

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF PROVIDENCE, RHODE ISLAND
FOR CONSTRUCTION OF THE
FOX POINT HURRICANE BARRIER, PROVIDENCE, RHODE ISLAND, PROJECT

THIS AGREEMENT is entered into this 8th day of April, 2002, by and between the Department of the Army (hereinafter the "Government"), represented by the Principal Deputy Assistant Secretary of the Army (Civil Works), and the City of Providence, Rhode Island (hereinafter the "Non-Federal Sponsor"), represented by the Mayor of the City of Providence, Rhode Island.

WITNESSETH, THAT:

WHEREAS, construction of the Fox Point Hurricane Barrier, Providence, Rhode Island, Project at the Providence River in Providence, Rhode Island, was authorized by Section 203 of the Flood Control Act of 1958 (72 stat 306) and construction was completed in 1966;

WHEREAS, construction of necessary repairs to the Fox Point Hurricane Barrier, Providence, Rhode Island, Project at the Providence River in Providence, Rhode Island, was authorized by Section 352 of the Water Resources Development Act of 1999, Public Law 106-53, which was modified by Section 333 of the Water Resources Development Act of 2000, Public Law 106-541;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the necessary repairs to the Fox Point Hurricane Barrier, Providence, Rhode Island, Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 352 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, specifies the cost-sharing requirements applicable to the Project;

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

WHEREAS, Section 333 of the Water Resources Development Act of 2000, Public Law 106-541, provides that the Assistant Secretary of the Army (Civil Works) may provide

credit toward the non-Federal share of the cost of the Project, or reimburse the non-Federal interest, for the Federal share of the costs of repairs authorized under Section 352(a) of the Water Resource Development Act of 1999, Public Law 106-53, as amended, that are incurred by the non-Federal interest before the date of execution of this Agreement;

WHEREAS, the Non-Federal Sponsor has performed certain work, as defined in Article I.J. of this Agreement (hereinafter referred to as the "Section 333 Work"), which is part of the Project;

WHEREAS, the Non-Federal Sponsor proposes to perform certain work, as defined in Article I.K. of this Agreement (hereinafter referred to as the "Section 215 Work"), which falls within the parameters of the Project as defined in Article I.A. of this Agreement;

WHEREAS, Section 215 of the Flood Control Act of 1968, Public Law 90-483, as amended, provides that the Secretary of the Army may enter into an agreement to provide credit or reimbursement for the cost of certain work accomplished by States or political subdivisions thereof which later is incorporated by the Government into an authorized project, when it is determined that such credit or reimbursement is in the public interest;

WHEREAS, the Secretary of the Army has determined that providing the Non-Federal Sponsor credit for the value of the costs of the proposed work to be accomplished pursuant to this Agreement is in the public interest up to a statutory maximum amount of \$5,000,000 or one percent of the total project costs, whichever is greater;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2000, Public Law 106-60, provides that credits and reimbursements afforded under certain general authorities and under project specific authority, such as Section 333 of the Water Resources Development Act of 2000, Public Law 106-541 or Section 215 of the Flood Control Act of 1968, Public Law 90-483, as amended, shall not exceed \$10,000,000 per project in each fiscal year, nor shall they exceed \$50,000,000 for all applicable projects in each fiscal year;

WHEREAS, on March 19, 2001 the Assistant Secretary of the Army (Civil Works) delegated to the U.S. Army Engineer for the New England District (hereinafter the "District Engineer") the authority to 1) accept items of work accomplished by the Non-Federal Sponsor which has been determined necessary to implement the Project; and 2) identify the costs for credit or reimbursement toward the Non-Federal Sponsor's required contribution, subject to Government audit, the availability of Federal funds, and other such conditions as prescribed by the Government;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Fox Point Hurricane Barrier and sets forth procedures for adjusting such maximum amount;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

