

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
BOARD OF COMMISSIONERS OF THE
PORT OF NEW ORLEANS
FOR CONSTRUCTION OF THE
DEEP DRAFT INCREMENT OF THE
INNER HARBOR NAVIGATION CANAL LOCK REPLACEMENT
(authorized as the MISSISSIPPI RIVER, BATON ROUGE TO THE GULF OF MEXICO
MISSISSIPPI RIVER-GULF OUTLET, LOUISIANA
NEW LOCK AND CONNECTING CHANNELS)

THIS AGREEMENT is entered into this 27th day of SEPTEMBER, 2001, 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 Board of Commissioners of the Port of New Orleans, a political subdivision of the State of Louisiana, (hereinafter the "Non-Federal Sponsor"), represented by its President and Chief Executive Officer.

WITNESSETH, THAT:

WHEREAS, construction of the Mississippi River, Baton Rouge To The Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Lock and Connecting Channels Inner Harbor Navigation Canal Lock Replacement (hereinafter the "Authorized Project") at the Inner Harbor Navigation Canal (IHNC) in New Orleans, Louisiana, was authorized by an act entitled "An Act to authorize construction of the Mississippi River-Gulf Outlet", approved March 29, 1956, Public Law 455, 84th Congress, as amended by Section 844 of the Water Resources Development Act of 1986, Public Law 99-662, and Section 326 of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, Section 844 of the Water Resources Development Act of 1986, Public Law 99-662 provides, in pertinent part, that the cost of the lock replacement "shall be allocated between general cargo navigation and inland navigation based on use patterns determined by the Secretary. Of the costs allocated to inland navigation, one-half of the Federal costs shall be paid from the Inland Waterway Trust Fund and one-half of the Federal costs shall be paid from the General Fund of the Treasury. With respect to the costs allocated to general cargo navigation, cost sharing provided in section 101 shall apply.";

WHEREAS, the Mississippi River-Gulf Outlet, New Lock and Connecting Channels Evaluation Report dated August 1995, as amended by a report of the same name dated March 1997, as approved by the Deputy Commanding General for Civil Works on February 2, 1998, determined that the use pattern of the shallow draft increment of the Authorized Project is

allocable to inland navigation and that the use pattern of the deep draft increment of the Authorized Project (hereinafter the "General Cargo Navigation Increment") is allocable to general cargo navigation;

WHEREAS, the Mississippi River-Gulf Outlet New Lock and Connecting Channels (Inner Harbor Navigation Canal Lock Replacement) Evaluation Report Supplement No. 1 dated September 20, 2000, as approved by the Assistant Secretary of the Army for Civil Works on September 20, 2000, amended the Mississippi River-Gulf Outlet, New Lock and Connecting Channels Evaluation Report dated March 1997, determining that it is in the public interest to construct the General Cargo Navigation Increment as a Federal project;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the General Cargo Navigation Increment (hereinafter the "Project", as defined in Article I.C. of this Agreement);

WHEREAS, Sections 101 and 844 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specify the cost-sharing requirements applicable to the Authorized Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, (codified as amended at 42 U.S.C. § 1962d-5b) and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (codified as amended at 33 U.S.C. § 2211), provide, inter alia, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 902 of the Water Resources Development Act, Public Law 99-662, as amended, establishes the maximum amount of costs for the Authorized Project 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 Project in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and team work prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the completion of a successful project.

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 "Authorized Project" shall mean the construction of a deep draft lock, with 36 feet of draft, by 110 feet wide, by 1200 feet long on a site north of Claiborne Avenue in the Inner Harbor Navigation Canal (hereinafter IHNC) as generally described in the Mississippi River-Gulf Outlet, New Lock and Connecting Channels Evaluation Report dated August 1995, as amended by a report of the same name dated March 1997, as approved by the Director of Civil Works, HQUSACE, on February 2, 1998. The Authorized Project includes the measures required to construct a lock with 36 feet of draft by 110 feet wide by 1200 feet long, its appurtenances, modifications to the lift span and towers of the existing Claiborne Avenue bridge, construction of a temporary and a permanent low-level, double bascule bridge at St. Claude Avenue, construction of mooring facilities in the IHNC between St. Claude and Claiborne Avenues, modifications of existing and construction of new Mississippi River flood control levees/floodwalls and Lake Pontchartrain hurricane protection levees/floodwalls, implementation of a Community Impact Mitigation Plan, removal of hazardous substances, historic preservation activities, all materials, services or resources required for the acquisition and/or implementation of lands, easements, rights-of-way, or relocations, and the dredged or excavated material disposal facilities at the existing disposal sites adjacent to the Mississippi River-Gulf Outlet, but excludes all aids to navigation.

