

APPENDIX D

MODEL LOCAL COOPERATION AGREEMENT

HARBOR PROJECT

LOCAL COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[full name of Local Sponsor]

FOR CONSTRUCTION OF THE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[full name of Project]

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_,  
by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the  
"Government"), acting by and through the Assistant Secretary of the Army  
(Civil Works), and

\_\_\_\_\_  
\_\_\_\_\_

[Local Sponsor]

(hereinafter referred to as the "Local Sponsor"), acting by and through

\_\_\_\_\_  
\_\_\_\_\_

[title of person signing this Agreement]

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WITNESSETH, THAT:

WHEREAS, construction of the \_\_\_\_\_

\_\_\_\_\_  
[name of Project]

at \_\_\_\_\_

\_\_\_\_\_  
[specific location of Project]

(hereinafter referred to as the "Project", as defined in Article I.a. of this Agreement), was authorized by \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ ; and,

\_\_\_\_\_  
[cite authority]

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project; and,

[OTHER WHEREAS CLAUSES AS NEEDED]; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "general navigation features of the Project" shall mean \_\_\_\_\_

[DESCRIBE THE GENERAL NAVIGATION FEATURES TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL AS IS NECESSARY TO AVOID ANY CONFUSION OVER WHAT WORK IS OR IS NOT INCLUDED. REFERENCE THE APPROVED GDM, RE-EVALUATION REPORT, OR OTHER PROJECT REPORT, IF APPROPRIATE. IF A SEPARABLE ELEMENT OF AN AUTHORIZED PROJECT IS PROPOSED TO BE UNDERTAKEN, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK IS ACCURATELY DESCRIBED.]

b. The term "total cost of construction of general navigation features assigned to commercial navigation" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the general navigation features of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs, including costs of relocations not performed by or on behalf of the Local Sponsor; supervision and administration costs; and costs of contract dispute settlements or awards, but shall not include the value of lands, easements, rights-of-way, and dredged material disposal areas, relocations performed by or on behalf of the Local Sponsor, non-Federal dredging of public or private channels and berthing areas, and aids to navigation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the general navigation features of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army Engineer for the \_\_\_\_\_ District, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

f. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

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g. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

j. The term "separable cost of recreation features" shall mean all separable costs incurred by the Local Sponsor and the Government for construction of the project recreation features (excluding betterments and operation and maintenance costs). Such recreation costs shall include but not necessary be limited to continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs; supervision and administration costs; costs of contract dispute settlements or awards; and the value of any separable lands necessary for access, parking, public health, and safety.

#### ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the general navigation features of the Project (including alterations or relocations of highway bridges and railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor will be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. The Local Sponsor will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but award of contracts and performance of work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. The Government shall operate and maintain the general navigation features of the Project assigned to commercial navigation. [IN THE CASE OF A DEEP-DRAFT PROJECT, ADD THE FOLLOWING: "The Local Sponsor shall pay to the Government one-half of the excess of the cost of the operation and maintenance of the general navigation features of the Project assigned to commercial navigation over the cost which the Government determines would be incurred for operation and maintenance if the Project had a depth of 45 feet".]

c. The Local Sponsor shall provide and maintain, at its own expense, all project features other than those for general navigation [WHERE APPROPRIATE ADD: ", including dredged depths commensurate with those in related general navigation features in berthing areas and local access channels serving the general navigation features."]

d. The Local Sponsor shall provide to the Government the non-Federal share of all other costs of construction of the Project, including: [LIST ALL TERMS AS SET OUT IN THE PROJECT DOCUMENTS.]

e. The Local Sponsor shall provide to the Government all lands, easements, and rights-of-way, including dredged material disposal areas, and perform, or assure performance of, all alterations and relocations of facilities and utilities (except relocations or alterations of highway bridges and railroad bridges and approaches thereto), determined by the Government to be necessary for construction, operation, or maintenance of the Project. [IN THE CASE OF A DEEP-DRAFT HARBOR (AUTHORIZED FOR DEEPER THAN 45 FEET) PROJECT, ADD THE FOLLOWING: "One-half of the cost of utility relocations or alterations shall be borne by the Local Sponsor, and one-half shall be borne by the utility owner."]

f. The Local Sponsor shall provide, during the period of construction, a cash contribution equal to the following percentages of the total cost of construction of the general navigation features assigned to commercial navigation:

1. 10 percent of the costs attributable to the portion of the Project which has a depth not in excess of 20 feet;
2. 25 percent of the costs attributable to the portion of the Project which has a depth in excess of 20 feet but not in excess of 45 feet; and,
3. 50 percent of the costs attributable to the portion of the Project which has a depth in excess of 45 feet.

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[LOOK TO PARAGRAPH 5.a. OF EC 1165-2-141, DATED 15 MARCH 1988, SUBJECT:  
"Harbor and Inland Waterways Project Cost Sharing and Related Guidance"  
FOR INCREMENTAL COST-SHARING DETERMINATIONS.]