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

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the necessary repairs to the Fox Point Hurricane Barrier in Providence, Rhode Island, which will include major repairs to the pumps and tainter gates, as described in the Condition Survey and Technical Assessment, dated April 1998 and as Supplemented by the Condition Survey and Technical Assessment, dated August 1998, and approved by a Letter Report, dated 9 May, 2001 by the Assistant Secretary of the Army (Civil Works) on October 23, 2001. The Project includes the Section 333 Work described in paragraph J. of this Article and the Section 215 Work described in paragraph K. of this Article.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; pre-construction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.C. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; costs incurred for the Section 333 Work as defined in paragraph J. of this Article for which the Government affords credit or reimbursement in accordance with Article II of this Agreement and that the Government determines necessary to implement the Project, to the extent they do not duplicate costs otherwise included in this paragraph; costs incurred for the Section 215 Work as defined in paragraph K. of this Article for which the Government affords credit or reimbursement in accordance with Article II of this Agreement and that the Government determines necessary to implement the Project, to the extent they do not duplicate costs otherwise included in this paragraph; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "period of construction" shall mean the period beginning with the effective date of this Agreement and ending on the date that the Government and the Non-Federal Sponsor agree that construction of the Project is complete.

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

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

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

G. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

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

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

J. The term "Section 333 Work" means work on the Project that the Non-Federal Sponsor performed or caused to be performed prior to execution of this Agreement for which the Government may, subject to the limitations in Article VI of this Agreement, afford credit or reimbursement pursuant to Section 333 of Public Law 106-541 and includes but is not limited to repair work to pumps and tainter gates at the hurricane barrier, as described in the Letter Report, dated May 9, 2001 and approved by the Assistant Secretary of the Army (Civil Works) on October 23, 2001. The Section 333 work includes construction of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with construction, but does not include the construction of betterments or the provisions of

lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the Section 333 work.

K. The term "Section 215 Work" means work on the Project that the Non-Federal Sponsor performs or causes to be performed on or after the execution of this Agreement for which the Government may, subject to the limitations in Article VI of this Agreement, afford credit or reimbursement pursuant to Section 215 of Public Law 90-483 and includes but is not limited to repair work to pumps and tainter gates at the hurricane barrier, as described in the Letter Report, dated May 9, 2001 and approved by the Assistant Secretary of the Army (Civil Works) on October 23, 2001. The Section 215 work includes construction of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with construction, but does not include the construction of betterments or the provisions of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas.

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

A. Using its funds, and subject to reimbursement by the Government in accordance with the terms and conditions of this Agreement, the Non-Federal Sponsor shall expeditiously construct the Project.

B. After the effective date of this Agreement, the Non-Federal Sponsor shall not issue a solicitation for any contract until the Government has approved the relevant plans and specifications. After the effective date of this Agreement, the Non-Federal Sponsor shall not award a contract, execute a contract modification, issue a change order, or resolve a contract claim without the prior written approval of the Government.

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

D. The Government shall inspect all work accomplished by the Non-Federal Sponsor to ensure that such work is accomplished in accordance with the Project design criteria, as set out in the Letter Report and in accordance with this Agreement.

E. When the Non-Federal Sponsor determines that construction of the Project is complete or that a portion of the Project has become a functional portion of the Project, the Non-Federal Sponsor shall so notify the District Engineer in writing and request a final inspection. The Government shall certify completion of the Project or functional portion of the Project when it finds the Project or functional portion of the Project, as applicable, has been completed in accordance with the plans and specifications. The Non-Federal Sponsor shall prepare and furnish the Government for review a proposed Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter

the "OMRR&R Manual"). The failure of the Non-Federal Sponsor to prepare an acceptable OMRR&R Manual shall not negate the Non-Federal Sponsor's responsibility to provide for the operation, maintenance, repair, replacement, and rehabilitation of the Project, in accordance with Article VIII of this Agreement. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

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

G. Throughout the period of construction, but not later than 180 days after the completion of the period of construction, the Non-Federal Sponsor shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of the Project and determine the reimbursement. Upon receipt of such documents the Government shall conduct an accounting for the Project, including determination of costs eligible for reimbursement.

