

APPENDIX H

MODEL ESCROW AGREEMENT

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between \_\_\_\_\_ (hereinafter referred to as the "Local Sponsor"), the Department of the Army (hereinafter referred to as the "Government") and the [FULL NAME OF INSTITUTION], (hereinafter referred to as the "Bank"), WITNESSETH THAT:

WHEREAS, on [EFFECTIVE DATE OF LCA], the Local Sponsor and the Government entered into a Local Cooperation Agreement for the construction of [NAME OF PROJECT]; and,

WHEREAS, pursuant to the Local Cooperation Agreement, the Local Sponsor is required to contribute, over the period of construction of the Project, a cash contribution calculated in accordance with said Agreement; and,

WHEREAS, the Local Sponsor and the Government have agreed that the required contribution may be deposited into an escrow account and held therein until the Government withdraws the funds in accordance with the Local Cooperation Agreement; and,

WHEREAS, the Bank has agreed to serve as depository for the escrow account and to accept appointment as escrow agent;

NOW, THEREFORE, the parties agree as follows:

1. The Bank is hereby appointed as the escrow agent for the Local Sponsor and is designated the depository for the monies delivered by the Local Sponsor pursuant to the aforementioned Local Cooperation Agreement. The Bank shall establish "       Project Construction Fund" (hereinafter referred to as the "Escrow Account") into which shall be deposited the funds delivered by the Local Sponsor.

2. In accordance with the method of payment provisions of the Local Cooperation Agreement, the Local Sponsor shall absolutely and irrevocably deliver to the Bank the funds required to be provided to the Government during the construction period.

3. The funds held in the Escrow Account shall earn interest at a rate as the Bank and the Local Sponsor may mutually agree. To the extent the Local Sponsor authorizes the Bank to

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invest the funds in any instrument other than an interest-bearing account, savings certificate, or certificate of deposit of the Bank itself, such investment shall be only in direct obligations of the Government of the United States of America or in obligations of agencies or insurers that are guaranteed by the Government of the United States of America. Any instrument must be subject to redemption on or prior to the dates the funds will be needed by the Government. Interest on the funds deposited shall accrue and belong to the Local Sponsor, and shall be payable to the Local Sponsor as the Bank and the Local Sponsor may agree.

4. The Government, acting pursuant to the terms of the Local Cooperation Agreement, shall have the sole and unrestricted right to draw upon all or any part of the funds deposited in the Escrow Account. A written demand for withdrawal shall be made to the Bank by the District Engineer, USAED, \_\_\_\_\_, or his designee, with a copy of said demand provided to the Local Sponsor. Within 10 days of receipt of the demand, the Bank shall pay to the Government the amount requested to the extent such amount does not exceed the balance available in the Escrow Account. All payments shall be in the form of bank drafts payable to the "FAO, USAED, \_\_\_\_\_", and shall be mailed or otherwise delivered to the Government as specified below in Article 9.

5. Upon receipt of signed certification by the Government that no further demand for payment of money will be made, the Bank shall complete a final accounting of other obligations required under this Agreement, and pay over any remaining balance to the Local Sponsor.

6. The fee to be paid to the Bank for the services provided hereunder shall be as the Bank and the Local Sponsor may mutually agree. Any fee paid to the bank shall be the sole responsibility of the Local Sponsor. The Bank shall have no right to deduct monies from the principal escrow sum to pay for its services. In the event the Local Sponsor fails to make payment to the Bank for its services, all claims for such payment shall be made directly against the Local Sponsor. The Government shall not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the Escrow Account.

7. Account statements shall be rendered by the Bank to the Local Sponsor and the Government once monthly, and shall show deposits, disbursements, and balances, and the dates thereof.

Upon receipt by the Bank of the certification specified in paragraph 5 above, the Bank shall prepare a final accounting showing all transactions relating to the Escrow Account and provide said accounting to the Local Sponsor and the Government at the addresses shown in paragraph 9.

8. It is understood and agreed that the Bank shall not be liable or responsible to ascertain the terms or conditions of any provision of the aforementioned Local Cooperation Agreement between the Local Sponsor and the Government. It is further understood and agreed that if any controversy arises between the Government and the Local Sponsor, or with any other party with respect to the subject matter of this Agreement, the Bank is authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government in accordance with the terms of this Agreement.

9. 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]

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If to the Bank:

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

10. Nothing in this Agreement shall be considered as vesting title in the Bank to the amount deposited, except as Trustee for the Local Sponsor and the Government for the purposes set forth herein. Title to said funds shall not vest in the Government until payment to the Government is made as provided herein.

11. This Agreement shall take effect upon the initial deposit of funds into the Escrow Account by the Local Sponsor and shall continue in full force until the certification specified in paragraph 5 hereof is received by the Bank and the balance remaining is returned to the Local Sponsor, unless earlier terminated by the written mutual agreement of the Local Sponsor and the Government.

12. This Agreement may not be amended, except by written modification signed by the parties hereto.

IN WITNESS WHEREOF, the Local Sponsor, the Government, and the Bank have executed this Agreement on the date first above written.

The Local Sponsor

ATTEST: \_\_\_\_\_ BY: \_\_\_\_\_

The Department of the Army

ATTEST: \_\_\_\_\_ BY: \_\_\_\_\_  
District Engineer

The Bank

ATTEST: \_\_\_\_\_ BY: \_\_\_\_\_