

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
PHILADELPHIA REGIONAL PORT AUTHORITY  
FOR CONSTRUCTION OF THE  
DELAWARE RIVER MAIN STEM AND CHANNEL PROJECT

THIS AGREEMENT is entered into this 23<sup>rd</sup> day of June, 2008, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the Philadelphia Regional Port Authority (hereinafter the "Non-Federal Sponsor"), represented by its Chairman and Executive Director.

WITNESSETH, THAT:

WHEREAS, construction of the Delaware River Main Stem and Channel Project at Delaware, New Jersey, and Pennsylvania, was authorized by Section 101(6) of the Water Resources Development Act of 1992, Public Law 102-580, which was modified by Section 308 of the Water Resources Development Act of 1999, Public Law 106-53, and further modified by Section 306 of the Water Resources Development Act of 2000, Public Law 106-541;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the Delaware River Main Stem And Channel Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662 (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 (33 U.S.C. 2280), establishes the maximum amount of costs for the 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;

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Project Partnership 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;

WHEREAS, the Non-Federal Sponsor desires to acquire certain dredged material disposal facilities sites, which will be provided to meet the Non-Federal Sponsor’s responsibilities for the Project and be available for the disposal of certain dredged material from the Project, as well as non-project dredged materials, subject to compliance with the requirements of all applicable environmental laws, subject to issuance of all necessary permits;

WHEREAS, the Non-Federal Sponsor considers dredge material a resource and may pursue use of the material for mine site placement and the manufacture of lightweight aggregates and top soil subject to compliance with the requirements of all applicable environmental laws, subject to issuance of all necessary permits and subject to such agreements as may be necessary with the Government;

WHEREAS, the Non-Federal Sponsor may offer in writing to accelerate provision to the Government of all or a portion of its required contribution of funds for immediate use by the Government for construction of the general navigation features;

WHEREAS, Section 308 of the Water Resources Development Act of 1999, Public Law 106-53, provides that:

(1) the Secretary of the Army may provide credit against the non-Federal share for the costs of engineering and design and construction management work performed by the Non-Federal Sponsor that the Secretary determines is necessary to implement the Project;

(2) the Secretary may provide credit against the non-Federal share for the costs of construction performed by the Non-Federal Sponsor that the Secretary determines is necessary to implement the Project;

(3) the Secretary may enter into an agreement with a non-Federal interest for the payment of disposal or tipping fees for dredged material from a Federal project, other than for the construction or operation and maintenance of the Project, if the non-Federal interest has supplied the corresponding capacity; and

(4) the Secretary may enter into an agreement with the Non-Federal Sponsor to carry out or cause to have carried out a disposal area management program for dredged material disposal areas necessary to construct, operate and maintain the project and to reimburse the Non-Federal Sponsor for the costs of carrying out the program;

WHEREAS, Section 306 of the Water Resources Development Act of 2000, Public Law 106-541, authorizes the Secretary of the Army to provide credit toward the non-Federal share of the cost of the Project under Section 101(a)(2) of the Water Resources Development Act of 1986, Public Law 99-662 for:

- (1) the cost of providing additional capacity at dredged material disposal areas; and
- (2) the cost of providing community access to the Project (including such disposal areas) and the cost of meeting applicable beautification requirements;

WHEREAS, the Non-Federal Sponsor has performed certain work and proposes to perform certain work (hereinafter referred to as the "Section 308 Work"), which is a part of the Project;

WHEREAS, on January 7, 2002 the Assistant Secretary of the Army (Civil Works) delegated the authority to the U.S. Army Engineer for the Philadelphia District (hereinafter the "District Engineer") to 1) accept items of work accomplished by the Non-Federal Sponsor for credit under Section 308 of the Water Resources Development Act of 1999, Public Law 106-53, which has been determined necessary to implement the Project; and 2) identify the costs for credit toward the Non-Federal Sponsor's required contribution, subject to Government audit, the availability of Federal funds, and other such conditions as prescribed by the Government;

WHEREAS, the Government anticipates that the State of Delaware will issue a State Subaqueous Lands and Wetlands Permit, such permit to be issued prior to the commencement of construction of the Project, under terms acceptable to the Government;

WHEREAS, the Non-Federal Sponsor agrees that all disposal costs for the disposal of dredged or excavated material from the Project shall be the least costly, environmentally acceptable method of disposal as identified in the December 2002 Comprehensive Economic Reanalysis Report, supplemented by the February 2004 report, and the April 2008 Economic Update Report, and that it will pay any costs that exceed that amount, at non-Federal expense, if it proposes a method of disposal of dredged or excavated material, or location of disposal sites, that are not the least costly, environmentally acceptable method of disposal.

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

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the general navigation features; removals accomplished in accordance with Article II of this Agreement; and all lands, easements, rights-of-way, and relocations that the Government, in accordance with Article III of this Agreement, determines to be necessary for the construction, operation, or maintenance of the general navigation features, but shall not include aids to navigation or the local service facilities.

B. The term “general navigation features” shall mean deepening the 102.5 mile long channel extending from deep water in the Delaware Bay to Philadelphia Harbor, Pennsylvania and to the upstream limit of Beckett Street Terminal, Camden New Jersey, to 45 feet below mean low water; widening 12 of the 16 existing channel bends; deepening a two-space anchorage to a depth of 45 feet at Marcus Hook anchorage; including any overdepth dredging; and Non-Federal Sponsor dredged material disposal facilities, including possible dredged material disposal facilities and land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for project construction, and existing Federal dredged material disposal facilities (Reedy Point South, Artificial Island, Killcohook, Penns Neck, Pedricktown South, Pedricktown North, Oldmans, and National Park) as generally described in the February 1992 Interim Feasibility Report, approved by Report of the Chief of Engineers dated June 29, 1992, Supplemented by the approved Limited Reevaluation Report dated February 1998 and approved by the Chief, Planning Division, Headquarters, U.S. Army Corps of Engineers on October 20, 1997, and revised by the December 2002 Comprehensive Economic Reanalysis with a February 2004 Supplement approved by the Director of Civil Works on March 12, 2004, and the April 2008 Economic Update Report.