B. The term "shallow draft increment" shall mean the construction of that portion of the Authorized Project allocated to inland navigation, that being those features associated with a lock with 22 feet of draft, by 110 feet wide, by 900 feet long, as generally described in the Mississippi River-Gulf Outlet, New Lock and Connecting Channels Evaluation Report dated August 1995, as amended by a report of the same name dated March 1997 and approved by the Director of Civil Works, HQUSACE, in February 1998. The shallow draft increment includes the measures required to construct a lock with 22 feet of draft by 110 feet wide by 900 feet long, its appurtenances, all materials, services or resources required for the acquisition and/or implementation of lands, easements, rights-of-way, relocations, or removals, all levees and floodwalls, all hazardous substances investigation and removal, all historic preservation activities, the dredged or excavated material disposal facilities at the existing disposal sites adjacent to the Mississippi River-Gulf Outlet and the entire Community Impact Mitigation that the Government determines to be necessary for the construction, operation and maintenance of the Authorized Project, but excludes all aids to navigation.

C. The term "Project" shall mean the construction of that portion of the Authorized Project that is allocated to general cargo navigation. The Project is represented by the difference between the lock features of the shallow draft increment and those of the Authorized Project. The Project excludes all materials, services or resources required for the acquisition and/or implementation of lands, easements, rights-of-way, relocations, or removals, all levees and floodwalls, all hazardous substances investigation and removal, all historic preservation

activities, the entire Community Impact Mitigation Plan, the dredged or excavated material disposal facilities at the existing disposal sites adjacent to the Mississippi River-Gulf Outlet, and all aids to navigation that the Government determines to be necessary for the construction, operation and maintenance of the Authorized Project.

D. The term "total cost of construction of the Authorized Project shall mean all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement directly related to construction of the Authorized Project. Subject to the provisions of this Agreement, the term shall include, but is not limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances; costs of historic preservation activities; actual construction costs (including any costs of construction of dredged or excavated material disposal facilities incurred prior to the end of the period of construction and the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States); the costs of any lands, easements, rights-of-way, or relocations; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article III of this Agreement; costs of contract dispute settlements or awards; and costs of audit in accordance with Articles VIII.B. and VIII.C. of this Agreement. The term does not include any costs due to betterments; any costs of dispute resolution under Article V of this Agreement; or any costs of aids to navigation.

E. The term "financial obligation for construction" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in the total cost of construction of the Authorized Project.

F. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.E. of this Agreement to the total financial obligations for construction, (after deducting the costs associated with the acquisition of all of the lands, easements and rights-of-way, the performance of all of the relocations, and the entire Community Impact Mitigation Plan from the total financial obligations for construction) as projected by the Government.

G. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article IV.B. of this Agreement, of the scheduled date for either issuance of the solicitation for the first contract for construction of the Project, as defined in Article I.C. of this Agreement, or commencement, using the Government's own forces, of construction of the Project to the date that the U.S. Army Engineer for the New Orleans District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Authorized Project is complete.

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

I. The term "bridge over navigable waters of the United States" shall mean a lawful bridge over the navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

J. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway, railroad (including any bridge thereof), or public facility, excluding existing bridges over navigable waters of the United States, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

K. 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.

L. The term "betterment" shall mean a change in the design and construction of an element of the Authorized Project accomplished at the request of the Non-Federal Sponsor 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.

M. The term "dredged or excavated material disposal facility" shall mean the improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with the construction, operation, or maintenance of the Authorized Project. Such improvements may include but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes.

N. The term "utility" shall mean that which the State of Louisiana, pursuant to generally applicable state law, defines as a public utility.