[INCLUDE THE FOLLOWING PARAGRAPH FOR PROJECTS WHICH HAVE SEPARABLE  
RECREATION FEATURES]

g. As further specified in Article VI hereof, the Local Sponsor shall provide during the period of construction, a cash contribution of 50 percent of total project costs allocated to separable recreation features.

h. As further specified in Article VI hereof, the Local Sponsor shall repay with interest, over a period not to exceed 30 years following completion of the period of construction of the Project, an additional 0 to 10 percent of the total cost of construction of general navigation features assigned to commercial navigation, depending on the value of the credit, as calculated under Article IV hereof, of items provided pursuant to Article II.e. If the credit allowed for such items is less than 10 percent of the total cost of construction of the general navigation features, the Local Sponsor shall repay a percentage of said total cost equal to the difference between 10 percent of the total cost and the percentage of the total cost represented by the value of such items. If the credit allowed is equal to or greater than 10 percent of said total cost, the Local Sponsor shall not be required to repay any additional percentage of the total cost.

i. No Federal funds may be used to meet the Local Sponsor share of project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency.

[ADD ADDITIONAL PARAGRAPHS AS NEEDED TO REFLECT SPECIAL REQUIREMENTS IN  
THE AUTHORIZING DOCUMENTS.]

#### ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-way to such lands.

The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. The Local Sponsor shall provide, or pay to the Government the cost of providing, all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all alterations and relocations of buildings, highways, railroads, storm drains, and other facilities, structures, and improvements, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

d. Upon notification from the Government, the Local Sponsor shall perform or assure performance of all necessary alterations and relocations of pipelines, cables, and other utilities. Nothing herein shall be deemed to affect the ability of the Local Sponsor to seek compensation from other non-Federal entities for costs it incurs under this paragraph. For projects authorized to be constructed to depths greater than 45 feet, the cost of necessary alterations or relocations shall be shared equally between the Local Sponsor and the owner of the affected utility.

e. The Local 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 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be credited towards the additional 10 percent of total costs the Local Sponsor must repay pursuant to Article II.h. will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the general navigation features of the Project is awarded, the credit shall be the fair market value of the interest provided to the Government at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the general navigation features of the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., 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 the obligations under this Agreement.



b. The costs of alterations or relocations of facilities and utilities incurred by the Local Sponsor that will be credited towards the additional 10 percent of total costs the Local Sponsor must repay pursuant to Article II.h. of this Agreement shall be that portion of the actual costs determined as set forth below, and approved by the Government:

1. Highways: Only that portion of the cost as would be necessary to construct substitute highways to the design standard that the State of \_\_\_\_\_ would use in constructing a new highway under similar conditions of geography and traffic loads.

2. Utilities and facilities: Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited to the Local Sponsor's share.

#### ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

[FOR ARTICLE VI USE OPTION I IF CONSTRUCTION OF THE PROJECT WILL BE COMPLETED WITHIN ONE YEAR.]

OPTION I

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of the general navigation features assigned to commercial navigation specified in Article II.f. of this Agreement. The total cost of construction of the general navigation features assigned to commercial navigation is presently estimated to be \$\_\_\_\_\_. In order to meet its share of such costs, the Local Sponsor must provide an initial cash contribution presently estimated to be \$\_\_\_\_\_. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based in cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The required cash contribution shall be provided as follows:       
[At least 30] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within     [half the above number] calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, \_\_\_\_\_" to the Contracting Officer representing the Government. In the event that the total cost of construction of the general navigation features assigned to commercial navigation is expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within 45 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

[USE OPTION II IF CONSTRUCTION OF THE PROJECT WILL EXTEND TO MORE THAN ONE YEAR, UNLESS THE LOCAL SPONSOR WISHES TO MAKE ITS CONTRIBUTION IN FULL AT THE OUTSET. NOTE: ARTICLE VI.b.2. OFFERS THE LOCAL SPONSOR THREE OPTIONS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE ITS CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE LOCAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE COURSE OF NEGOTIATING THE AGREEMENT. ONLY ONE FUNDING MECHANISM SHOULD BE INCLUDED IN THE DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL.]

OPTION II

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of general navigation features assigned to commercial navigation specified in Article II.f. of this Agreement. The total cost of construction of the general navigation features assigned to commercial navigation is currently estimated to be \$\_\_\_\_\_. In order to meet its share of such costs, the Local Sponsor must provide an initial cash contribution currently estimated to be \$\_\_\_\_\_. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based on cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide its required cash contribution in proportion to the rate of Federal expenditures during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by [specific date] of each year of the estimated funds that will be required from the Local Sponsor to meet its share of project costs for the upcoming fiscal year.