C. The term “local service facilities” shall mean the facilities that are necessary to realize the benefits of the general navigation features, as generally described in, and required of the Non-Federal Sponsor by the Corps’ February 1992 Interim Feasibility Report, and Supplemented by the approved Limited Reevaluation Report dated February 1998 including, but not necessarily limited to, the disposal of dredged or excavated material associated with construction, operation and maintenance of the local service facilities. The local service facilities are the berthing areas for the docks at Beckett Street Terminal, NJ; Packer Avenue Marine Terminal, PA; Sun Oil at Westville, NJ; Sun Oil Fort Mifflin, PA; Sun Oil Hog Island, PA; Valero Oil Corporation, Paulsboro, NJ; Conoco Phillips, Marcus Hook, PA; and Sun Oil Marcus Hook, PA.

D. The term “total cost of construction of the general navigation features” 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 general navigation features. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs including the value of the Non-Federal Sponsor’s Design Coordination Team Activities; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A.1. and Article XV.A.3. of this Agreement; the Government’s costs of cleanup and response in accordance with Article XV.D.2. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. and Article XVIII.D.1. of this Agreement; actual construction costs (including any costs incurred in the construction of dredged or excavated material disposal facilities during any subsequent period of construction, the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States, the costs incurred for the Section 308 Work as determined in accordance with Article II.G. of this Agreement for which the Government affords credit in accordance with Article II.H. of this Agreement); supervision and administration costs; costs of



participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; incidental costs of removals accomplished by the Non-Federal Sponsor before the end of the period of construction or during any subsequent period of construction in accordance with Article II.Q. of this Agreement; direct and incidental costs of removals accomplished by the Government before the end of the period of construction or during any subsequent period of construction in accordance with Article II.P. of this Agreement; and costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, or relocations; any costs of removals accomplished by the Non-Federal Sponsor other than incidental costs; any financial obligations for operation or maintenance of the general navigation features; any costs assigned to an existing Federal navigation project in accordance with Article II.E. of this Agreement; any costs due to betterments; any costs of dispute resolution under Article VII of this Agreement; any costs of aids to navigation; or any costs of construction, operation or maintenance of the local service facilities.

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 general navigation features.

F. The term “non-Federal proportionate share” shall mean the ratio of the Non-Federal Sponsor’s total contribution required in accordance with Article II.F. of this Agreement to 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 VI.B. of this Agreement, of the scheduled date for either issuance of the solicitation for the first contract for construction of the general navigation features or commencement of construction of the general navigation features using the Government’s own forces, to the date that the U.S. Army Engineer for the Philadelphia District (hereinafter the “District Engineer”) notifies the Non-Federal Sponsor in writing of the Government’s determination that construction of the general navigation features is complete, except for construction of any dredged or excavated material disposal facility identified in Article I.B. of this Agreement for which a construction contract has not been awarded at the time of the written notice.

H. The term “subsequent period of construction” shall mean a period of time after the period of construction beginning with the date that the Government first notifies the Non-Federal Sponsor in writing of the scheduled date for either issuance of the solicitation for the contract or commencement using the Government’s own forces of construction of a dredged or excavated material disposal facility that is part of the general navigation features as defined in Article I.B. of this Agreement and ending with the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government’s determination that construction is complete. There may be more than one subsequent period of construction.

I. The term “highway” shall mean any public highway, roadway, street, or way, including any bridge thereof.

J. 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.

K. 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.

L. The term “removal” shall mean eliminating an obstruction (other than a bridge over the navigable waters of the United States) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for the construction, operation, or maintenance of the general navigation features, including the borrowing of material or the disposal of dredged or excavated material associated therewith; 2) elimination must be accomplished before the end of the period of construction or during a subsequent period of construction, and 3) the Non-Federal Sponsor, the States of New Jersey or Delaware or the Commonwealth of Pennsylvania, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof. The term also shall mean the elimination of an obstruction to the construction, operation, or maintenance of the general navigation features when such elimination is specifically provided for, and is identified as a removal, in the authorizing legislation for the Project or any report referenced therein.

M. 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.

N. The term “betterment” shall mean a change in the design and construction of an element of the general navigation features 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.

O. 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 other general navigation features. 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. The term also includes modifications to a dredged or excavated material disposal facility to increase capacity beyond that created by regularly recurring operation and maintenance activities.

P. The term “over-depth” shall mean additional depth required to accomplish advanced maintenance, if any, and to compensate for dredging inaccuracies.

Q. The term “utility” shall mean that which the States of Delaware or New Jersey or the Commonwealth of Pennsylvania, pursuant to generally applicable state law, defines as a public utility.

R. The term “Design Coordination Team Activities” shall mean the oversight of issues related to design, including scheduling of report and work products; development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government’s cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project; and other related matters.

S. The term “value of the Non-Federal Sponsor’s Design Coordination Team Activities” shall mean the reasonable, allowable, and allocable costs incurred by the Non-Federal Sponsor after October 1, 1996 for Design Coordination Team Activities, as determined by the Government and subject to an audit in accordance with Article X of this Agreement.

T. The term “Section 308 Work” means work on the Project that the Non-Federal Sponsor performed or causes to be performed for which the Government will afford credit pursuant to Section 308 of Public Law 106-53 and includes but is not limited to performing engineering studies and designs; construction plans and specifications; technical reviews; quality assurance services such as surveying, inspection and reporting; construction management and construction of dredged material disposal facilities. All such Section 308 Work is subject to the approval of the Government and subject to compliance with all applicable environmental laws and regulations.

## 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 general navigation features (excluding the Section 308 Work but 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 Government contracts, 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 until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project and the local service facilities. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review in advance and comment on all subsequent solicitations for all contracts and all contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification 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 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 general navigation features, except for the Section 308 Work, shall be exclusively within the control of the Government.

2. Throughout the period of construction and during any subsequent 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 awarded by the Government for the general navigation features.

3. For applicable Section 308 Work, the Government shall be afforded an opportunity to review and comment on the solicitations for all Non-Federal Sponsor contracts including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. Construction of Section 308 Work shall not commence until the designs, detailed plans and specifications, and arrangements for prosecution of such work have been approved in writing by the District Engineer, or his representative. All bids received and proposed provisions of any contract shall be subject to review by the Government prior to contract award. In addition, all proposed changes in approved designs, plans, and specifications shall be reviewed and approved by the District Engineer or his representative in writing in advance of the related construction where practicable. In any instance where providing the Government with notification of a change or contract modification is not possible prior to execution of the change or modification, the Non-Federal Sponsor shall provide notification and supporting documentation to enable Government review at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government made as a result of its review, but the contents of solicitations, award of contract claims, and performance of applicable Section 308 Work shall be exclusively within the control of the Non-Federal Sponsor. However, the failure of the Non-Federal Sponsor to comply with direction received from the District Engineer, with respect to the Section 308 Work, may result in the costs associated with such work being determined ineligible for credit towards the Non-Federal Sponsor's share of Project costs.

