

PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE WOODS HOLE, MARTHA'S VINEYARD AND NANTUCKET  
STEAMSHIP AUTHORITY  
FOR CONSTRUCTION OF THE  
HYANNIS HARBOR  
BARNSTABLE AND YARMOUTH, MASSACHUSETTS  
NAVIGATION PROJECT

THIS AGREEMENT is entered into this 13th day of November, 1997, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer for the New England District (hereinafter the "District Engineer"), and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, a public authority chartered by the Commonwealth of Massachusetts (hereinafter the "Non-Federal Sponsor"), represented by the General Manager.

WITNESSETH, THAT:

WHEREAS, improvements at the Hyannis Harbor, Barnstable and Yarmouth, Massachusetts were approved for construction by the Detailed Project Report titled "Hyannis Harbor, Barnstable and Yarmouth, Massachusetts, Final Detailed Project Report & Environmental Assessment" dated October 1995 pursuant to the authority contained in Section 107 of Public Law 86-645, as amended, 33 U.S.C. § 577 (1986);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Hyannis Harbor Navigation Improvement Project at Barnstable and Yarmouth, Massachusetts (hereinafter 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, (codified as amended at 33 U.S.C. § 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 201 of the Water Resources Development Act of 1996 amends Sections 101(a) and 101(b) of the Water Resources Development Act of 1986, as amended, to provide specific requirements relating to the construction, operation, and maintenance of land-based and aquatic dredged material disposal facilities required for the Project;

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

WHEREAS, Section 107 of Public Law 86-645, as amended, 33 U.S.C. § 577b (1986), provides that no more than \$4,000,000 shall be allotted for the construction of any single small river and harbor improvement project;

WHEREAS, in addition to the per project limitation specified above, Federal expenditures for construction, operation, and maintenance, including costs of reconnaissance through the construction phases, are administratively limited to the greater of \$4,500,000 or 2.25 times the Federal costs of 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 Project Cooperation 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, including those lands necessary for dredged or excavated material disposal facilities, relocations, suitable borrow areas, or removals that the Government, in accordance with Article III of this Agreement, determines to be necessary for the construction, operation, or maintenance of the general navigation features, but shall not include aids to navigation.

B. The term "general navigation features" shall mean construction of modifications to the Federal navigation project for Hyannis Harbor, consisting of the following:

- realignment of the entrance channel through the outer harbor to the southwest,
- widening of the channel to 240 feet through the outer harbor and Lewis Bay, widened further at the bends, and widening the upper channel reach to 220 feet,
- reduction in the size of the inner harbor turning basin by 0.9 acres by elimination of the east and northeast corners of the basin,
- deepening the channel and basin to -13 feet at mean lower low water,
- excavation of a confined aquatic disposal cell for receipt of silty dredged materials from the upper project reaches, to be located beneath the existing outer harbor entrance channel reach to be abandoned with construction of the realign entrance, and capping of the cell,
- disposal of sandy dredged materials on adjacent beaches, with plantings to stabilize the fill area on Dunbar Point,

and including all dredged or excavated material disposal facilities required for construction, operation, and maintenance as generally described in the report entitled "Hyannis Harbor, Barnstable and Yarmouth, Massachusetts, Final Detailed Project Report & Environmental Assessment" dated October 1995, approved by the Division Engineer of the former New England Division on 27 October 1995, and as modified by the report entitled "Hyannis Harbor, Barnstable and Yarmouth, Massachusetts, Supplemental Feasibility Report & Environmental Assessment dated August 1997, approved by the New England District on 11 August 1997.

C. 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; 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 Articles XV.A.1. and XV.A.4. of this Agreement; costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.D.1. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States and the costs of construction of dredged or excavated material disposal facilities; 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 in accordance with Article II.L. of this Agreement; direct and incidental costs of removals accomplished by the Government before the end of the period of construction in accordance with Article II.K. of this Agreement; and costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, relocations, or borrow areas, including any lands, easements, rights-of-way, or relocations necessary for dredged material disposal areas; any direct costs of removals accomplished by the Non-Federal Sponsor; financial obligations for operation or maintenance of the general navigation features, including any financial obligations for advanced maintenance; any costs due to betterments; any costs of dispute resolution under Article VII of this Agreement; or any costs of aids to navigation.

D. 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.

E. 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.F. of this Agreement to total financial obligations for construction, as projected by the Government.

F. 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 issuance of the solicitation for the first contract for 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, except for dredged or excavated material disposal facilities that may be required solely for operation and maintenance, construction of the general navigation features is complete.

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

H. 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.

I. The term "relocation" shall mean providing a functionally equivalent facility, regardless of the authorized depth of the Project, 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.

J. 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; 3) the Non-Federal Sponsor, the Commonwealth of Massachusetts or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof.

K. 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.

L. 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.

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

N. The term "borrow areas" shall mean the lands, easements, or rights-of-way together with the improvements necessary on those lands, easements, or rights-of-way to enable the borrowing of material for the construction, operation, or maintenance of the general navigation features.

