

APPENDIX B

MODEL ESCROW AGREEMENT

\*\*\*\*\*

ESCROW AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
[NAME OF NON-FEDERAL SPONSOR]  
AND  
[NAME OF BANK]

This AGREEMENT, is entered into this [DAY] day of [MONTH], [YEAR], by and between the Department of the Army (hereinafter referred to as the "Government"), represented by the District Engineer, U.S. Army Engineer District, [NAME], the [NAME OF NON-FEDERAL SPONSOR] (hereinafter referred to as the "Non-Federal Sponsor"), represented by the [TITLE OF REPRESENTATIVE], and the [NAME OF BANK] (hereinafter referred to as the "Bank"), represented by the [TITLE OF REPRESENTATIVE] .

WITNESSETH THAT:

WHEREAS, on [DAY, MONTH, YEAR], the Non-Federal Sponsor and the Government entered into a Project Cooperation Agreement for the construction of [NAME OF PROJECT OR SEPARABLE ELEMENT]; and

WHEREAS, pursuant to the Project Cooperation Agreement the Non-Federal Sponsor is required to contribute, over the term of construction of the project, a cash contribution calculated in accordance with said agreement; and

WHEREAS, the Non-Federal 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 Project 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 do hereby agree as follows:

- 1. The Bank is hereby appointed as the escrow agent for the Non-Federal Sponsor and is designated the depository for the monies delivered by the Non-Federal Sponsor pursuant to the aforementioned Project Cooperation Agreement. The Bank shall establish an "[NAME OF PROJECT OR SEPARABLE ELEMENT]" (hereinafter referred to as the "Escrow Account") into which shall be deposited the funds delivered by the Non-Federal Sponsor.

2. In accordance with the method of payment provisions of the Project Cooperation Agreement, the Non-Federal Sponsor shall absolutely and irrevocably deliver to the Bank the funds ["required to be provided" OR "to be contributed" OR "to be advanced"] to the Government during the ["planning, engineering and design" OR "construction" OR "operation and maintenance"] period.

3. The funds held in the Escrow Account shall earn interest at such rate as the Bank and the Non-Federal Sponsor may mutually agree upon. To the extent the Non-Federal Sponsor authorizes the Bank to 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 entities 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 Non-Federal Sponsor, and shall be payable to the Non-Federal Sponsor subject to such terms and conditions as the Bank and the Non-Federal Sponsor may mutually agree upon.

4. The Government, acting pursuant to the terms of the Project 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, U.S. Army Engineer District, [NAME], or his or her duly authorized representative, with a copy of said demand provided to the Non-Federal Sponsor. Within ten (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 "Finance and Accounting Officer, [NAME OF DISTRICT], and shall be mailed or otherwise delivered to the Government as specified below in paragraph 9.

5. The fee to be paid to the Bank for the services provided hereunder shall be as the Bank and the Non-Federal Sponsor may mutually agree. Any fee paid to the Bank shall be the sole responsibility of the Non-Federal Sponsor. The Bank shall have no right to deduct monies from the principal amount deposited in the Escrow Account to pay for its services. In the event the Non-Federal 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.

6. Account statements shall be rendered by the Bank to the Non-Federal Sponsor and the Government once monthly, and shall show deposits, disbursements, and balance, and the dates thereof.

7. At such time that the Government, in its sole discretion, shall

determine that it shall make no further demands for withdrawal from the Escrow Account upon the Bank, the District Engineer, U.S. Army Engineer District, [NAME], or his or her duly authorized representative, shall provide notice of its determination to the Bank. Upon receipt of such notice, the Bank shall prepare a final accounting showing all transactions relating to the Escrow Account, provide said accounting to the Non-Federal Sponsor and the Government at the addresses shown in paragraph 9, and pay over the balance remaining to the Non-Federal Sponsor. 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 and other obligations required under this Agreement, and pay over the balance remaining to the Non-Federal Sponsor.

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 Project Cooperation Agreement between the Non-Federal Sponsor and the Government. It is further understood and agreed that if any controversy arises between the Government and the Non-Federal 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, statements, or payments specified in 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-prepaid), registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

[ADDRESS]

If to the Government:

Commander  
U.S. Army Engineer District, [NAME]  
[ADDRESS]

If to the Bank:

[ADDRESS]

10. Nothing in this Agreement shall be considered as vesting title to the funds deposited in the Bank except as Trustee for the Non-Federal Sponsor and the Government for the purpose 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 Non-Federal Sponsor and shall

ER 1165-2-30  
31 Dec 97

continue in full force until the notice specified in paragraph 7 hereof is received by the Bank and any balance remaining is returned to the Non-Federal Sponsor, unless earlier terminated by the written mutual agreement of the Government, Non-Federal Sponsor and the Bank.

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

IN WITNESS WHEREOF, the Government, Non-Federal Sponsor, and the Bank have executed this Agreement on the date, month, and year first above written.

The Department of the Army

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

BY:           [ SIGNATURE ]            
                [ TYPED NAME ]            
      District Engineer  
      U.S. Army Engineer District,           [ NAME ]          

The **[ NAME OF NON-FEDERAL SPONSOR ]**

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

BY: \_\_\_\_\_  
                [ TYPED NAME ]            
                [ TITLE ]                  

The **[ NAME OF BANK ]**

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

BY: \_\_\_\_\_  
                [ TYPED NAME ]            
                [ TITLE ]