

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE MASSACHUSETTS PORT AUTHORITY, BOSTON, MA
FOR CONSTRUCTION OF
DREDGED OR EXCAVATED MATERIAL DISPOSAL FACILITIES FOR
DISPOSAL OF MATERIAL FROM THE EXISTING GENERAL NAVIGATION FEATURES
AT
BOSTON HARBOR, MASSACHUSETTS

THIS AGREEMENT entered into this 29th day of May, 2007, by and between the Department of the Army (hereinafter the "Government") represented by the U.S. Army Engineer, New England District and the Massachusetts Port Authority (Massport), a body politic and corporate organized pursuant to Chapter 465 of the Acts of 1956, as amended, with its regular place of business as One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128 (hereinafter the "Non-Federal Sponsor"), represented by the Assistant Secretary-Treasurer.

WITNESSETH, THAT:

WHEREAS, construction, operation, and maintenance of the general navigation features of the Boston Harbor Federal Navigation Project at Boston, Massachusetts was authorized by House Document. 244, 72nd Cong., 1st session; Rivers and Harbors Committee Doc. 29, 74th Cong., 1st session. (hereinafter the "*existing general navigation features*", as defined in Article I.A. of this Agreement);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of *dredged or excavated material disposal facilities* (hereinafter the "*Project*", as defined in Article I.B. of this Agreement) to enable continued operation and maintenance of the *existing general navigation features*;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 217(a) of the Water Resources Development Act of 1996, Public Law 104-303 (33 U.S.C. 2326a(a)), provides that the Government may provide additional capacity at a dredged or excavated material disposal facility constructed by the Government beyond the capacity that would be required for water resources project purposes, if a non-Federal sponsor agrees to pay all costs associated with the construction of the additional capacity;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of

1986, Public Law 99-662, as amended (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 interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and the 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 teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

A. The term "*existing general navigation features*" shall mean the (1) 40-foot channel extending from President Roads to North Jetty, Boston, generally 600 feet wide, (2) A channel 35 feet deep along the same line as the 40-foot Main Ship Channel, and adjacent to the northerly side of the 40-foot Main Ship Channel from President Roads to abreast of the Fish Pier, 600 feet wide, (3) The upper 1,340 feet Reserved Channel with a depth of 35 feet and a width of 450 feet. The channel has also been widened and deepened to 40 feet at the confluence of the Reserved Channel, Main Ship Channel, and Dry Dock Channel; (4) the Mystic River channel 40 feet deep and 580 feet wide through the Tobin Bridge, and 740 to 700 feet wide from the bridge upstream to the Island End River. The term does not include any lands, easements, rights-of-way, *relocations; removals; betterments; aids to navigation; or local service facilities.*

B. The term "*Project*" shall mean the *general navigation features*; all *removals* accomplished in accordance with Article II of this Agreement; and all lands, easements, rights-of-way, and *relocations* that the Government, in accordance with Article III of this Agreement, determines to be necessary for construction or operation and maintenance of the *general navigation features*, but shall not include aids to navigation or *local service facilities.*

C. The term "*general navigation features*" shall mean the *initial general navigation features* and the *subsequent dredged or excavated material disposal facilities.* The *general navigation features* shall consist of the *dredged or excavated material disposal facilities* at Boston Harbor, Massachusetts consisting of the construction of one confined aquatic disposal cell dredged beneath the 40-foot channel in the Mystic River upstream of the Tobin bridge, with a finished top elevation of the capped cell no shallower than -42 feet at mean lower low water, sized to accommodate a total of about 535,400 cubic yards of dredged material, as generally described in the Decision Document for Maintenance Dredging and Dredged Material Disposal Facility Construction, Boston Harbor, dated September, 2006 and approved by the North

Atlantic Division on October 24, 2006. The term does not include any lands, easements, rights-of-way, *removals*; *betterments*; any capacity provided pursuant to II.L.3. of this Agreement; aids to navigation; or *local service facilities*.

D. The term “*initial general navigation features*” shall mean the *dredged or excavated material disposal facilities* other than the *subsequent dredged or excavated material disposal facilities*.

E. The term “*subsequent dredged or excavated material disposal facilities*” shall mean any *dredged or excavated material disposal facilities* that will be constructed after the conclusion of the *initial period of construction*.

F. The term “*initial period of construction*” shall mean the time from the date that the Government either issues the solicitation for the first construction contract for the *initial general navigation features* or commences construction of the *initial general navigation features* using the Government’s own forces, whichever is earlier, to the date that construction of the *initial general navigation features* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIV or Article XV.C. of this Agreement, whichever is earlier.