H. Subject to the limitations of Article VI of this Agreement, the Government shall reimburse the Non-Federal Sponsor in an amount necessary to make the Federal contribution for the Project equal to 65 percent of total project costs assigned by the Government to hurricane and storm damage reduction plus 50 percent of the separable costs of total project costs assigned by the Government to recreation. The Government shall not reimburse the Non-Federal Sponsor for any portion of total project costs assigned by the Government to privately owned shores (where use of such shores is limited to private interests). On the effective date of this Agreement, total project costs are projected to be \$3,000,000, the Government's share of total project costs is projected to be \$1,950,000, the Non-Federal Sponsor's share of total project costs is projected to be \$1,050,000, total project costs to be incurred by the Government are projected to be \$150,000, total project costs to be incurred by, or on behalf of, the Non-Federal Sponsor are projected to be \$2,850,000, and total reimbursements are projected to be \$1,800,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

I. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

J. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a Non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the

impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by Non-Federal interests to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the Non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

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

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

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

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

prior to issuance of the solicitation for each contract for construction, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

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

D. The Non-Federal Sponsor 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 paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

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

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

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the

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

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, 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 awards a contract requiring the use of such property, or if the Non-Federal Sponsor performs the construction with its own labor, the date that the Non-Federal Sponsor begins construction of the Project. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. 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, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's

appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

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

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

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

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the

construction, operation, and maintenance of the Project, 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. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Rhode Island would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the

improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

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

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees. Each party shall submit a quarterly progress report, including activities accomplished and Project expenditures.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations and the construction portion of the non-Federal Section 215 Work; credit/reimbursement to be afforded for the Section 333 Work and Section 215 Work; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the Non-Federal Sponsor on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations. Except as otherwise provided

in this Agreement, the Non-Federal Sponsor may not reject or modify the Project Coordination Team's recommendations when the purpose of such recommendations is to ensure that the Project complies with Federal, State, or local laws or regulations. If the Non-Federal Sponsor disagrees with the Government's actions, it may seek its remedies under Article VII of this Agreement.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and shared in accordance with the provisions of this Agreement.

ARTICLE VI - LIMITATIONS ON REIMBURSEMENT

A. Reimbursement for the Federal share of work performed by the Non-Federal Sponsor is subject to the availability of appropriations for this Project and shall not take precedence over other pending projects of higher priority.

B. No reimbursement shall be made unless and until the Government has certified that the work subject to reimbursement has been performed in accordance with this Agreement.

C. No reimbursement shall be made for any work which does not, in the judgment of the Government, conform to the description set forth in Article I.A. of this Agreement or does not conform to approved plans and specifications, contract modifications, or change orders.

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

E. Solely for contracts awarded and executed after the effective date of this Agreement, crediting and/or reimbursement is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c). Crediting and/or reimbursement 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.

F. Reimbursement by the Government pursuant to this Agreement, authorized by Section 333 of the Water Resources Development Act of 2000, Public Law 106-541 or Section 215 of the Flood Control Act of 1968, Public Law 90-483, as amended, shall be subject to the applicable limitations contained in Section 102 of the Energy and Water Development Appropriations Act, 2000 (Public Law 106-60).

G. As of the effective date of this Agreement, \$1,950,000 of Federal funds have been appropriated for the Project. The Government makes no commitment to seek additional Federal funds for the Project. Notwithstanding any other provision of this

Agreement, the Government's financial participation in the Project shall not exceed the total amount of Federal funds that have been appropriated and hereafter may be appropriated for the Project. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

H. Any work undertaken by the Non-Federal Sponsor prior to April 1998 shall not be subject to reimbursement pursuant to this Agreement.

