



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CHICAGO DISTRICT, CORPS OF ENGINEERS
111 NORTH CANAL STREET
CHICAGO, ILLINOIS 60608-7208

April 17, 2000

Programs and Project Management Division
Project Management Branch

Honorable Peter J. Visclosky
U.S. House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515-1401

Dear Congressman Visclosky:

Thank you for your letter of April 14, 2000, regarding the Project Cooperation Agreement (PCA) for the Indiana Harbor and Canal Maintenance Dredging and Disposal Activities.

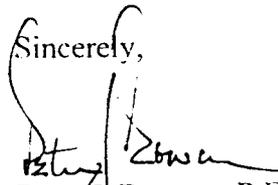
The Chicago District, Corps of Engineers will meet annually during the first week of April of each year, with the local Project Sponsor, the East Chicago Waterway Management District, your representatives and other appropriate parties to discuss new and emerging technology in the field of removal, transportation, disposal and treatment of contaminated sediments. These meetings will occur each year until completion of the dredging and disposal activities.

If new and emerging technologies appears applicable to this project, we will pursue it in accordance with Article V of the PCA which states:

“The Government, in coordination with the District, shall perform technical literature reviews related to the transportation, dredging, treatment and disposal of dredged materials at such times and under such conditions as prescribed by the Project Coordination Team, but not less frequently than once every five years. The results of such reviews shall

be reported to the Project Coordination Team and be made available to the public. In the event that the District and the Government concur that a technological advancement should be implemented for the Project, the Government, subject to the availability of appropriations, and the District shall use all reasonable efforts to obtain any approvals, including if necessary legislative authorization, permits, amendments to this Agreement in accordance with Article XXI of this Agreement, or other actions which are necessary to implement such advancements."

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Rowan". The signature is written in a cursive style with a large, prominent initial "P".

Peter J. Rowan, P.E.
Lieutenant Colonel, U.S. Army
District Engineer

cc. Hon. Peter Visclosky, U.S. Representative, Gary IN office

**PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE EAST CHICAGO WATERWAY MANAGEMENT DISTRICT
FOR CONSTRUCTION OF A
CONFINED DREDGED OR EXCAVATED MATERIAL DISPOSAL FACILITY
AT THE
INDIANA HARBOR AND CANAL
EAST CHICAGO, INDIANA**

THIS AGREEMENT is entered into this 7th day of August, 2000 by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the East Chicago Waterway Management District (hereinafter the "District"), a political subdivision of the State of Indiana, represented by and through the President of its Board of Directors (hereinafter the "Representative").

WITNESSETH, THAT:

WHEREAS, the Rivers and Harbors Acts of 25 June 1910, 20 March 1922, 3 July 1930, 30 August 1935, 28 August 1937, 14 July 1960 and 27 October 1965 authorized construction and maintenance of the general navigation features at the Indiana Harbor and Ship Canal, Indiana, project (hereinafter the "existing general navigation features", as defined in Article I.A. of this Agreement) at the City of East Chicago, Indiana; and

WHEREAS, maintenance of the existing general navigation features includes dredging or excavation and disposal of material; and

WHEREAS, a facility for the confined disposal of dredged or excavated material from the existing general navigation features is needed for continued maintenance of the existing navigation features; and

WHEREAS, under the authority of Section 217 of Public Law 104-303 (33 U.S.C. §2326a) the Secretary of the Army (hereinafter the "Secretary") can provide additional capacity at a dredged or excavated material disposal facility for material from associated local service facilities if non-Federal interests agree to pay, during construction, all costs associated with the additional capacity; and

WHEREAS, the Secretary has agreed to provide for such additional capacity for dredged or excavated material from the local service facilities and the District hereby agrees to pay, during construction, all costs associated with such additional capacity; and

WHEREAS, the Government and the District desire to enter into a Project Cooperation Agreement for construction and maintenance of a dredged or excavated material disposal facility (hereinafter referred to as the "Project", and as further defined in Article I.B. of this Agreement) with capacity for the confined disposal of dredged or excavated material from the existing general navigation features and with additional capacity for the confined disposal of dredged or excavated material from associated local service facilities; and

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and Section 217 of Public Law 104-303 (33 U.S.C. §2326a) specify the cost-sharing requirements applicable to the Project; and

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

WHEREAS, under the authority of Section 217(a)(2) of Public Law 104-303 (33 U.S.C. §2326a) the District may recover the costs assigned to the additional capacity for dredged or excavated material from the local service facilities through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the District for the use of the facility; and

WHEREAS, the Government and the District have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost sharing and financing of the Project in accordance with the terms of this Agreement; and

WHEREAS, the East Chicago Waterway Management District was created by an Act of Indiana General Assembly for the express purpose, among others, of acting as the non-Federal Sponsor under this Agreement and having the legal authority and capability of providing local assurances for this Project; and

WHEREAS, the Government and the District, in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship between the Government and the District 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 District, and facilitate the completion of a successful project.

