expansion is complete. There may be more than one subsequent period of construction and a subsequent period of construction may be concurrent with the period of construction.

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

J. 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.

K. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway, railroad (including any 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. 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.

L. 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, including the borrowing of material 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 Missouri, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof.

M. 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.

N. The term "betterment" shall mean a change in the design and construction of an element of the general navigation 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.

O. 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, waste weirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes.

P. The term "depth", when used to determine the cost sharing required under this Agreement, shall mean dredged or excavated depth net of associated entrance channel wave allowances and over-depth.

Q. The term "over-depth" shall mean additional dimensions associated with a given depth that are required to accomplish advanced maintenance, if any, and to compensate for dredging inaccuracies at that depth.

R. The term "utility" shall mean that which the State of Missouri, pursuant to generally applicable state law, defines as a public utility.

S. The term "Federal program funds" shall mean funds or grants provided by a Federal agency, other than the Department of the Army, and any non-Federal matching share required therefor.

T. The term "creditable work" shall mean any work for which the Congress of the United States enacts legislation having the substantial effect of authorizing the Government to credit the Non-Federal Sponsor for work carried out after December 31, 1997 by the Missouri Army National Guard on behalf of the Non-Federal Sponsor and by the Non-Federal Sponsor that is determined by the Division Commander to be a compatible and integral part of the Project as described in the Pemiscot County Harbor Detailed Project Report dated March 2001. The creditable work includes clearing and grubbing lands adjacent to the harbor; constructing ring levees for disposal of fill material; constructing weirs and culverts; raising height of existing levee; surveying a ditch and laying out five acre blocks of land; and constructing a dirt ramp from levee to the Mississippi River features.

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 general navigation 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. To the extent possible, 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. 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, resolution of contract claims, and performance of all work on the general navigation 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 each contract for the general navigation features.

3. As of the effective date of this Agreement, \$ 990,000 of Federal funds have been appropriated for the Project. The Government makes no commitment to budget for additional funds for the Federal share of the total cost of construction of the general project features. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project is limited to this amount together with any additional funds that the Congress may appropriate or are otherwise made available for the Project. In the event that funds sufficient to meet the Federal share of funds required to continue construction of the Project in the then-current or upcoming fiscal year are not made available for the Project, the Government shall notify the Non-Federal Sponsors of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.F. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsor may request the Government to design or construct betterments. Such requests shall be in writing and shall describe the betterments requested to be performed. If the Government in its sole discretion elects to perform 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.

C. 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, 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.

D. 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 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.

E. The Government shall assign all costs associated with the dredging of material from the dimensions, including over-depth and entrance channel wave allowances, of any existing Federal navigation Project to the costs of operation and maintenance of the existing Federal navigation Project. 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 during the period of construction to one or more of the following depth increments: dredging to a depth not in excess of 20 feet plus associated over-depth and entrance channel wave allowances; dredging to a depth in excess of 20 feet but not in excess of 45 feet plus associated over-depth and entrance channel wave allowances; and dredging to a depth in excess of 45 feet. Any costs of construction of the general navigation features incurred during a subsequent period of construction shall be assigned to the Project dredged depth.

F. The Non-Federal Sponsor shall contribute 10 percent of the total cost of construction of the general navigation features (including any costs of dredged or excavated material disposal facilities during any subsequent period of construction).

G. If the Government projects that the contributions under paragraph H and N.3. of this Article, and contributions under Articles V, X.B., X.C., XV.A.1., and XVIII of this Agreement will be less than its share required by paragraph F. of this Article, the Non-Federal

Sponsor shall provide a contribution of funds, in accordance with Article VI.B. of this Agreement, in the amount necessary to meet its share required by paragraph F. of this Article.

H. The value of the creditable work (if authorized by Congress) as determined in the Detailed Project Report dated March 2001 is \$223,700. The affording of such credit shall be subject to an on-site inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Project. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. To afford such credit, the Government shall apply the credit amount toward any cash contribution required under paragraph G and J of this Article. In no event shall the credit amount afforded exceed the value of the Non-Federal Sponsor's contributions required under paragraphs C, G, H, and J of this Article and Articles V, X, and XV.A of this Agreement.

I. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the Non-Federal Sponsor's contributions provided in accordance with paragraphs B., D., G., H., and N. of this Article, and the Non-Federal Sponsor's contributions provided in accordance with Articles V, X.B., X.C., XV.A.1., and XVIII of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and F. of this Article. The final accounting also shall determine an amount equal to 10 percent of the total cost of construction of the general navigation features (hereinafter the "10 percent amount"). In the event there is a subsequent period of construction, the Government shall amend the final accounting in accordance with Article VI.E.5. of this Agreement.