G. The term “*subsequent period of construction*” shall mean the time during which the engineering and design or construction is performed on a *subsequent dredged or excavated material disposal facility*. The commencement of each *subsequent period of construction* shall be the date that the Government issues the solicitation for the first contract for any work on such facility, or the date that the Government makes the first financial obligation for the Government’s own forces to perform any work on such facility, whichever is earlier. The end of each *subsequent period of construction* shall be the date that construction of such facility is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIV or Article XV.C. of this Agreement, whichever is earlier.

H. The term “*total costs 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: the Government’s Preconstruction Engineering and Design costs; the Government’s engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; the costs of historic preservation activities in accordance with Articles XVIII.A.1. and XVIII.C.1. of this Agreement; the Government’s actual construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*); the Government’s supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; incidental costs of *removals* accomplished by the Non-Federal Sponsor in accordance with Article II.K.3. of this Agreement; direct and incidental costs of *removals* accomplished by the Government in accordance with Article II.J. 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 and maintenance of the *general navigation features*; any costs of additional work under Articles II.L.2. and II.L.3. of this Agreement; or any costs of dispute resolution under Article VII of this Agreement.

I. The term “*total costs of initial construction*” shall mean that portion of *total costs of construction of the general navigation features* incurred for the *initial general navigation features*.

J. The term “*total costs of subsequent construction*” shall mean that portion of *total costs of construction of the general navigation features* incurred for the *subsequent dredged or excavated material disposal facilities*.

K. The term “*financial obligation for initial construction*” shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in *total costs of initial construction*.

L. The term “*financial obligation for subsequent construction*” shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in *total costs of subsequent construction*.

M. The term “*non-Federal proportionate share of financial obligations for initial construction*” shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement to total *financial obligations for initial construction*, as projected by the Government.

N. The term “*non-Federal proportionate share of financial obligations for subsequent construction*” shall mean the ratio of the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement to *financial obligations for subsequent construction*, as projected by the Government.

O. The term “*highway*” shall mean any public highway, roadway, street, or way, including any bridge thereof.

P. 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.

Q. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (including any bridge thereof), or public facility, excluding any *bridge over navigable waters of the United States*, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally

equivalent facility when such action is specifically provided for, and is identified as a *relocation*, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

R. . 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 construction or operation and maintenance of the *general navigation features*, including the borrowing of material or the disposal of dredged or excavated material associated therewith; and 2) 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.

S. The term “*betterment*” shall mean a difference in the engineering and design or construction of an element of the *general navigation features* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the engineering and design or construction of that element. The term does not include features in addition to the *general navigation features*, nor does it include capacity provided, pursuant to Article II.L.3. of this Agreement, at any *dredged or excavated material disposal facility* for disposal of dredged or excavated material from outside the *existing general navigation features*.

T. The term “*dredged or excavated material disposal facility*” shall mean improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with operation and maintenance of the *existing 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 term also includes modifications to a dredged or excavated material disposal facility to increase capacity beyond that created by regularly recurring operation and maintenance activities. Such modifications may include, but are not limited to, major raising of dikes, expansion of the dredged or excavated material disposal facility, or a significant investment in dewatering facilities.

U. 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.

V. The term “*utility*” shall mean that which is defined as a public utility pursuant to generally applicable law of the Commonwealth of Massachusetts.

W. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

X. The term “*fiscal year*” shall mean one year of the Government beginning on October 1 and ending on September 30.

Y. The term “*local service facilities*” shall mean those facilities that the Non-Federal Sponsor must construct or operate and maintain to realize the benefits of the *existing general navigation features*.

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

A. The Government, subject to receiving funds appropriated by the Congress 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 demolition of any *bridge over navigable waters of the United States*), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first construction contract for the *initial general navigation features* or commence construction of the *initial general navigation features* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. 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. 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 or commencement of construction using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *general navigation features* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer for the New England District (hereinafter the “District Engineer”) furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract for the *general navigation features*, the District Engineer shall furnish the Non-Federal Sponsor with a copy thereof.