I. This Agreement does not commit the Government to assume any of the responsibilities placed upon the Non-Federal Sponsor or any other non-Federal entity by the conditions of project authorization or any other applicable statute or regulation or as committing the Government to reimburse the Non-Federal Sponsor if this authorized Project is not undertaken or is modified so as to make the work performed by the Non-Federal Sponsor no longer an integral part of the authorized Project.

J. The amount of credit or reimbursement shall not exceed the Government's estimate of the Federal share of the costs of the Section 333 Work and Section 215 Work as if accomplished by the Government by contract or the Federal share of the actual auditable costs attributable to the Section 333 Work and Section 215 Work, whichever is less, and shall include the Non-Federal Sponsor's engineering and design, inspection and administrative costs. The amount of reimbursement is subject to an audit in accordance with Article X of this Agreement to determine reasonableness, allowability, and allocability of costs.

ARTICLE VII -DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

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

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

ARTICLE IX -INDEMNIFICATION

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

ARTICLE X -MAINTENANCE OF RECORDS AND AUDIT

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

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-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 Project shall be included in total project costs and shared in accordance with the provisions of this Agreement.

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

ARTICLE XI -FEDERAL AND STATE LAWS

A. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army. The Non-Federal Sponsor is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c).

B. In accordance with paragraph A. of this Article, the Non-Federal Sponsor shall procure all necessary permits and licenses necessary to accomplish the construction of the Project.

ARTICLE XII -RELATIONSHIP OF PARTIES

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

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

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

ARTICLE XIII -OFFICIALS NOT TO BENEFIT

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

ARTICLE XIV -TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.E., II.J., or XVIII of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands 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. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs 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.

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

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

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

ARTICLE XVI -NOTICES

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

If to the Non-Federal Sponsor:

Director
Department of Public Works
700 Allens Avenue
City of Providence, R.I. 02095

If to the Government:

U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742
Attn: CE-NAE-PP-M

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

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

ARTICLE XVII-CONFIDENTIALITY

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

ARTICLE XVIII- HISTORIC PRESERVATION

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

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

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


ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

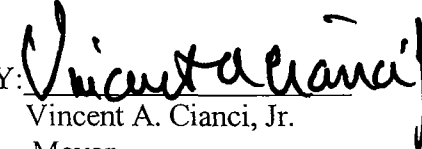
The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Fox Point Hurricane Barrier. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not make a new Project financial obligation or make a Project expenditure, if such obligation or expenditure would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$3,685,000, as calculated in accordance with ER 1105-2-100 using October 1, 2001 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

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

DEPARTMENT OF THE ARMY

CITY OF PROVIDENCE, RI

BY: 
Dominic Izzo
Principal Deputy Assistant Secretary of the Army
(Civil Works)

BY: 
Vincent A. Cianci, Jr.
Mayor

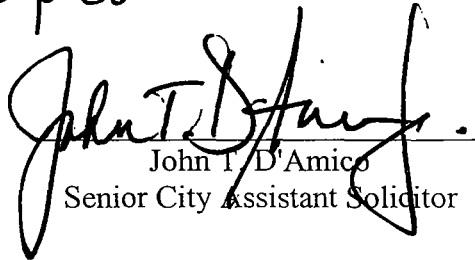
DATE: April 8th 2002

DATE: April 8-02

CERTIFICATE OF AUTHORITY

I, John T. D'Amico, do hereby certify that I am the principal legal officer of the City of Providence, R.I., that the City of Providence, R.I. is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Providence, R.I. in connection with the Fox Point Hurricane Barrier Repair Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Providence, R.I. have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
8th day of April 2002.


John T. D'Amico
Senior City Assistant Solicitor

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.

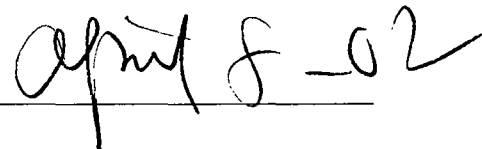
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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.



Vincent A. Cianci, Jr.
Mayor

DATE:  _____