O. The term "utility" shall mean that which the Commonwealth of Massachusetts, pursuant to generally applicable state law, defines as a public utility.

## 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. 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, 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.

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 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, and rights-of-way, including those lands, easements, and rights-of-way necessary for dredged or excavated material disposal facilities, or suitable borrow areas that the

Government determines the Non-Federal Sponsor must provide for the construction, operation, or maintenance of the general navigation features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, or maintenance of the general navigation features.

D. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, suitable borrow areas 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, rights-of-way, or suitable borrow 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.

E. The Non-Federal Sponsor shall contribute 10 percent of the total cost of construction of the general navigation features.

F. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph L. of this Article and Articles V, X.B., X.C., and XV.A.1. of this Agreement will be less than its share required by paragraph E. of this Article, the Non-Federal Sponsor shall provide a cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to meet its share required by paragraph E. of this Article.

G. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., F., and L. of this Article and the contributions provided by the Non-Federal Sponsor in accordance with Articles V, X.B., X.C., and XV.A.1. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. 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").

H. 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, and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, or suitable borrow areas provided before the end of the period of construction; provided, however, that such credit shall not exceed the 10 percent amount. In accordance with Article VI.E. of this Agreement, the Non-Federal Sponsor shall, over a period not to exceed 30 years, pay an amount equal to the 10 percent amount reduced by such credit (hereinafter the "principal amount"), with interest. In accordance

with Article VI.E.4. of this Agreement, the Government also shall afford credit against the principal amount for the value, as determined in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, or suitable borrow areas provided after the period of construction.

I. The Government shall operate and maintain the general navigation features subject to the limits described in VIII.A. of this Agreement.

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

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

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.

L. The Non-Federal Sponsor shall accomplish all removals, other than those removals specifically assigned to the Government by paragraph K. 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 Commonwealth of Massachusetts has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

### 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, rights-of-way, and relocations necessary for the construction, operation, or maintenance of the general navigation features, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, or borrow materials, and including those lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude. Such features shall include, but not be limited to, the provision by the Non-Federal Sponsor of a right-of-entry for property owned by the town of Barnstable at Azelton Park, Kalmus Park and Veterans Memorial Park for construction staging areas and disposal of dredged material. 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, 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 improvements necessary on lands, easements, or rights-of-way to enable the borrowing of material associated with the construction, operation, or maintenance of the general navigation features. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes. 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 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 plans and specifications for all improvements the Government determines to be necessary for the borrowing of material that will be necessary for that work, 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, or maintenance of the general navigation features, including those necessary to enable the removal of borrow materials or 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. 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. Nothing in this agreement shall be deemed to affect the rights the Non-Federal Sponsor may have to seek and receive contributions from the utility owner, in accordance with Section 101(a)(4) of Public Law 99-662, for the owner's share.

D. 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.H. 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., B., or C. 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.H. of this Agreement.

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

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

A. The Non-Federal Sponsor shall receive credit in accordance with Article II.H. of this Agreement for the value of the lands, easements, rights-of-way, and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, or suitable borrow areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, including those lands necessary for dredged or excavated material disposal facilities, relocations, or borrow areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, including those lands necessary for dredged or excavated material disposal facilities, relocations, or borrow areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, or borrow materials, 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. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve

the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

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

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

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

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value

shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are necessary for the construction, operation, 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.E. 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 dredged or excavated material disposal facilities, relocations, or borrow materials 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 Commonwealth of Massachusetts 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.

E. The value of the improvements made to lands, easements, or rights-of-way to enable the borrowing of material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments or any costs of construction not in accordance with Government approved plans and specifications or Government approved modifications thereof, as determined by the Government. Costs due to betterments shall be only those costs for portions of the improvements that the Government identifies in writing to the Non-Federal Sponsor as betterments at the time that the Government approves plans and specifications or at the time the Government approves modifications, as the case may be.

## 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 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 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. 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 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 cash contributions required in accordance with Articles II.B., II.D., and II.F. of this Agreement, and of the non-Federal proportionate share, of the credit to be afforded pursuant to Article II.H. of this Agreement for the value of lands, easements, rights-of-way, and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, or suitable borrow areas contributed before the end of the 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 \$3,316,000, and the Non-Federal Sponsor's cash contribution required under Article II.F. of this Agreement is projected to be \$331,600. These amounts are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required by Article II.F. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Article II.F. 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, New England" to the District Engineer. 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. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's cash 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 45 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or 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 by delivering a check payable to "FAO, USAED, New England" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

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.

1. The final accounting shall determine the total cost of construction of the general navigation features, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Article II.B. or II.D. of this Agreement and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. or II.D. of this Agreement.

a. In the event the final accounting shows that the total contribution 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 II.D. 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 the total cost of construction of the general navigation features plus costs due to additional work under Article II.B. or II.D. of this Agreement.

b. In the event the final accounting shows that the total contribution 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 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 of lands, easements, rights-of-way, and relocations, including those lands, easements, rights-of-way, and relocations necessary for dredged or excavated material disposal facilities, relocations, and suitable borrow areas provided before the end of the period of construction.