4. Notwithstanding paragraph A.1. of this Article, if the award of any contract for construction of the general navigation features would result in cumulative financial obligations for construction exceeding \$331,313,000 (FY 2008 price level inflated to the mid-year of construction),



the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the general navigation features until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the general navigation features, 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.

5. As of the effective date of this Agreement, \$24,070,000 of Federal funds have been made available for the Project. The Government makes no commitment to budget additional Federal funds for the Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project is limited to this amount together with any additional funds that the Congress may appropriate for the Project. In the event that the Congress does not appropriate funds for the Project sufficient to meet the Federal share of the costs of work on the Project in the then-current or upcoming fiscal year, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.F. of this Agreement, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish 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 VI.C. of this Agreement.

C. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, or rights-of-way that the Government determines the Non-Federal Sponsor must provide for the construction, operation, or maintenance of the general navigation features, including the borrowing of material or the disposal of dredged or excavated material associated therewith, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, or maintenance of the general navigation features.

D. The Non-Federal Sponsor may request the Government to provide lands, easements, or rights-of-way, including those necessary for the borrowing of material or the disposal of dredged or

excavated material, or to perform relocations for the general navigation features on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services 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 of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, or rights-of-way, or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.D. of this Agreement.

E. The Government shall assign all costs associated with the dredging of material from the dimensions, including over-depth, 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 construction of the general navigation features to a Project depth of 45 feet. The Government shall include any costs associated with over-depth dredging accomplished as part of the general navigation features in the costs assigned to the Project depth.

F. The Non-Federal Sponsor shall contribute 25 percent of the total cost of construction of the general navigation features (including any costs of dredged or excavated material disposal facilities during the period of construction and all subsequent periods of construction).

1. If the Government projects at any time that the collective value of the Non-Federal Sponsor's Design Coordination Team Activities and the Non-Federal Sponsor's contributions under paragraph Q.3. of this Article and Article V, Article X, and Article XV.A.1. of this Agreement determined by the Government to be attributable to the general navigation features constructed during the period of construction will be less than the Non-Federal Sponsor's required share of 25 percent of the portion of total cost of construction of the general navigation features that will be incurred during the period of construction, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded pursuant to paragraph H. and paragraph S. of this Article.

2. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article VI.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide for the period of construction, the Government shall reduce the amount determined in accordance with paragraph F.1. of this Article by the amount of credit the Government projects will be afforded pursuant to paragraph H. and paragraph S. of this Article.

3. If the Government projects at any time that the collective value of the Non-Federal Sponsor's Design Coordination Team Activities and the Non-Federal Sponsor's contributions under paragraph Q.3. of this Article and Article V, Article X, and Article XV.A.1. of this Agreement

determined by the Government to be attributable to the general navigation features constructed during a subsequent period of construction will be less than the Non-Federal Sponsor's required share of 25 percent of the portion of total cost of construction of the general navigation features that will be incurred during such subsequent period of construction, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded pursuant to paragraph H. and paragraph S. of this Article.

4. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article VI.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide for each subsequent period of construction, the Government shall reduce the amount determined in accordance with paragraph F.3. of this Article by the amount of credit the Government projects will be afforded pursuant to paragraph H. and paragraph S. of this Article.

G. The Government shall determine and include in total cost of construction of the general navigation features any costs incurred by the Non-Federal Sponsor for Section 308 Work, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in total cost of construction of the general navigation features for Section 308 Work.

1. The Non-Federal Sponsor, in consultation with the Government, shall obtain all applicable Federal, State, and local permits required for the performance of the applicable Section 308 Work.

2. Section 308 Work shall be subject to certification by the Government that the work was accomplished in a satisfactory manner and in accordance with the provisions of this Agreement and is suitable for inclusion in the Project.

3. The Non-Federal Sponsor's costs for Section 308 Work that may be eligible for inclusion in total cost of construction of the general navigation features pursuant to this Agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

4. The Non-Federal Sponsor's costs for Section 308 Work that may be eligible for inclusion in total cost of construction of the general navigation features pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the Section 308 Work is completed and the time the costs are included in total cost of construction of the general navigation features.

5. The Government shall not include in total cost of construction of the general navigation features any costs for Section 308 Work paid by the Non-Federal Sponsor using Federal funds unless the Federal granting agency verifies in writing that expenditure of such funds for such

purpose is expressly authorized by Federal law.

6. The Government shall not include in total cost of construction of the general navigation features any costs for Section 308 Work in excess of the Government's estimate of the costs of the Section 308 Work had the work been accomplished by the Government.

7. In the performance of any construction portion of the Section 308 Work, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Costs for any construction portion of Section 308 Work may be excluded from total cost of construction of the general navigation features by the Government, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

H. The Government, in accordance with this paragraph, shall afford credit for the costs of the Section 308 Work determined in accordance with paragraph G. of this Article as described below. However, the maximum amount of credit that can be afforded for the Section 308 Work shall not exceed the lesser of the following amounts as determined by the Government: the sum of the amount of funds determined in accordance with paragraph F.2. and paragraph F.4. and paragraph K. of this Article or the costs of the Section 308 Work determined in accordance with paragraph G. of this Article.

1. First, the credit will be afforded toward the amount of funds determined in accordance with paragraph K. of this Article.

2. Second, the credit will be afforded toward the amount of funds determined in accordance with paragraph F.2. of this Article.

3. Lastly, the credit will be afforded toward the amount of funds determined in accordance with paragraph F.4. of this Article.

I. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of the Section 308 Work determined in accordance with paragraph G. of this Article that exceed the amount of credit afforded for the Section 308 Work pursuant to paragraph H. of this Article. The Non-Federal Sponsor shall be responsible for 100 percent of all costs of the Section 308 Work that exceed the amount of credit afforded.

J. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the period of construction and the conclusion of each subsequent period of construction. Upon providing each notification, the Government shall conduct an accounting, in accordance with Article VI of this Agreement, and furnish the results to the Non-Federal Sponsor.