4. Notwithstanding paragraph A.1. of this Article, if the award of any contract for the *initial general navigation features*, or continuation of construction of the *initial general navigation features* using the Government’s own forces would result in *total costs of initial construction* exceeding \$13,000,000, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for the *initial general navigation*

features, and continuation of construction on any remaining *initial general navigation features* using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *initial general navigation features* or the continuation of construction on any remaining *initial general navigation features* using the Government's own forces, but in no event shall the award of contracts or the continuation of construction using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with construction using the Government's own forces, after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

5. As of the effective date of this Agreement, \$8,000,000.00 of Federal funds have been provided for the *Project*. The Government makes no commitment to budget for additional Federal funds for the *Project*. 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 for the *Project*. In the event that the Congress does not appropriate Federal funds for the *Project* sufficient to meet the Federal share of the costs of work on the *Project* in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor 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 Sponsor in accordance with Article II.D. or II.E. of this Agreement, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide for construction or operation and 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 construction or operation and maintenance of the *general navigation features*.

C. The Government shall allocate *total costs of construction of the general navigation features* between *total costs of initial construction* and *total costs of subsequent construction* and shall allocate *total costs of subsequent construction* among the *subsequent periods of construction*. The Government also shall allocate *total costs of initial construction* and *total costs of subsequent construction* to the final dredged depth of the *existing general navigation features*, excluding associated *over-depth* and entrance channel wave allowances.

D. The Non-Federal Sponsor shall contribute 25 percent of *total costs of initial construction*. If the Government projects that the Non-Federal Sponsor's contributions under

paragraph K.3. of this Article and under Articles V, X.B., X.C., and XV.A. of this Agreement that are allocated by the Government to *total costs of initial construction* will be less than the Non-Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

E. The Non-Federal Sponsor shall contribute 25 percent of *total costs of subsequent construction* incurred for each *subsequent period of construction*. If the Government projects that the Non-Federal Sponsor's contributions under paragraph K.3. of this Article and under Articles V, X.B., X.C., and XV.A. of this Agreement that are allocated by the Government to *total costs of subsequent construction* for that *subsequent period of construction* will be less than the Non-Federal Sponsor's share required by this paragraph for that *subsequent period of construction*, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph for that *subsequent period of construction*.

F. In accordance with Article VI.E. of this Agreement, the Non-Federal Sponsor shall pay an additional amount equal to 10 percent of *total costs of construction of the general navigation features* less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and relocations provided or performed pursuant to Article III of this Agreement, plus interest thereon except as provided by Article VI.E.7. of this Agreement. The Non-Federal Sponsor shall not be entitled to reimbursement for any value of such lands, easements, rights-of-way, and relocations that exceeds 10 percent of *total costs of construction of the general navigation features*.

G. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the *initial period of construction* and the conclusion of each *subsequent period of construction*. Upon providing each notification, the Government shall conduct an accounting, in accordance with Article VI of this Agreement, and furnish the results to the Non-Federal Sponsor.

H. The Government, subject to the availability to funds and as it deems necessary, shall operate and maintain the *general navigation features* in accordance with Article VIII of this Agreement. The Government shall be responsible for all financial obligations for operation and maintenance of the *general navigation features*.

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

J. 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 *removals*, and shall accomplish all *removals* that the

Government is expressly required to accomplish in the authorizing legislation for the *Project* or any report referenced therein.

1. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as 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 or ensure performance of *relocations*, as appropriate, pursuant to Article II.B. of this Agreement.

2. All costs incurred by the Government in accomplishing removals shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

K. The Non-Federal Sponsor shall accomplish all *removals*, other than those *removals* specifically assigned to the Government by paragraph J. 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 or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of the *general navigation features* using the Government's 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 or ensure performance of *relocations*, as appropriate, pursuant to Article II.B. of this Agreement.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing *removals* shall be included in *total costs 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.

L. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional

work”) described below. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.F. of this Agreement.

1. Acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *general navigation features* only. Notwithstanding the acquisition 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 any costs of cleanup and response in accordance with Article XV.C. of this Agreement.

2. Inclusion of *betterments* in the engineering and design or construction of the *general navigation features*. In the event the Government elects to include any *betterments*, the Government shall allocate the costs of constructing the *general navigation features* that include *betterments* between *total costs of construction of the general navigation features* and the costs of the additional work.

3. Provision of capacity at a *dredged or excavated material disposal facility* for dredged or excavated material from outside the *existing general navigation features*. In the event the Government elects to provide such capacity, the Government shall allocate the costs of engineering and design and construction of the *dredged or excavated material disposal facility* between *total costs of construction of the general navigation features* and the costs of the additional work. The Government also shall allocate any operation and maintenance costs of the *dredged or excavated material disposal facility* between the costs of operation and maintenance for the *general navigation features* and the costs of the additional work.