2. No later than [30-60] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of project costs, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction, for the first fiscal year of construction. No later than [half the above number] calendar days thereafter, the Local Sponsor shall [SELECT ONLY ONE OF THE FOLLOWING FUNDING MECHANISMS] [1] provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, \_\_\_\_\_" to the Contracting Officer representing the Government. [2] verify to the satisfaction of the Government that it has deposited the requisite amount in an escrow account

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acceptable to the Government, with interest accruing to the Local Sponsor. [3] present to the Government an irrevocable letter of credit acceptable to the Government in an amount sufficient to meet the Local Sponsor's obligation.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

[CLAUSE c. ONLY APPLIES TO ARTICLE VI OPTION II.]

c. The Government will draw on the [DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL SHOULD REFLECT ONLY ONE OF THE THREE FOLLOWING OPTIONS, CONSISTENT WITH THE FUNDING MECHANISM SELECTED IN ARTICLE VI.b.2.] [1] funds [2] escrow account [3] letter of credit provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

[CLAUSES d., e., AND f. APPLY TO BOTH OPTIONS I AND II IN ARTICLE VI.]

d. Upon completion of the general navigation features and resolution of all relevant contract claims and appeals, the Government shall compute the total cost of construction of the general navigation features assigned to commercial navigation and tender to the Local Sponsor a final accounting of the Local Sponsor's share of project costs. In the event the total contribution by the Local Sponsor is less than its initial required share, the Local Sponsor shall, no later than 90

calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its initial required share of project costs.

e. In the event the Local Sponsor has made excess cash contributions which result in the Local Sponsor's having provided more than its initial required share of project costs, the Government shall first credit the excess to the additional amount the Local Sponsor must repay pursuant to Article II.h. of this Agreement. In the event the excess cash contribution exceeds the additional amount the Local Sponsor must repay pursuant to Article II.h., the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations, return said excess to the Local Sponsor.

f. The Local Sponsor shall repay the additional amount required pursuant to Article II.h. of this Agreement, reduced by any excess cash contribution made during the period of construction, in equal annual installments over a period of [not more than 30] years from the completion of the period of construction of the general navigation features. Such repayment shall include interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the repayment period, during the month preceding the fiscal year in which costs for construction of the Project are first incurred, or, in the case of recalculating, the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury at five-year intervals. Nothing herein shall preclude the Local Sponsor from repaying this additional amount in full upon receipt of the final accounting. Should this full repayment be made within 90 days from receipt of the final accounting, there shall be no charges for interest or transaction costs.

#### ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND  
REHABILITATION

a. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate all project features other than the general navigation features assigned to commercial navigation in accordance with regulations or directions prescribed by the Government.

b. The Government shall operate and maintain the general navigation features assigned to commercial navigation. [IF A DEEP-DRAFT PROJECT, ADD THE FOLLOWING: "No later than 60 calendar days prior to the beginning of each fiscal year for which the Government will incur costs for operating and maintaining the general navigation features assigned to commercial navigation, the Government shall notify the Local Sponsor of its estimated share of operation and maintenance costs required pursuant to Article II.b. of this Agreement. Within 30 calendar days thereafter, the Local Sponsor shall provide the requisite amount by delivering a check made payable to "FAO, USAED, \_\_\_\_\_", to the Contracting Officer representing the Government".]

c. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it 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 Local Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local 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 of the Project by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, and documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, 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".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Secretary of the Army 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. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall



conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement, pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[full address]

If to the Government:

\_\_\_\_\_  
\_\_\_\_\_  
[full address]

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 such time as it is personally delivered or seven days after it is mailed, as the case may be.

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ARTICLE XVIII - 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.

[FOR THOSE PROJECTS AUTHORIZED BY P.L. 99-662, P.L. 100-676, AND SUBSEQUENT AUTHORIZATION ACTS, ARTICLE XIX SHOULD BE ADDED]

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The [Local Sponsor] has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes a maximum construction cost for the project. For purposes of this Agreement, the Section 902 cost limit is \$\_\_\_\_\_ as calculated on \_\_\_\_\_, \_\_\_\_\_. [The dollar figure to be inserted should be derived as provided for in EC 1105-2-176, "Maximum Cost of Projects."] This amount shall be adjusted to allow for appropriate increases for inflation and changes in the project cost as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

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

THE DEPARTMENT OF THE ARMY

THE LOCAL SPONSOR

BY: \_\_\_\_\_  
[signature]

BY: \_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed name]

\_\_\_\_\_  
[typed name]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[title in full]

\_\_\_\_\_  
[title in full]

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the [local sponsor], that the [local sponsor] 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 [local sponsor] in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the [local sponsor] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
[Signed]  
Title

ER 1165-2-131  
15 Apr 89

CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for [name of project] has been fully reviewed by the Office of Chief Counsel, USAED,

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District Counsel