K. In accordance with Article VI.F. of this Agreement, the Non-Federal Sponsor shall pay an additional amount equal to 10 percent of total cost of construction of the general navigation features less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and relocations. The Non-Federal Sponsor shall not be entitled to reimbursement for any value of lands, easements, rights-of-way, and relocations provided or performed pursuant to Article III of this Agreement that exceeds 10 percent of total cost of construction of the general navigation features.

L. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct or cause to be constructed the local service facilities, including dredging, excavation, and disposal of material therefrom, and shall be responsible for taking all actions to enable such construction. The Government shall have no obligation under this Agreement for construction of the local service facilities or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party.

M. In accordance with Article VIII.A. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain or cause to be operated and maintained the local service facilities, including dredging, excavation, and disposal of material therefrom. The Government shall have no obligation under this Agreement for operation and maintenance of the local service facilities or operation and maintenance of any other facilities to be provided by the Non-Federal Sponsor or a third party.

N. The Government shall operate and maintain the general navigation features in accordance with Article VIII.B. of this Agreement.

O. The Non-Federal Sponsor shall not use Federal funds to meet its obligations for the Project under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds for such purpose is expressly authorized by Federal law.

P. The Government shall accomplish all removals that neither the Non-Federal Sponsor nor the State of Delaware nor the State of New Jersey nor the Commonwealth of Pennsylvania has the legal capability to accomplish where both the Non-Federal Sponsor and either the States of Delaware or the State of New Jersey or the Commonwealth of Pennsylvania, whichever is appropriate, make a written request for the Government to accomplish such removals, and shall accomplish all removals that the Government is expressly required to accomplish in the authorizing legislation for the Project or any report referenced therein.

1. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such removal shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, in accordance with Article II.C. of this Agreement.

2. All costs incurred by the Government in accomplishing removals shall be included in the total cost of construction of the general navigation features and shared in accordance with the provisions of this Agreement.

Q. The Non-Federal Sponsor shall accomplish all removals, other than those removals specifically assigned to the Government by paragraph P. of this Article, in accordance with the provisions of this paragraph.

1. The Government, at least 90 days prior to award of the first construction contract, shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such removals, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with accomplishing such removals. Unless the Government agrees to a later date in writing, prior to the issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features, or prior to the Government incurring any financial obligation for construction, operation, or maintenance of the general navigation features that it elects to perform with its own forces, the Non-Federal Sponsor shall accomplish all removals set forth in such descriptions that the Government determines to be necessary for that work.

2. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such removal shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, in accordance with Article II.C. of this Agreement.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing removals, shall be included in the total cost of construction of the general navigation features, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shared in accordance with the provisions of this Agreement. Incidental costs may include legal and administrative costs (including but not limited to owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the Non-Federal Sponsor in accomplishing removals, but shall not include any costs that the Non-Federal Sponsor or the States of Delaware or New Jersey or the Commonwealth of Pennsylvania has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

R. The Non-Federal Sponsor may offer in writing to accelerate a portion or all of its cash contribution required by paragraph F.2., paragraph F.4., and paragraph K. of this Article during the period of construction or a subsequent period of construction, as applicable, for immediate use by the Government. This offer shall be limited to an amount that does not exceed the most current estimate of the total of the Non-Federal Sponsor's cash contribution required by paragraph F.2., paragraph F.4., and paragraph K. of this Article, as determined by the Government in coordination with the Non-Federal Sponsor, less any funds previously contributed by the Non-Federal Sponsor.

Upon receipt of such offer or offers, the Government, subject to receiving such approvals and concurrences as customarily are required to accept such funds, may accept the funds, or such portion thereof as the Government determines to be necessary to meet the costs of construction of the general navigation features. If the Government elects to accept such funds, it shall notify the Non-Federal Sponsor of such acceptance in a writing that sets forth any applicable terms and conditions. In the event of a conflict between this Agreement and any such writing, this Agreement shall control. Such funds shall be used by the Government for construction of the general navigation features.

S. As Federal appropriations are made available to pay the Federal share of construction of the general navigation features, the Government shall afford credit for funds provided during the period of construction or a subsequent period of construction, as applicable, in accordance with paragraph R. of this Article. The Government shall credit this amount, provided during the period of construction or a subsequent period of construction, as applicable, first, toward the Non-Federal Sponsor's cash contribution required by paragraph K. of this Article, and then toward the Non-Federal Sponsor's cash contribution required by paragraph F.2. and paragraph F.4. of this Article. If after the final accounting at the end of the period of construction or a subsequent period of construction, as applicable, it is determined that the Non-Federal Sponsor has provided funds in excess of its cash contribution required by paragraph F.2., paragraph F.4., and paragraph K. of this Article, the Government shall proceed in accordance with Article VI.D.2. or Article VI.E.2. of this Agreement, as applicable, to determine whether a refund is applicable. However, if in the event of a final accounting due to termination pursuant to Article XIV.C. of this Agreement prior to the end of the period of construction or a subsequent period of construction, as applicable, it is determined that the Non-Federal Sponsor has provided funds in excess of its cash contribution required by paragraph F.2., paragraph F.4., and paragraph K. of this Article, the Government shall not reimburse the Non-Federal Sponsor for any such excess funds, except that any such excess funds which have not been obligated by the Government on the general navigation features shall be refunded to the Non-Federal Sponsor, subject to the availability of funds.

T. The Non-Federal Sponsor shall use its best efforts to provide and maintain adequate public terminal and transfer facilities open to all on equal terms and such depths from the Federal channel line to and between the wharves at the terminals (berthing areas) as may be required for the accommodation of vessels at the terminals, consistent with the Federal project.

U. The Non-Federal Sponsor shall use its best efforts to prohibit the erection of any structures that would encroach on the authorized general navigation features

V. The Non-Federal Sponsor may request the Government to design, construct, or operate and maintain the local service facilities on behalf of the Non-Federal Sponsor in conjunction with the design, construction, or operation and maintenance of the associated general navigation features. For the purposes of this paragraph, the local service facilities include, but are not limited to: the berthing areas of Beckett Street Terminal, NJ; Packer Avenue Marine Terminal, PA; Sun Oil at Westville, NJ; Sun Oil Fort Mifflin, PA; Sun Oil Hog Island, PA; Valero Oil Corporation, Paulsboro, NJ; Conoco Phillips, Marcus Hook, PA; and Sun Oil Marcus Hook, PA. Any such

request shall be in writing and describe the services requested to be performed. If, in its sole discretion, the Government elects to perform the requested services, or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing setting forth any applicable terms and conditions consistent with the Agreement. If there is a conflict between such a writing and this Agreement, the Agreement controls. The Non-Federal Sponsor is solely responsible for all costs of the requested services, and shall pay all such costs in accordance with Article VI.C. of this Agreement.