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

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those lands, easements, and rights-of-way necessary for the borrowing of material, the disposal of dredged or excavated material, and *relocations*, and including those lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude. The Government shall indicate which of the required lands, easements, and rights-of-way are necessary for the *initial general navigation features* and which are necessary for the *subsequent dredged or excavated material disposal facilities*. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and

rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and 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. Furthermore, prior to the end of the *initial period of construction*, or prior to the end of any *subsequent period of construction*, as applicable, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction or operation and maintenance of the applicable *general navigation features*, as set forth in such descriptions and shall provide the Government with authorization for entry thereto. For so long as the *Project* remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the *general navigation features* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction or operation and 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 shall indicate which of such *relocations* are necessary for the *initial general navigation features* and which are necessary for the *subsequent dredged or excavated material disposal facilities*. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government's 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. Nothing in this Agreement shall be deemed to affect any rights the Non-Federal Sponsor may have to seek and receive contributions from a utility owner, in accordance with Section 101(a)(4) of Public Law 99-662, as amended (33 U.S.C. 2211(a)(4)), for the owner's share of *deep draft utility relocation* costs.

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 (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way necessary for construction or operation and 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. To determine the additional amount, the Government shall afford credit toward an amount equal to 10 percent of *total costs of construction of the general navigation features* for the value of the lands, easements, and 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, no credit shall be afforded 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. In addition, no credit shall be afforded for the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.

B. 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 Article III of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contribution for the purpose of determining the amount of credit to be afforded toward an amount equal to 10 percent of *total costs of construction of the general navigation features*.

C. For the sole purpose of determining the amount of credit to be afforded for the value of lands, easements, and rights-of-way, including those necessary for the *relocations*, borrowing of material, and the disposal of dredged or excavated material, other than those the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.L.1. 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 C.3., C.4., or C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph C.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph C.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. 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 C.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 C.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 C.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, prior to instituting such proceedings, shall 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 C.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 construction or 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 Government shall afford credit for the documented incidental costs associated with preparing to acquire the 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 (including appraisals required for crediting purposes pursuant to Article IV.C.2. of this Agreement), survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C. of this Agreement.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation problem is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. For the sole purpose of determining the amount of credit to be afforded for the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.L.1. 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 relocation assistance benefits in accordance with Public Law 91-646, as amended.

E. After consultation with the Non-Federal Sponsor, the Government, for the sole purpose of determining the amount of credit to be afforded, 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*, as determined by the Government. *Relocation* costs shall not include 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.

F. Any credit afforded for the value of *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, applicable Federal labor standards in 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 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 *initial 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 *initial period of construction* and during each *subsequent period of construction*, as applicable, the Project Coordination Team shall generally oversee the *Project*, including but not necessarily limited to matters related to: engineering and 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 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 USC 276c)) for *relocations*; the Government's cost projections; final inspection of the entire *Project* or functional portions of the *Project*; anticipated requirements for operation and maintenance of the *general navigation features*; and other matters related to the *Project*. The Project Coordination Team shall also 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 matters related to the *Project* 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 *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records of, and provide to the Non-Federal Sponsor current projections of, costs, financial obligations, contributions provided by the parties, and credit afforded for the value of lands, easements, rights-of-way, and *relocations*. As of the effective date of this Agreement, *total costs of construction of the general navigation features* are projected to be \$ 7,000,000, *total costs of initial construction* are projected to be \$ 7,000,000, the Non-Federal Sponsor's contribution of funds required by Article II.D. of this Agreement is projected to be \$ 1,750,000,

the *non-Federal proportionate share of financial obligations for initial construction* is projected to be 25 percent, the Government's total financial obligations for additional work to be incurred through the end of the *initial period of construction* and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement are projected to be \$ 7,000,000, 10 percent of *total costs of construction of the general navigation features* as of the end of the *initial period of construction* is projected to be \$ 700,000, the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations* to be provided or performed through the end of the *initial period of construction* is projected to be \$0, the additional amount required by Article II.F. of this Agreement as of the end of the *initial period of construction* is projected to be \$ 700,000, *total costs of subsequent construction* are projected to be \$0, the Non-Federal Sponsor's total contribution of funds required by Article II.E. of this Agreement for all *subsequent periods of construction* is projected to be \$0, and the Government's total financial obligations for the additional work to be incurred after the *initial period of construction* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.L. of this Agreement are projected to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