J. Before furnishing the Non-Federal Sponsor with the results of the final accounting, 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, rights-of-way, or relocations provided before the end of the period of construction and for the remaining value of any creditable work not previously afforded under Article II.H, if any; 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, or relocations provided after the period of construction. In the event there is a subsequent period of construction and the Government amends the final accounting in accordance with 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 amended final accounting.

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

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

M. The Government shall accomplish all removals that neither the Non-Federal Sponsor nor the State of Missouri has the legal capability to accomplish where both the Non-Federal Sponsor and the State of Missouri make a written request for the Government to accomplish such removals.

1. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the 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.C. 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 and shared in accordance with the provisions of this Agreement.

N. The Non-Federal Sponsor shall accomplish all removals, other than those removals specifically assigned to the Government by paragraph M. 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 prior to the Government incurring any financial obligation for construction, operation, or maintenance of the general navigation 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 the 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.C. of this Agreement.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing removals, shall be included in the total cost of construction of the general navigation features, 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 Missouri has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

O. 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.

P. 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.

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, including those lands, easements, or rights-of-way necessary for the borrowing of material, the disposal of dredged or excavated material, or relocations, and including those lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude. 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, 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 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.

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, including those necessary to enable the borrowing of material or the 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. 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 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.J. 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 Article II.J. of this Agreement.

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, 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 Article II.J. of this Agreement 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 program funds unless the Federal agency providing the Federal program funds verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for the borrowing of material, the disposal of dredged or excavated material, or relocations other than those the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.D. 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 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, and maintenance of the general navigation 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 the borrowing of material, the disposal of dredged or excavated material, or relocations that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.D. 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 Missouri 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.

5. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

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 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.

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 and during each subsequent period of construction, the Project Coordination Team shall generally oversee the Project, including but not necessarily limited to matters related to design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; 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; anticipated requirements for operation and maintenance of the general navigation features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project and the local service facilities. Oversight of the Project 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 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 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 shall be included in the total cost of construction of the general navigation features and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, 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 and costs due to additional work under Article II.B. or Article II.D. of this Agreement. 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 the total cost of construction of the general navigation features, of total costs due to additional work under Article II.B. or Article II.D. of this Agreement, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B., II.D., and II.G. of this Agreement, and of the non-Federal proportionate share, of the credit to be afforded for the creditable work, if any, in accordance with Articles II.H. and II.J. of this Agreement and for the value of lands, easements, rights-of-way, or relocations contributed before the end of the period of construction 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. Thereafter, until the outstanding portion of the principal amount equals \$0, the Government shall maintain current records of contributions provided by the parties and, 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 \$1,140,400, and the Non-Federal Sponsor's contribution required under Article II.G. of this Agreement is projected to be \$109,300. These amounts are subject to adjustment by the Government, after coordination with the Non-Federal Sponsor, 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 contribution required by Article II.G. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to the scheduled date for either 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, after consideration of any credit afforded pursuant to Article II.H. of this Agreement, determines to be required from the Non-Federal Sponsor to meet its projected contribution under Article II.G. 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, Memphis District" to the District Engineer, or verifying 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 presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or providing an Electronic Funds Transfer of the required funds 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: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction or the subsequent period of construction (including the construction of or modifications to a dredged or excavated material disposal facility during any subsequent period of construction), as applicable. If at any time during the period of construction the Government, after offsetting for credit afforded for the creditable work, if any, determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified above.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or Article II.D. 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 through any of the payment mechanisms specified in paragraph B. of this Article. 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 contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B. of this Article.

D. After completion of the construction of the general navigation features 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 the final accounting. The Government may perform an interim accounting, if requested by the Non-Federal Sponsor.

1. The final accounting shall determine the total cost of construction of the general navigation features, each party's contribution provided thereto (including the value of any credits afforded to the Non-Federal Sponsor for the creditable work, if any), and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Article II.B. or Article II.D. of this Agreement and the Non-Federal Sponsor's contribution provided in accordance with Article II.B. or Article II.D. of this Agreement.

a. In the event the final accounting shows that the total contribution (including the value of any credits afforded to the Non-Federal Sponsor for the creditable work,

if any) provided by the Non-Federal Sponsor is less than its required share of the total cost of construction of the general navigation features plus costs due to additional work under Article II.B. or Article II.D. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of the total cost of construction of the general navigation features plus costs due to additional work under Article II.B. or Article II.D. of this Agreement by delivering a check payable to "FAO, USAED, Memphis District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. In the event the final accounting shows that the total contribution (including the value of any credits afforded to the Non-Federal Sponsor for the creditable work, if any) provided by the Non-Federal Sponsor exceeds its required share of the total cost of construction of the general navigation features plus costs due to additional work under Article II.B. or Article II.D. 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.