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

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, or rights-of-way necessary for the construction, operation, or maintenance of the general navigation features, including those lands, easements, or rights-of-way necessary for the borrowing of material, the disposal of dredged or excavated material, relocations, and including those lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, or rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, or rights-of-way. Prior to the end of the period of construction, or the subsequent period of construction, as applicable, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way necessary for the construction of the general navigation features, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform with its own forces, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, or maintenance of the general navigation features, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Unless the Government agrees to a later date in writing, prior to issuance of the solicitation for each Government contract for construction, operation, or maintenance of the general navigation features or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform by its own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that work.



C. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting in accordance with Article VI.D. of this Agreement, or the credit afforded in accordance with Article II.K. of this Agreement equals the 10 percent amount, whichever occurs later, the Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided in accordance with paragraph A. or B. of this Article. Upon receipt of such documents the Government in a timely manner shall afford credit for the value of such contribution in accordance with Article II.K. of this Agreement.

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

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

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

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations other than those the Government acquires on behalf of the Non-Federal Sponsor in accordance with Article II.D. of this Agreement, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement

shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. or B.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for that real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest, or, in the event an authorization for entry is not required, no later than the end of the period of construction or the end of the subsequent period of construction, as applicable. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific

real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

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

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

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are necessary for the construction, operation, and maintenance of the general navigation features, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, consistent with Government practices and procedures in effect at the time, that the interest is acquired, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made in accordance with Article III.A. of this Agreement, the Non-Federal Sponsor shall receive credit for the documented incidental costs associated with preparing to acquire lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, costs of investigations and studies supporting a prudent acquisition decision provided that such land, easements and rights-of-way were actually acquired, cost of internal legal staff and attorney's fees for outside counsel that do not duplicate costs incurred by internal legal staff, survey costs, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.D. of this Agreement.

5. Waiver of Appraisal. Except as required by paragraph B.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

C. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations that the Government acquires on behalf of the Non-Federal Sponsor in accordance with Article II.D. of this Agreement, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits.

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

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

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the States of Delaware or New Jersey or the Commonwealth of Pennsylvania, as appropriate, would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. For a relocation of a utility, the value shall be only that portion of relocation costs borne by the Non-Federal Sponsor that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items. Provided, however, that prior to undertaking such a utility relocation the Non-Federal Sponsor may consult with the Government to determine what portion of relocation costs the Government will accept as being necessary to provide a functionally equivalent facility and the



Government shall cooperate by providing a response within 60 days of receiving such a request from the Non-Federal Sponsor.

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

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

#### ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Such representatives are not required to be employees of the Non-Federal Sponsor should the Non-Federal Sponsor choose to have a Third Party represent its interest and officially designate the representatives. Thereafter, the Project Coordination Team shall meet at least once per month until the end of the period of construction and during each subsequent period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team. The Non-Federal Sponsor and the Government shall appoint an equal number of representatives to the Project Coordination Team, but in no case shall the number of representatives exceed 5 from each party.

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 and during each subsequent period of construction, the Project Coordination Team shall generally oversee the Project, including but not necessarily limited to matters related to design; quality assurance, plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the

provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations and the construction portion of the Section 308 Work; the Government's cost projections; the performance of, scheduling for, and determining costs of the Section 308 Work; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operation and maintenance of the general navigation features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project and the local service facilities. 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 and the Non-Federal Sponsor's Executive Director on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The District Engineer and the Non-Federal Sponsor's Executive Director in good faith shall consider the recommendations of the Project Coordination Team and shall attempt to reach a mutually acceptable agreement. The Government, having the legal authority and responsibility for construction of the general navigation features, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations. The failure of the parties to agree on a matter that was forwarded to the District Engineer and the Non-Federal Sponsor's Executive Director may be considered a dispute subject to the provisions of Article VII of this Agreement.

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

## ARTICLE VI - 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 general navigation features and costs due to additional work under Article II.B., Article II.D., Article II.V., or Article XXII.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 general navigation features, of total costs due to additional work under Article II.B., Article II.D., Article II.V., or Article XXII.B. of this Agreement, of the maximum amount determined in accordance with Article XX of this Agreement, of the Non-Federal Sponsor's total contributions required in accordance with Article II.B., Article II.D., Article II.V., Article XXII.B., and Article II.F. 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 credit to be afforded in accordance with Article II.K. of this Agreement for the value of lands, easements, rights-of way, or

relocations contributed before the end of the period of construction and during any subsequent period of construction, of the credits to be afforded pursuant to Article II.H. and Article II.S. of this Agreement, of the 10 percent amount, of the principal amount, and of the installments to be paid in accordance with paragraph E.2. of this Article. Thereafter, until the outstanding portion of the principal amount equals \$0, the Government, at least annually, shall provide the Non-Federal Sponsor with a report setting forth the outstanding portion of the principal 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 general navigation features is projected to be \$331,313,000 (FY 2008 price level updated to mid-year of construction) and the Non-Federal Sponsor's contribution required under Article II.F. of this Agreement is projected to be \$82,828,000 (FY 2008 price level updated to mid-year of construction). These amounts are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required by Article II.F.2. and Article II.F.4. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the general navigation features to be constructed during the period of construction or commencement of construction of the general navigation features to be constructed during the period of construction using the Government's own forces, 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: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the projected non-Federal proportionate share of financial obligations for construction to be incurred in the first fiscal year or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected non-Federal proportionate share of financial obligations for construction through the first fiscal. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Philadelphia" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of all the general navigation features is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for engineering and design

or construction of the general navigation features, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each fiscal year in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected non-Federal proportionate share of financial obligations for construction for that fiscal year for such continuing contract. No later than 30 calendar days prior to the beginning of that fiscal year the Non-Federal Sponsor shall make the full amount of such required funds for that fiscal year available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract where the Government will not use a continuing contract to make financial obligations for engineering and design or construction of the general navigation features, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected non-Federal proportionate share of financial obligations for construction to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make financial obligations for engineering and design or construction of the general navigation features using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each fiscal year in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected non-Federal proportionate share of financial obligations for construction using the Government's own forces for that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, the Non-Federal Sponsor shall make the full amount of such 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 incurred prior to the commencement of the period of construction; (b) the non-Federal proportionate share of financial obligations for construction as financial obligations for construction are incurred; and (c) to the extent funds are offered and accepted in accordance with Article II.R. of this Agreement, any other financial obligations for construction in excess of the non-Federal proportionate share as they are incurred during the period of construction or a subsequent period of construction, as applicable. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations in 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. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of



this Article.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., Article II.D., Article II.V., or Article XXII.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 the payment mechanisms specified in paragraph 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 the payment mechanism specified in paragraph B.1. of this Article.