O. 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.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Authorized Project (including alteration,

lowering, raising, or replacement and attendant removal of existing bridges over navigable waters of the United States) applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts for the Project, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract for the Project until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications for the Project, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification for the Project is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims for the Project prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract for construction of the Authorized Project would result in total cost of construction of the Authorized Project (after deducting the costs associated with the acquisition of all of the lands, easements and rights-of-way, the performance of all of the relocations, and the entire Community Impact Mitigation Plan from the total financial obligations for construction) exceeding \$570,895,000, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Authorized Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Authorized Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to design or construct betterments. Such requests shall be in writing and shall describe the betterments requested to be performed. If the Government in its sole discretion elects to perform the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of

conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article IV.C. of this Agreement.

C. The Government shall assign all costs associated with the dredging of material from the dimensions, including over-depth and entrance channel wave allowances, of any existing Federal navigation project to the costs of operation and maintenance of the existing Federal navigation project. The Government, in accordance with Federal laws, regulations, and policies, shall assign all costs included or to be included in the total cost of the Authorized Project during the period of construction to one or more of the following depth increments: dredging to a depth not in excess of 20 feet plus associated over-depth and entrance channel wave allowances; dredging to a depth in excess of 20 feet but not in excess of 45 feet plus associated over-depth and entrance channel wave allowances; and dredging to a depth in excess of 45 feet.

D. During the construction period of the Project, the Non-Federal Sponsor shall contribute 4.64 percent of the total cost of the Authorized Project (after deducting the costs associated with the acquisition of the lands, easements and rights-of-way, the performance of relocations, and the Community Impact Mitigation Plan from the total cost of the Authorized Project), as described in detail in the Supplemental Evaluation Report entitled "Mississippi River - Gulf Outlet, New Lock and Connecting Channels (Inner Harbor Navigation Canal Lock Replacement)", and approved by the Assistant Secretary of the Army for Civil Works on 20 September 2000.

E. If the Government projects that the contributions under Articles III, VIII.B., and VIII.C. of this Agreement will be less than its share required by paragraph D. of this Article, the Non-Federal Sponsor shall provide a contribution of funds, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its share required by paragraph D. of this Article.

F. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the Non-Federal Sponsor's contributions provided in accordance with paragraphs B., D., and E. of this Article, and the Non-Federal Sponsor's contributions provided in accordance with Articles III, VIII.B., and VIII.C. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B. and D. of this Article. The final accounting also shall determine an amount equal to 1.86 percent of the total cost of the Authorized Project (after deducting the costs associated with the acquisition of the lands, easements and rights-of-way, the performance of relocations, and of the Community Impact Mitigation Plan from the total cost of the Authorized Project), as described in detail in the Supplemental Evaluation Report entitled "Mississippi River - Gulf Outlet, New Lock and Connecting Channels (Inner Harbor Navigation Canal Lock Replacement)", dated September 20 2000 and approved by the Assistant Secretary of the Army for Civil Works on September 20, 2000. (hereinafter the "1.86 percent amount").

G. In accordance with Article IV.E. of this Agreement, the Non-Federal Sponsor shall, over a period not to exceed 30 years, pay an amount equal to the 1.86 percent amount, with interest.

H. The Government shall operate and maintain the Authorized Project in accordance with Article VI. of this Agreement.

I. The Non-Federal Sponsor shall not use Federal program funds to meet its obligations for the Project 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.

J. The Non-Federal Sponsor shall convey to the Government the real estate interests over its property, as required for the construction, operation and maintenance of the Authorized Project, and shall accept \$16,856,000 as just compensation for the value of such real estate interests, including Port-owned improvements located on the property. It is also understood that the above referenced figure does not include the fair market value of certain tenant-owned improvements that are located on property that the Port is currently leasing to tenants. The Government will pay the fair market value for each of these improvements, which payment will be made either to the pertinent tenant or to the Non-Federal Sponsor, but only once the necessary disclaimers of interest are provided. After the execution of this Agreement, and once funding is available, the Government and the Non-Federal Sponsor will execute the "Act of Sale and Easement/Servitude Agreement" (hereinafter the "Act of Sale"), a copy of which is attached to this Agreement. Upon execution of the Act of Sale, it is understood that the Government and the Non-Federal Sponsor will execute an Escrow Agreement, a copy of which is attached to this Agreement, and the above referenced amount will be deposited into an escrow account that is controlled by the Government, with the interest accruing to the Non-Federal Sponsor. This escrow account will be the source of the Non-Federal cash requirement that will be required to be given to the Government in accordance with Article IV.B. and C. of this Agreement.