1. By 1 October, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total costs of construction of the general navigation features; total costs of initial construction;* the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement; the *non-Federal proportionate share of financial obligations for initial construction;* the Government's total financial obligations for additional work incurred through the end of the *initial period of construction* and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.L. of this Agreement; 10 percent of *total costs of construction of the general navigation features* as of the date of the final accounting for the *initial period of construction;* the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations* to be provided or performed through the end of the *initial period of construction;* the additional amount required by Article II.F. of this Agreement as of the end of the *initial period of construction;* the annual installments calculated in accordance with paragraph E. of this Article; *total costs of subsequent construction;* the Non-Federal Sponsor's total contribution of funds required by Article II.E. of this Agreement for all *subsequent periods of construction;* and the Government's total financial obligations for additional work incurred after the *initial period of construction* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.L. of this Agreement.

2. By 1 October, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total costs of construction of the general navigation features; total costs of initial construction; total costs of subsequent construction;* the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement for all *subsequent periods of construction;* *total costs of subsequent construction* incurred for that *subsequent period of construction;* the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement for that *subsequent period of construction;* the *non-Federal proportionate share of financial obligations for subsequent construction* for that *subsequent period of construction;* the Government's total

financial obligations for additional work incurred during that *subsequent period of construction* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.L. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the forthcoming *fiscal year*; 10 percent of *total costs of construction of the general navigation features* as of the date of the final accounting for that *subsequent period of construction*; the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations* to be provided or performed through the end of that *subsequent period of construction*; and the additional amount required by Article II.F. of this Agreement as of the end of that *subsequent period of construction*.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D. and II.E. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *initial general navigation features* or commencement of construction of the *initial general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for initial construction* incurred prior to the commencement of the *initial period of construction*; and (b) the projected *non-Federal proportionate share of financial obligations for initial construction* to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for initial construction* through the first *fiscal year*. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, New England District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of all the *general navigation features* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for engineering and design or construction of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* for that *fiscal year* for such continuing contract; and (b) the *non-Federal proportionate share of*

financial obligations for subsequent construction for that *fiscal year* for such continuing contract. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract where the Government will not use a continuing contract to make financial obligations for engineering and design or construction of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* to be incurred for such contract; and (b) the *non-Federal proportionate share of financial obligations for subsequent construction* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make financial obligations for engineering and design or construction of the *general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* using the Government's own forces for that *fiscal year*; and (b) the *non-Federal proportionate share of financial obligations for subsequent construction* using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for initial construction* incurred prior to the commencement of the *initial period of construction*; (b) the *non-Federal proportionate share of financial obligations for initial construction* as *financial obligations for initial construction* are incurred; and (c) the *non-Federal proportionate share of financial obligations for subsequent construction* as *financial obligations for subsequent construction* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations in the current *fiscal year*, 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 from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *initial period of construction* and resolution of all relevant claims and appeals and all eminent domain proceedings, the Government shall conduct a final accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If due to outstanding relevant claims and appeals or eminent domain proceedings a final accounting for the *initial period of construction* cannot be conducted in a timely manner, the Government shall conduct an interim accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and all eminent domain proceedings for the *initial period of construction* are resolved, the Government shall amend the interim accounting for the *initial period of construction* to complete the final accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting for the *initial period of construction*, as applicable, shall determine *total costs of initial construction* and the costs allocated by the Government to operation and maintenance of any pre-existing non-Federal navigation project as of the date of such accounting. For each set of costs, the final or interim accounting for the *initial period of construction*, as applicable, also shall determine each party's required share thereof and each party's total contributions thereto as of the date of such accounting.

1. In the event the final or interim accounting for the *initial period of construction*, as applicable, shows that the Non-Federal Sponsor's total required shares for *total costs of initial construction* and the costs allocated by the Government to operation and maintenance of any pre-existing non-Federal navigation project exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government of an amount equal to the excess by delivering a check payable to "FAO, USAED, New England District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final or interim accounting for the *initial period of construction*, as applicable, shows that the total contributions provided by the Non-Federal Sponsor for *total costs of initial construction* and the costs allocated by the Government to operation and maintenance of any pre-existing non-Federal navigation project exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event 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. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