D. Upon conclusion of the period of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for the period of construction and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for the period of construction from being conducted in a timely manner, the Government shall conduct an interim accounting for the period of construction and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings for the period of construction are resolved, the Government shall amend the interim accounting for the period of construction to complete the final accounting for the period of construction and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, for the period of construction shall determine the portion of total cost of construction of the general navigation features incurred during the period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during the period of construction, as of the date of such accounting. The final or interim accounting, as applicable, for the period of construction shall determine each party's required share thereof and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, for the period of construction show that the Non-Federal Sponsor's total required shares of the portion of total cost of construction of the general navigation features incurred during the period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during the period of construction exceed the Non-Federal Sponsor's total contributions provided thereto (including credit afforded pursuant to Article II.H. and Article II.S. of this Agreement), the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Philadelphia" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the final or interim accounting, as applicable, for the period of construction show that the total contributions provided by the Non-Federal Sponsor (including credit afforded pursuant to Article II.H. and Article II.S. of this Agreement) for the portion of total cost of construction of the general navigation features incurred during the period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during the period of construction exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by Article II.I. of this Agreement, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event 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. To the extent that such appropriations are not received, the Government, after consultation with the Non-Federal Sponsor, shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph F. of this Article. However, if the final accounting is conducted prior to the end of the period of construction due to termination of the Agreement pursuant to Article XV.D. of this Agreement, and the Non-Federal Sponsor accelerated provision of its required contribution of funds in accordance with Article II.R. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of such accelerated funds that were not obligated by the Government for work on the Project, subject to the availability of funds.

E. Upon conclusion of each subsequent period of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for such subsequent period of construction and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for such subsequent period of construction from being conducted in a timely manner, the Government shall conduct an interim accounting for such subsequent period of construction and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings for such subsequent period of construction are resolved, the Government shall amend the interim accounting for such subsequent period of construction to complete the final accounting for such subsequent period of construction and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, for such subsequent period of construction shall determine the portion of total cost of construction of the general navigation features incurred during such subsequent period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during such subsequent period of construction, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, for such subsequent period of construction show that the Non-Federal Sponsor's total required shares of the portion of total cost of construction of the general navigation features incurred during such subsequent period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during such subsequent period of construction exceed

the Non-Federal Sponsor's total contributions provided thereto (including credit afforded pursuant to Article II.H. and Article II.S. of this Agreement), the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Philadelphia" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the final or interim accounting, as applicable, for such subsequent period of construction show that the total contributions provided by the Non-Federal Sponsor (including credit afforded pursuant to Article II.H. and Article II.S. of this Agreement) for the portion of total cost of construction of the general navigation features incurred during such subsequent period of construction and the costs due to additional work under Article II.B., Article II.D., Article II.V., and Article XXII.B. of this Agreement incurred during such subsequent period of construction exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by Article II.I. of this Agreement, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event 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. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph F. of this Article. However, if the final accounting is conducted prior to the end of such subsequent period of construction due to termination of the Agreement pursuant to Article XV.D. of this Agreement, and the Non-Federal Sponsor accelerated provision of its required contribution of funds in accordance with Article II.R. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of such accelerated funds that were not obligated by the Government for work on the Project, subject to the availability of funds.

F. The Non-Federal Sponsor shall pay, with interest, any additional amount required by Article II.K. of this Agreement in accordance with the provisions of this paragraph.

1. Each time the Government conducts a final or interim accounting for the period of construction and for each subsequent period of construction, the Government shall determine:

a. an amount equal to 10 percent of total cost of construction of the general navigation features as of the end of the period of construction or the most recent subsequent period of construction, whichever is latest;

b. the value, in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, relocations provided or performed pursuant to Article III of this Agreement as of the end of the period of construction or the most recent subsequent period of construction, whichever is latest; and

c. the additional amount to be paid by the Non-Federal Sponsor as of the end of the period of construction or the most recent subsequent period of construction, whichever is

latest. The additional amount is equal to the amount determined pursuant to paragraph F.1.a. of this Article reduced by the credit afforded for the value of the lands, easements, rights-of-way, relocations determined pursuant to paragraph F.1.b. of this Article further reduced by the credit afforded for Section 308 Work determined in accordance with Article II.G. of this Agreement and by the amount of credit afforded pursuant to Article II.S. of this Agreement. In the event the result of the aforesaid calculation is a negative number, the additional amount shall be zero.

2. At the time of the first final or interim accounting in which the Government determines that the additional amount is greater than zero, the Government shall calculate annual installments for payment of the additional amount, and such annual installments shall be substantially equal. To calculate the annual installments, the Government shall amortize the additional amount over a period of 30 years (hereinafter the "payment period"), beginning on the date the Government notifies the Non-Federal Sponsor of the additional amount, using an interest rate determined by the Secretary of the Treasury in accordance with this paragraph. The Government shall notify the Non-Federal Sponsor in writing of the additional amount and the annual installments.

a. If the calculation that first determined that the additional amount is greater than zero was based upon the final or interim accounting for the period of construction, the Secretary of the Treasury, in determining the interest rate used to calculate the annual installments, shall take into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the fiscal year in which the period of construction commences, plus a premium of one-eighth of one percentage point for transaction costs.

b. If the calculation that first determined the additional amount is greater than zero was based upon the final or interim accounting for a subsequent period of construction, the Secretary of the Treasury, in determining the interest rate used to calculate the annual installments, shall take into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the fiscal year in which such subsequent period of construction commences, plus a premium of one-eighth of one percentage point for transaction costs.

3. Thereafter, at the time of each subsequent final or interim accounting until the payment period has elapsed, the Government shall recalculate the annual installments by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the remaining portion of the payment period during the month preceding the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount and the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.