E. The Non-Federal Sponsor shall pay the principal amount required by Article II.H. 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, New England" to the District Engineer.

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, and relocations including those lands, easements, rights-of-way and relocations necessary for dredged or excavated material disposal facilities, relocations, and suitable borrow areas 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.

#### 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. The Government, as it determines necessary, shall operate and maintain the general navigation features and shall be responsible for financial obligations limited to the greater of \$4,500,000 or 2.25 times the Federal costs of the Project, including costs for the reconnaissance through the construction phases, for operation and maintenance of the general navigation features, including financial obligations for advanced maintenance. Once this limit is met, the Non-Federal Sponsor shall be responsible for all operation and maintenance of the Project.

B. The Non-Federal Sponsor shall contribute a share of the cost of constructing dredged or excavated material disposal facilities necessary for the disposal of dredged or excavated material required for the operation and maintenance of the general navigation features in accordance with

Articles II.E. and II.H. of this Agreement. The Non-Federal Sponsor shall pay such costs in accordance with the provisions of Articles VI.B. and VI.E. of this Agreement.

C. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the general navigation features for the purpose of inspection and, if necessary, 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.

#### ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation, or maintenance of the Project, and any 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, 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. 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 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-128, and such costs as are allocated to the Project shall be included in the total cost of construction of the general navigation features and shared in accordance with the provisions of this Agreement.

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

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not 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".

#### 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 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.F., VI, or VIII.B. 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 of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment 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 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 for such investigations for hazardous substances shall be considered incidental costs under Article IV.B.4. and be credited pursuant to Article II.H. 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. Except for costs associated with construction of dredged or excavated material disposal facilities, all actual costs incurred by the Government after the 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.A. of this Agreement.

4. All actual costs incurred by the Government after the period of construction for such investigations for hazardous substances associated with construction of dredged or excavated material disposal facilities shall be included in the total costs of construction of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

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 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.

C. 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.

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. 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:

General Manager  
Woods Hole, Martha's Vineyard and Nantucket Steamship Authority  
P.O. Box 284  
Railroad Avenue  
Woods Hole, Massachusetts 02543

If to the Government:

District Engineer  
U.S. Army Corps of Engineers, New England District  
424 Trapelo Road  
Waltham, Massachusetts 02254-9149

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, and all costs of identification, survey, and evaluation of historic properties associated with construction of dredged or excavated material disposal facilities, shall be included in the total cost of construction of the general navigation features and shared in accordance with Articles II.E. and II.H. of this Agreement.

B. Except for the costs associated with construction of dredged or excavated material disposal facilities, the costs of identification, survey, and evaluation of historic properties incurred after the period of construction shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.A. 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 the Government is authorized to expend 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, and any costs of mitigation and data recovery that exceed the one percent limit and are associated with the construction of dredged or excavated material disposal facilities, shall be included in the total cost of construction of the general navigation features and shall be shared in accordance with Articles II.E. and II.H. of this Agreement.

2. Except for the costs associated with the construction of dredged or excavated material disposal facilities, any costs of mitigation and data recovery that exceed the one percent limit and are incurred after the period of construction shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.A. of this Agreement.

ARTICLE XIX - 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 implementation of the Project except for costs incurred on behalf of the Non-Federal Sponsor pursuant to Articles II.B. and 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 Department of the Army.

THE DEPARTMENT OF THE ARMY

THE WOODS HOLE, MARTHA'S VINEYARD  
AND NANTUCKET STEAMSHIP AUTHORITY

BY: Michael W. Pratt  
MICHAEL W. PRATT  
Lieutenant Colonel, Corps of Engineers  
District Engineer, New England District

BY: Armand L. Tiberio  
ARMAND L. TIBERIO  
General Manager  
Woods Hole, Martha's Vineyard and  
Nantucket Steamship Authority

DATE: 13 Nov 97

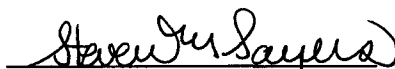
DATE: 11/12/97



## CERTIFICATE OF AUTHORITY

I, Steven M. Sayers, do hereby certify that I am the principal legal officer of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, that the Woods Hole, Martha's Vineyard and Nantucket Steamship 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 Woods Hole, Martha's Vineyard and Nantucket Steamship Authority in connection with the Hyannis Harbor Navigation Improvement 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 Woods Hole, Martha's Vineyard and Nantucket Steamship Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
12<sup>th</sup> day of November 1997.



STEVEN M. SAYERS

General Counsel

Woods Hole, Martha's Vineyard and Nantucket  
Steamship 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.



ARMAND L. TIBERIO

General Manager

Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

DATE: 11/12/97