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, or relocations provided before the end of the period of construction.

E. After affording credit for the value of any creditable work not previously afforded under Article II.H, if any, the Non-Federal Sponsor shall pay the principal amount required by Article II.J. 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, 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, 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 average 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, Memphis District" to the District Engineer or providing 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, in whole or in part, at any time. Notwithstanding paragraph E.1. of this Article, there shall be no charges for interest on any portion of the principal amount prepaid within 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, 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, or relocations provided after the period of construction; 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, by refunding such portion to the Non-Federal Sponsor, subject to the availability of funds. In the event existing funds are not available to refund such portion to the Non-Federal Sponsor, 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 dredged or excavated material disposal facility or facilities, and upon resolution of all relevant proceedings, claims, and appeals, shall amend 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 amended 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, Memphis District" to the District Engineer or providing 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 AND MAINTENANCE

A. Subject to applicable Federal laws and regulations and for so long as the Project remains authorized, and commensurate with the Government's operation and maintenance of the general navigation features, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain the local service facilities 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 and shall be responsible for all financial obligations limited to the greater of \$4,500,000 or 2.25 times the Federal costs of the Project, including costs for the planning, design, and construction phases, and for operation and maintenance of the general navigation features. Once this limit is met, the Non-Federal Sponsor shall be responsible for all operation and maintenance of the Project.

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. Further, to the extent not inconsistent with the interest in real property owned by the Non-Federal Sponsor, the Non-Federal Sponsor hereby authorizes the Government to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in the Government's sole discretion, are necessary for the operation, maintenance, or management of the dredged or excavated material disposal facilities including, but not necessarily limited to, construction, operation, or maintenance of the dredged or excavated material disposal facilities; disposal of dredged or excavated material associated with the construction, operation, or maintenance of the general navigation features; and removal and reuse of previously deposited dredged or excavated material without charge to the Government.

ARTICLE IX - HOLD AND SAVE

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.

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, or 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. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal 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 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 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 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 necessarily limited to, 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". The Non-Federal Sponsor is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c).

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 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 there from.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.D., II.G., and 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 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 its share of scheduled expenditures for the general navigation 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. 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, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV.D. 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.D. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

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. 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 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 shall be considered incidental costs under Article IV.B.4. and be credited pursuant to Article II.J. 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 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, 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, if already in construction, operation, or maintenance, whether to continue with construction, operation, or maintenance of the general navigation 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. 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. 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. 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 - 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
Pemiscot County Port Authority
619 Ward Avenue
Caruthersville, Missouri 63830

If to the Government:

District Engineer
U. S. Army Corps of Engineers, Memphis District
167 N. Main
Room B202
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 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 and shared in accordance with Articles II.F. and II.J. of this Agreement.

B. The costs of identification, survey, and evaluation of historic properties 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. 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, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the construction of the general navigation features.

D. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph C. 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 and shall be shared in accordance with Articles II.F. and II.I. of this Agreement.

2. Any costs of mitigation and data recovery 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.

ARTICLE XIX – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XX - LIMITATION ON GOVERNMENT EXPENDITURES

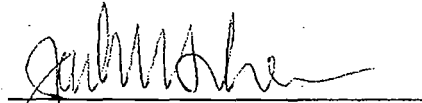
In accordance with Section 107 of Public Law 86-645, as amended, the Government's financial participation in the Project is limited to \$4,000,000 which shall include all Federal funds expended by the Government for planning, design, and construction of the Project except for costs incurred on behalf of the Non-Federal Sponsor in accordance with Article II.B. or Article II.D. of this Agreement. 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

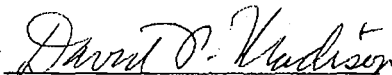
THE PEMISCOT COUNTY PORT
AUTHORITY

BY:



Jack V. Scherer
Colonel, Corps of Engineers
District Engineer

BY:



David P. Madison
Executive Director

DATE: 7-30-01

DATE: 7-30-01

CERTIFICATE OF AUTHORITY

I, J. Michael Mowrer, do hereby certify that I am the principal legal officer of the Pemiscot County Port Authority, that the Pemiscot County Port Authority 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 Pemiscot County Port Authority in connection with the Pemiscot County Harbor, Missouri, 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 Pemiscot County Port Authority have acted within their statutory authority.

30th IN WITNESS WHEREOF, I have made and executed this certification this
day of July 2001



J. Michael Mowrer
Pemiscot County Port Authority

CERTIFICATION REGARDING LOBBYING

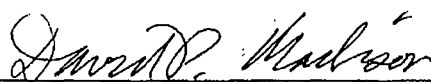
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



David P. Madison
Executive Director, Pemiscot County Port Authority

DATE: 7-30-01