4. Thereafter, at the time of each final or interim accounting after the payment period has elapsed, the Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount. The Non-Federal Sponsor, not later than 90 days from receipt of such notice, shall pay to the Government the outstanding portion of the additional amount by delivering a check payable to "FAO, USAED, Philadelphia" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

5. In addition to any recalculation of the annual installments in accordance with paragraph F.3. of this Article, the Government shall recalculate the annual installments at five year intervals by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

6. Subject to paragraph D.2. and paragraph E.2. of this Article, the Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraphs F.2., F.3., or F.5. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the additional amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, Philadelphia" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

7. Notwithstanding paragraph F.6. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the additional amount, in whole or in part, at any time. Notwithstanding paragraphs F.2., F.3., or F.5. of this Article, there shall be no charges for interest on any portion of the additional amount that is paid within 90 days after the Government notifies the Non-Federal Sponsor of the additional amount, nor shall there be interest charges on any portion of an increase to the additional amount that is caused by recalculation of the additional amount and that is paid within 90 days after the Government notifies the Non-Federal Sponsor of such recalculated additional amount.

8. If the Government determines that the Non-Federal Sponsor has made payments (including credit afforded pursuant to Article II.H. and Article II.S. of this Agreement), toward the additional amount that exceed the additional amount, the Government, subject to the availability of funds and as limited by Article II.I. of this Agreement, shall refund the amount of the excess, without interest. In the event funds are not available to make such refund, the Government shall seek such appropriations as are necessary to make such refund.

## ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, or as otherwise specified in Article V.D. or Article VIII.D. of this Agreement, that party must first notify the other party in writing of the nature of the purported breach or dispute 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 in accordance with this Agreement.

## ARTICLE VIII - OPERATION AND MAINTENANCE

A. Subject to applicable Federal laws and regulations and for so long as the Project remains authorized, and commensurate with the Government's operation and maintenance of the general navigation features, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain or cause to be operated and maintained the local service facilities in a manner compatible with the authorized purposes of the Project including dredging, excavation, and disposal of material therefrom. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance.

B. The Government, as it determines necessary, shall operate and maintain the general navigation features and shall be responsible for all financial obligations for operation and maintenance of the general navigation features.

C. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the general navigation features. Nothing contained herein, however, shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

D. Further, to the extent not inconsistent with the interest in real property owned by the Non-Federal Sponsor, the Non-Federal Sponsor hereby authorizes the Government to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in the Government's sole discretion, are necessary for the operation, maintenance, or management of the dredged or excavated material disposal facilities including, but not necessarily limited to, construction, operation, or maintenance of the dredged or excavated material disposal facilities; disposal of dredged or excavated material associated with the construction, operation, or maintenance of the general navigation features. The right of either party to remove material from the dredged or excavated material disposal facilities for reuse or other purposes shall be subject to discussion between the parties and, if necessary, amendment to this Agreement pursuant to Article XXI of this Agreement. The failure of the parties

to agree may be considered a dispute subject to the provisions of Article VII of this Agreement.

#### ARTICLE IX - HOLD AND SAVE

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

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred in accordance with 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 Amendments of 1996, 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 general navigation features and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. 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 general navigation features and shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - 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 limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

#### ARTICLE XII - RELATIONSHIP OF PARTIES

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

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release, or take any other action, 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 XIII - OFFICIALS NOT TO BENEFIT

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

#### ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under 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 general navigation features 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 general navigation features 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 in accordance with 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 in accordance with this Article or Article XV.D. of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV.D. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment from 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 XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Government determines, in accordance with Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the general navigation features, except for any such lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude or any lands that are owned by the United States and administered by the Government. For lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. Further, the Government shall perform, or ensure performance of, such investigations on lands that are owned by the United States and administered by the Government.

1. All actual costs incurred by the Non-Federal Sponsor before the end of the period of construction or during any subsequent period of construction for such investigations for hazardous substances shall be included in the total cost of construction of the general navigation features and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Non-Federal Sponsor after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances shall be considered incidental costs under Article IV.B.4. and be credited in accordance with Article II.K. of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

3. All actual costs incurred by the Government before the end of the period of construction or during any subsequent period of construction for such investigations for hazardous substances shall be included in the total cost of construction of the general navigation features and shared in accordance with the provisions of this Agreement.

4. All actual costs incurred by the Government after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

B. The Non-Federal Sponsor may perform, or cause to be performed, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, or rights-of-way necessary solely for the construction, operation, or maintenance of the local service facilities. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this paragraph shall be borne entirely by the Non-Federal Sponsor. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

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

rights-of-way necessary for the construction, operation, or maintenance of the local service facilities, the Non-Federal Sponsor and the Government shall, in addition to providing any other notice required by applicable law, provide prompt written notice to each other.

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction, operation, or maintenance of the general navigation features, or, if already in construction, operation, or maintenance, whether to continue with construction, operation, or maintenance of the general navigation features, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, in accordance with Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the general navigation features.

1. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction, operation, or maintenance after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, except for any costs of cleanup and response on lands owned by the United States and administered by the Government. Cleanup and response costs that are the responsibility of the Non-Federal Sponsor under this paragraph shall not be considered a part of the total cost of construction of the general navigation features.

2. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction, operation, or maintenance after considering any liability that may arise under CERCLA, the Government shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands owned by the United States and administered by the Government. All actual costs incurred by the Government for such cleanup and response shall be included in total cost of construction of the general navigation features and shared in accordance with the provisions of this Agreement.

3. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under paragraph D. of this Article upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the general navigation features. The Government shall have no obligation under this Agreement for the costs of any clean-up and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the local service facilities.

E. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear

any necessary clean up and response costs as defined in CERCLA. Any decision made in accordance with paragraph D. of this Article, shall not relieve any third party from any liability that may arise under CERCLA.

F. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XVI - NOTICES

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

If to the Non-Federal Sponsor:

Executive Director, Philadelphia Regional Port Authority  
3460 N. Delaware Avenue  
Philadelphia, PA 19134-6311

If to the Government:

District Engineer U. S. Army Philadelphia District,  
Wanamaker Building  
100 Penn Square East,  
Philadelphia, Pennsylvania 19107-3396

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 in accordance with this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVII - CONFIDENTIALITY

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

## ARTICLE XVIII - HISTORIC PRESERVATION



A. The costs of identification, survey, and evaluation of historic properties incurred before the end of the period of construction or during a subsequent period of construction shall be included in the total cost of construction of the general navigation features and shared in accordance with Article II.F. and Article II.K. of this Agreement.