D. Upon conclusion of each *subsequent period of construction* and resolution of all relevant claims and appeals and all eminent domain proceedings, the Government shall conduct a final accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If due to outstanding relevant claims and appeals or eminent domain proceedings a final accounting for such *subsequent period of*

construction cannot be conducted in a timely manner, the Government shall conduct an interim accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and all eminent domain proceedings for such *subsequent period of construction* are resolved, the Government shall amend the interim accounting for such *subsequent period of construction* to complete the final accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting for such *subsequent period of construction*, as applicable, shall determine *total costs of subsequent construction* for that *subsequent period of construction*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. In the event the final or interim accounting for such *subsequent period of construction*, as applicable, shows that the Non-Federal Sponsor's total required share for *total costs of subsequent construction* for that *subsequent period of construction* exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government of an amount equal to the excess by delivering a check payable to "FAO, USAED, New England District " to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final or interim accounting for such *subsequent period of construction*, as applicable, shows that the total contributions provided by the Non-Federal Sponsor for *total costs of subsequent construction* for that *subsequent period of construction* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event 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. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

E. The Non-Federal Sponsor shall pay any additional amount plus any interest thereon required by Article II.F. of this Agreement in accordance with the provisions of this paragraph.

1. Each time the Government conducts a final or interim accounting for the *initial period of construction* and for each *subsequent period of construction*, the Government shall determine:

a. an amount equal to 10 percent of *total costs of construction of the general navigation features* as of the date of such accounting;

b. the value, in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, and *relocations* provided or performed pursuant to Article III of this Agreement as of the date of such accounting; and

c. the additional amount to be paid by the Non-Federal Sponsor as of the date of such accounting. The additional amount is equal to the amount determined in accordance

with paragraph E.1.a. of this Article less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and *relocations*, determined in accordance with paragraph E.1.b. of this Article. In the event the result of the aforesaid calculation is a negative number, the additional amount shall be zero.

2. The first time the Government determines that the additional amount is greater than zero, the Government shall calculate annual installments for payment of the additional amount that shall be substantially equal. To calculate the annual installments, the Government shall amortize the additional amount over a period of 30 years (hereinafter the "payment period"), beginning on the date the Government notifies the Non-Federal Sponsor of the additional amount, using an interest rate 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 of maturity comparable to the payment period during the month preceding the *fiscal year* in which the *initial period of construction* or *subsequent period of construction*, as applicable, commences, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the additional amount and the annual installments.

3. For all subsequent occurrences where the Government determines the additional amount is greater than zero, and the payment period has not elapsed, the Government shall recalculate the annual installments by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the remaining portion of the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount and the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

4. For all subsequent occurrences where the Government determines the additional amount is greater than zero, and the payment period has elapsed, the Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount. The Non-Federal Sponsor, not later than 90 days from receipt of such notice, shall pay to the Government the outstanding portion of the additional amount by delivering a check payable to "FAO, USAED, New England District " to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

5. In addition to any recalculation of the annual installments in accordance with paragraph E.3. of this Article, the Government shall recalculate the annual installments at five year intervals by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the *initial period of construction* or *subsequent period of construction*, as applicable, commences, plus a premium of one-eighth of one

percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

6. Subject to paragraphs C.2., D.2., and F.3.b. of this Article, the Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraphs E.2., E.3., or E.5. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the additional amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, New England District " to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

7. Notwithstanding paragraph E.6. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the additional amount, in whole or in part, at any time. Notwithstanding paragraphs E.2., E.3., or E.5. of this Article, there shall be no charges for interest on any portion of the additional amount that is prepaid within 90 days after the Government notifies the Non-Federal Sponsor of the additional amount, nor shall there be interest charges on any portion of an increase to the additional amount that is caused by recalculation of the additional amount and that is prepaid within 90 days after the Government notifies the Non-Federal Sponsor of such recalculated additional amount.

8. If the Government determines that the Non-Federal Sponsor has made payments towards the additional amount that exceed the additional amount, the Government, subject to the availability of funds, shall refund the amount of the excess, without interest. In the event funds are not available to make such refund, the Government shall seek such appropriations as are necessary to make such refund.

F. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.L. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. 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. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, 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 from receipt of such notice, the Non-Federal Sponsor shall provide the

Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the final or interim accounting for the *initial period of construction*, as applicable, or the final or interim accounting for each *subsequent period of construction*, as applicable, or at the end of each *fiscal year* in which the Government incurs costs for additional work provided or performed prior to the *initial period of construction* or after all *subsequent periods of construction*, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such accounting. Such accounting shall determine the Government's total financial obligations for additional work incurred during the applicable period and the Non-Federal Sponsor's contribution of funds provided thereto.

a. In the event such accounting shows that the total obligations for additional work incurred during the applicable period exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government of an amount equal to the excess by delivering a check payable to "FAO, USAED, New England District " to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. In the event such accounting shows that the total contribution of funds provided by the Non-Federal Sponsor for additional work during the applicable period exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event 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. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

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 an equal share 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, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features*.

B. 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*. However, nothing contained herein shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

C. 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 that, in the Government's sole discretion, are necessary for the operation and maintenance of the *general navigation features*. Such activities include, but are not necessarily limited to management of disposal of dredged or excavated material associated with operation and maintenance of the *existing general navigation features*. In addition, as between the Government and the Non-Federal Sponsor, for so long as a *dredged or excavated material disposal facility* is required for operation and maintenance of the *existing general navigation features* as determined by the Government, the Government shall have the full authority and exclusive right to operate and maintain or manage such facility including the exclusive right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government.

ARTICLE IX - HOLD AND SAVE

Subject to the provisions of Article XXI of this agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction or operation and maintenance of the *Project* and any *betterments*, and the provision of capacity pursuant to Article II.L.3. of this Agreement, 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, records, documents, 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 Amendments of 1996, 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 shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *general navigation features* shall be included in *total costs 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 Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total costs 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) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 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 therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under 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 determines that Federal funds for the *Project* are not sufficient to meet the Federal share of the costs of work on the *Project* in 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 Federal funds for the *Project* or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever is earlier.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and proceed to a final or interim accounting for the *initial period of construction*, as applicable, in accordance with Article VI.C. of this Agreement, or a final or interim accounting for such *subsequent period of construction*, as applicable, in accordance with Article VI.D. of this Agreement, as applicable.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV.C. 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 ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter

"CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. However, for lands, easements, and 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 for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs 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 Government for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions 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 construction or operation and maintenance of the *general navigation features*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction or operation and maintenance of the *general navigation features*, or, if already in construction or operation and maintenance of the *general navigation features*, whether to continue with construction or operation and 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 construction or operation and maintenance of the *general navigation features*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction or operation and maintenance of the *general navigation features* 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 cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total costs of construction of the general navigation features*. In the event the Non-Federal Sponsor fails to provide any funds

necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may 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 cleanup 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: Port Director
Massport – Maritime Department
1 Harborside Drive, Suite 200 South
East Boston, Massachusetts 02128

If to the Government: District Commander
New England District
U.S. Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742-2751

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 Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties.

1. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.H. of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as renumbered and amended by Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total costs 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 *general navigation features*.

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

1. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.H. 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 - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XXI - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the General Court of the Commonwealth of Massachusetts, where creating

such an obligation would be inconsistent with Chapter I, Section III, Article VII of the Constitution of the Commonwealth of Massachusetts.

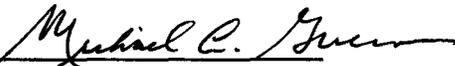
B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander of the U.S. Army Engineer, New England District.

DEPARTMENT OF THE ARMY

MASSACHUSETTS PORT AUTHORITY

BY: 
Curtis L. Thalken
District Commander
New England District

BY: 
Michael A. Grieco
Assistant Secretary-Treasurer

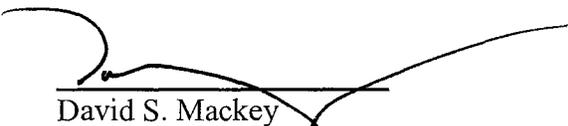
DATE: 29 May 07

DATE: 5/23/07

CERTIFICATE OF AUTHORITY

I, David S. Mackey, do hereby certify that I am the principal legal officer of the Massachusetts Port Authority, that the Massachusetts 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 Massachusetts Port Authority in connection with the Boston Harbor Federal Navigation 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, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Massachusetts Port Authority have acted within their statutory authority.

23rd IN WITNESS WHEREOF, I have made and executed this certification this
day of May, 2007.



David S. Mackey
Chief Legal Counsel

CERTIFICATION REGARDING LOBBYING

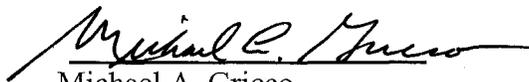
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Michael A. Grieco
Assistant Secretary-Treasurer

DATE: 5/23/07