ARTICLE III - 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.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including but not necessarily limited to matters related to design; plans and specifications; scheduling; contract awards or 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 non-Federal work-in-kind; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project. Oversight of the Project shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Authorized Project, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

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

ARTICLE IV - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of the total cost of construction of the Authorized Project and costs due to additional work under Article II.B. of this Agreement. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the total cost of construction of the Authorized Project, of the total costs due to additional work under Article II.B. of this Agreement, of the maximum amount determined in accordance with Article XVII of this Agreement, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B. and II.E. of this Agreement, of the non-Federal proportionate share, of the funds required from the Non-Federal Sponsor for the upcoming fiscal year, of the 1.86 percent amount, and of the installments to be paid in accordance with paragraph E.2. of this Article. Thereafter, until the outstanding portion of the 1.86 percent amount equals \$0, the Government, at least annually, shall provide the Non-Federal Sponsor with a report setting forth the outstanding portion of the 1.86 percent amount and the current projection of the remaining installments to be paid in accordance with paragraph E.2. of this Article. On the effective date of this Agreement, the total cost of construction of the Authorized Project is projected to be \$748,000,000, and the Non-Federal Sponsor's contribution required under Article II.E. of this Agreement is projected to be \$37,109,000. These amounts are subject to adjustment by the Government, after consultation with the non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

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

1. Not less than 30 calendar days prior to the scheduled date for either issuance of the solicitation for the first construction contract of the Project or commencement of construction using the Government's own forces for the Project, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction of the Project through the first fiscal year of construction of the Project, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, New Orleans District B2" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of construction of the Project, the Government shall notify the Non-Federal Sponsor in writing, no later than 120 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction of the Project for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction of the Authorized Project incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction of the Authorized Project as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction of the Authorized Project for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 90 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in paragraph B.1. of this Article; provided that if the Government determines the Non-Federal Sponsor must provide additional funds less than 90 calendar days prior to the commencement of the upcoming fiscal year, the Non-Federal Sponsor shall make the

funds available through any of the payment mechanisms specified in paragraph B.1. of this Article no later than 30 calendar days prior to the beginning of the fiscal year.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in B.1. of this Article. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

D. After completion of the construction of the Authorized Project or termination of this Agreement, and upon resolution of all relevant proceedings, claims, and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The Government may perform an interim accounting, if requested by the Non-Federal Sponsor.

1. The final accounting shall determine the total cost of construction of the Authorized Project, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Article II.B. of this Agreement and the Non-Federal Sponsor's contribution provided in accordance with Article II.B. of this Agreement.

a. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of the total cost of construction of the Authorized Project plus costs due to additional work under Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of the total cost of construction of the Authorized Project plus costs due to additional work under Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, New Orleans District B2" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of the total cost of construction of the Authorized Project plus costs due to additional work under Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

2. The final accounting also shall determine the 1.86 percent amount.

E. The Non-Federal Sponsor shall pay the 1.86 percent amount required by Article II.G. of this Agreement in accordance with the provisions of this paragraph.

1. Before furnishing the Non-Federal Sponsor with the results of the final accounting, the Government shall calculate the 1.86 percent amount and the annual installments, which installments shall be substantially equal. At the time the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall notify the Non-Federal Sponsor in writing of the 1.86 percent amount and the annual installments. The Government shall recalculate the annual installments at five year intervals and shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. In calculating or recalculating the annual installments, the Government shall amortize the 1.86 percent amount over a period of 30 years (hereinafter the "payment period"), beginning on the date the Government notifies the Non-Federal Sponsor of the 1.86 percent amount, using an interest rate determined by the Secretary of the Treasury. In the case of the initial calculation, the interest rate shall 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 payment period during the month preceding the fiscal year in which the Government awards the first contract for construction of the Project, plus a premium of one-eighth of one percentage point for transaction costs. In the case of recalculations, the interest rate shall be determined by the Secretary of the Treasury taking into consideration such average market yields during the month preceding the fiscal year in which the sixth installment is to be paid, and thereafter during the month preceding the fiscal year in which each fifth installment is to be paid, plus a premium of one-eighth of one percentage point for transaction costs.

2. The Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraph E.1. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the 1.86 percent amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, New Orleans District B2" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

3. Notwithstanding paragraph E.2. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the 1.86 percent amount, in whole or in part, at any time. Notwithstanding paragraph E.1. of this Article, there shall be no charges for interest on any portion of the 1.86 percent amount prepaid within 90 days after the Government notifies the Non-Federal Sponsor of the 1.86 percent amount.