B. The costs of identification, survey, and evaluation of historic properties incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

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

D. The Government shall not incur costs for archeological data recovery activities that exceed the statutory one percent limit specified in paragraph C. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in that waiver in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)).

1. Any costs of archeological data recovery activities that exceed the one percent limit and are incurred before the end of the period of construction or during a subsequent period of construction shall be included in the total cost of construction of the general navigation features and shall be shared in accordance with Article II.F. and Article II.K. of this Agreement.

2. Any costs of archeological data recovery activities that exceed the one percent limit and are incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.B. of this Agreement.

## ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

A. 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.

B. No member, director, officer, agent or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, shall 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 XX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of the Water Resources Development Act, Public Law 99-662, as amended, and understands that Section 902 establishes the maximum cost of the Project and the local service facilities. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total cost of construction of the general navigation features 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 general navigation features plus the value of any contribution provided by the Non-Federal Sponsor in accordance with Article III of this Agreement plus the costs of the local service facilities exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$727,506,000 (FY 2008 price level) as calculated in accordance with the cost authorization in the Water Resources Development Act of 1992 and ER 1105-2-100. The Government shall adjust this maximum amount in accordance with Section 902 of the Water Resources Development Act, Public Law 99-662, as amended.

#### ARTICLE XXI – AMENDMENTS

Amendments to this Agreement must be in writing executed by all parties to the said Agreement. In the event of a change in the law applicable to the Agreement, the parties hereto, on notice from either party to the other according to the notice provisions hereof, shall meet to agree upon the form and substance of any amendment that may be required in order that the Agreement shall accord with the current provisions of law. In addition, this Agreement shall be amended to include provisions to provide credit toward the non-Federal share of the cost of the project for costs incurred by the Non-Federal Sponsor, as provided for in Section 306 of the Water Resources Development Act of 2000, Public Law 106-541, after the Secretary of the Army approves a plan for such work. Secretary of the Army approval requires documentation by the Army Corps of Engineers that justifies the work that may be eligible for such credit and a recommendation for the amount of such credit. In no event, shall the Government afford credit for Section 306 work performed prior to amendment of this Agreement.

#### ARTICLE XXII – SPECIAL PROJECT CONDITIONS

A. The Government has applied to the State of Delaware for a State Subaqueous Lands and Wetlands Permit, and the Government at present does not intend to commence construction on this

Project, or on any Project related betterment, until the State of Delaware has issued a State Subaqueous Lands and Wetlands Permit to the Government, with terms and conditions acceptable to the Government, or unless the State of Delaware fails to issue said state permit in a timely manner. If the State of Delaware does not issue said state permit with terms and conditions acceptable to the Government, and within a period of time deemed by the Government to be reasonable and timely, the Government reserves the right to determine whether said Delaware state permit is legally required as a matter of Federal law.

B. In accordance with Articles II.C. and III.A. of this Agreement, the Non-Federal Sponsor is required to provide all lands, easements, or rights-of-way for the disposal of dredged or excavated material resulting from the construction, operation, or maintenance of the general navigation features of the Project. The Non-Federal Sponsor may request, in writing, that the Government consider an alternative plan for the disposal of dredged or excavated material from the general navigation features of the Project that differs from the plan described in the December 2002 Comprehensive Economic Reanalysis, supplemented by the February 2004 Report for this Project. If in its sole discretion the Government elects to honor the Non-Federal Sponsor's request, 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. Should the Government determine that this alternative disposal plan is not the least costly, environmentally acceptable disposal plan, the Non-Federal Sponsor shall be responsible for the difference between the costs to utilize the Non-Federal Sponsor's requested plan and the costs to utilize the Government's currently approved disposal plan (hereinafter the "incremental costs"). 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 the incremental costs and shall pay such costs in accordance with Article VI.C. of this Agreement.

#### ARTICLE XXIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the Commonwealth of Pennsylvania.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, 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 Assistant Secretary of the Army (Civil Works) .

THE DEPARTMENT OF THE ARMY

THE PHILADELPHIA REGIONAL  
PORT AUTHORITY

By: John Paul Woodley, Jr.  
Name: John Paul Woodley, Jr  
Title: Assistant Secretary of the Army  
(Civil Works)

By: John H. Estey, Esq.  
Name: John H. Estey, Esq.  
Title: Chairman

THE PHILADELPHIA REGIONAL  
PORT AUTHORITY

\_\_\_\_\_  
By: James T. McDermott, Jr.  
Name: James T. McDermott, Jr.  
Title: Executive Director



CERTIFICATE OF AUTHORITY

I, Gregory V. Iannarelli, do hereby certify that I am the principal legal officer of the PHILADELPHIA REGIONAL PORT AUTHORITY, that the PHILADELPHIA REGIONAL PORT AUTHORITY 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 PHILADELPHIA REGIONAL PORT AUTHORITY in connection with the DELAWARE RIVER MAINSTEM AND CHANNEL DEEPENING PROJECT, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the PHILADELPHIA REGIONAL PORT AUTHORITY have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
27<sup>th</sup> day of June 2008.



GREGORY V. IANNARELLI, ESQ.  
COUNSEL  
PHILADELPHIA REGIONAL PORT AUTHORITY

DATE: June 27, 2008

## CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



JOHN H. ESTEY, ESQ.  
CHAIRMAN  
PHILADELPHIA REGIONAL  
PORT AUTHORITY



JAMES T. MC DERMOTT JR.  
EXECUTIVE DIRECTOR,  
PHILADELPHIA REGIONAL  
PORT AUTHORITY

# CERTIFICATION OF LEGAL REVIEW

The Project Cooperation Agreement for the construction of the DELAWARE RIVER MAIN STEM AND CHANNEL DEEPENING PROJECT, at DELAWARE, NEW JERSEY, AND PENNSYLVANIA has been fully reviewed by the Office of Counsel, U.S. Army Engineer District, Philadelphia, and is legally sufficient.

A handwritten signature in cursive script, appearing to read 'Mark Dolchin', is written over a horizontal line.

MARK DOLCHIN  
District Counsel

DATE: 23 Jun 2008