ARTICLE V - 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 VI - OPERATION AND MAINTENANCE

The Government, as it determines necessary, shall operate and maintain the Authorized Project, based on a reasonable standard of performance and care, and shall be responsible for all financial obligations for operation and maintenance of the Authorized Project, except for the St. Claude Ave. Bridge, which will be the responsibility of the Port of New Orleans, the Claiborne Ave. Bridge, which will be the responsibility of the State of Louisiana Department of Transportation and Development, and the levees and floodwalls, which will be the responsibility of the Orleans Levee District. Separate agreements are in place for the levees and floodwalls and will be in place prior to commencement of work on the two bridges to cover these exceptions.

ARTICLE VII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from 12.85 percent of all damages arising from the construction, operation, or maintenance of the Authorized Project and shall hold and save the Government free from all damages arising from the construction, operation, or maintenance of any betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VIII - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting 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 the total cost of construction of the Authorized Project and cost 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in the total cost of construction of the Authorized Project and cost shared in accordance with the provisions of this Agreement.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not necessarily limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 and 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 X - RELATIONSHIP OF PARTIES

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

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

ARTICLE XI - 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 XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.G., II.J., and/or IV 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 its share of scheduled expenditures for the Authorized Project 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, whichever occurs first.

C. 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 IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XIII - 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:

President/Chief Executive Officer
Board of Commissioners of the Port of New Orleans
P. O. Box 60046
New Orleans, Louisiana. 70160

If to the Government:

Commanding Officer
Corps of Engineers, New Orleans District
P. O. Box 60267
New Orleans, Louisiana. 70160

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 XIV - 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 XV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XVI - NON-LIABILITY OF OFFICERS AND EMPLOYEES

Neither the President/Chief Executive Officer of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee thereof, nor any officer, agent, consultant, or employee of the Government, may be charged personally with any liability, or held liable under the terms or provisions of this Agreement, or because of its execution or attempted execution, or because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912 of the Water Resources Development Act of 1986, Public Law 99-662, or other applicable law.

ARTICLE XVII - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and understands that Section 902 establishes the maximum cost of Authorized Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Authorized Project financial obligation, make an Authorized Project expenditure, or afford credit toward total cost of construction of the Authorized Project for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in the total cost of construction of the Project together with such obligations, expenditures, credits, and contributions for other elements of the Authorized Project, exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$1,373,017,000, 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 of the Water Resources Development Act of 1986, Public Law 99-662, as amended.

ARTICLE XVIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Board of Commissioners of the Port of New Orleans or the Legislature of the State of Louisiana, where creating such an obligation would be inconsistent with the Louisiana Constitution of 1974 Article 7, Sec 10(D) and Article 3, Sec 16(A) or Title 34 of the Louisiana Revised Statutes of the State of Louisiana.

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

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

THE DEPARTMENT OF THE ARMY
OF

BY: 

Dominic Izzo
Principal Deputy Assistant Secretary
Of the Army (Civil Works)

DATE: Sep 27th 2001

THE BOARD OF COMMISSIONERS
THE PORT OF NEW ORLEANS

BY: 

J. Ron Brinson
President/Chief Executive Officer

DATE: 9/6/01

Approved:


Attorney for Board

CERTIFICATE OF AUTHORITY

I, Gerald O. Gussoni, Jr., do hereby certify that I am the principal legal officer of the Board of Commissioners of the Port of New Orleans, that the Board of Commissioners of the Port of New Orleans 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 Board of Commissioners of the Port of New Orleans in connection with the General Cargo Navigation Increment of the Inner Harbor Navigation Canal Lock Replacement (authorized as the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, New Lock and Connecting Channels), 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 Board of Commissioners of the Port of New Orleans have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
10th day of September 2002.

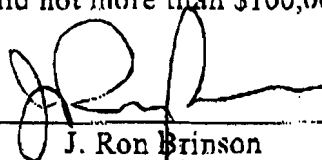

Gerald O. Gussoni, Jr.

CERTIFICATION REGARDING LOBBYING

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

- J. 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.
- J. 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.
- J. 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.



J. Ron Brinson

President/Chief Executive Officer

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS

DATE: 9/10/01