NOW, THEREFORE, the Government and the District agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "existing general navigation features" shall mean " shall mean a lake approach channel 29 feet deep and 800 feet wide and approximately 7,200 feet long ending in an anchorage and turning basin 28 feet deep, a canal entrance channel 27 feet deep and 280 feet wide, approximately 2600 feet long terminating at the eastward railroad overpass, a narrow channel 22 feet deep, approximately 400 feet long and approximately 75 feet wide connecting to the main canal which is 22 feet deep and 210 feet wide, narrowing to 160 feet wide at the Dickey Place bridge to the confluence of the Lake George Branch and the Calumet River Branch known as the Forks Turning Basin which is 22 feet deep. The Lake George Branch extends approximately 1100 feet westward from the Indianapolis Ave. Bridge to its upper limit. The channel is generally 160 feet wide except for the portion approximately 800 feet eastward of the Indianapolis Ave, bridge which is 130 feet wide and the Calumet River Branch which from the confluence with the Lake George Branch and the Indiana Harbor Canal. The Calumet River Branch extends to the 141st Street Bridge. The channel is 22 feet deep and 160 feet wide from the 141st Street Bridge for approximately 800 feet northward then widening to 260 feet and for approximately 1100 feet northward and narrowing to approximately 200 feet over the final 400 feet northward to the Forks Turning Basin.

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

C. The term "Confined Disposal Facility" shall mean the improvements necessary on lands, easements, or rights-of-way to enable the confined disposal of dredged or excavated material from the existing general navigation features and from associated local service facilities, to be located at the former ECI Site in East Chicago, Indiana, as generally described in the Comprehensive Management Plan for Indiana Harbor and Canal Maintenance Dredging and Disposal Activities, Volume 1, Feasibility Report and Final Environmental Impact Statement, dated January 1999 and approved by the Assistant Secretary of the Army (Civil Works) on February 2, 1999 (hereinafter the "CMP"). 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, wastewater treatment plant and outfalls, and closure/corrective actions required under the Resource Conservation and Recovery Act 42 U.S.C. §901-933 (hereinafter the "RCRA site closure"). The Confined Disposal Facility shall not include the local service facilities and dredging, excavation, and disposal material activities for the existing general navigation features and the local service facilities.

D. The term "local service facilities" shall mean the facilities that are necessary to realize the benefits of the existing general navigation features, as generally described in, and required of the District by the CMP including, but not limited to, adequate berthing areas with depths commensurate with the depths of the adjacent existing general navigation features. For the

purposes of this Agreement the local service facilities are: all areas to be dredged as the result of consent decrees; all berthing areas utilized in conjunction with the existing general navigation features; all other areas adjacent to the existing navigation features located in reaches 2 through 12; a strip approximately 150 feet wide adjacent to the eastern edge of the Federal Entrance Channel and a strip approximately 180 feet wide adjacent to the western edge of the Federal Entrance Channel, both extending from the southern boundary of reach #1 to the northern boundary of reach #1.

E. The term "total cost of construction of the Confined Disposal Facility" shall mean all costs incurred by the District or the Government in accordance with the terms of this Agreement directly related to construction of the Confined Disposal Facility. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: planning and engineering costs incurred after Federal Construction General funding was obtained; 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. of this Agreement; costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.D.1. of this Agreement; actual construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable water of the United States); 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 District before the end of the period of construction or during any subsequent period of construction in accordance with Article II.P. 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.O. of this Agreement; costs of RCRA site closure; 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 District other than incidental costs, any costs of operation or maintenance of the existing general navigation features; any financial obligations for operation and maintenance of the Confined Disposal Facility; 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.

F. The term "total cost shared construction cost" shall mean that portion of the total cost of construction of the Confined Disposal Facility that the Government, in accordance with Article II.E. of this Agreement, assigns to the disposal of dredged or excavated material from the existing general navigation features.

G. The term "total non-cost shared construction cost" shall mean that portion of the total cost of construction of the Confined Disposal Facility that the Government, in accordance with Article II.E. of this Agreement, assigns to the disposal of dredged or excavated material from the local service facilities.

H. 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 Confined Disposal Facility.

I. The term "non-Federal proportionate share" shall mean the ratio of the District's total cash contribution required in accordance with Article II.F. of this Agreement to total financial obligations for construction through the applicable period of construction or subsequent period of construction, as projected by the Government.

J. The term "period of construction" shall mean the time from the date the Government first notifies the District 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 Confined Disposal Facility, or commencement, using the Government's own forces, of construction of the Confined Disposal Facility, to the date that the U.S. Army Engineer for the Chicago District (hereinafter the "District Engineer") notifies the District in writing of the Government's determination that construction of the stage 1 dike raising for the Confined Disposal Facility is complete.

K. The term "subsequent period of construction" shall mean a period beginning with the date that the Government first notifies the District 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 any expansion of the Confined Disposal Facility or of RCRA site closure and ending with the date that the District Engineer notifies the District in writing of the Government's determination that such construction is complete. For the purposes of this Agreement, the final subsequent period of construction shall be RCRA site closure.

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

M. 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.

N. 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.

O. 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 District, that: 1) elimination is necessary for the construction, operation, or maintenance of the Confined Disposal Facility, 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 District, the State of Indiana 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 Confined Disposal Facility 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.

P. 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.

Q. The term "betterment" shall mean a change in the design and construction of an element of the Confined Disposal Facility accomplished at the request of the District 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.

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

S. The term "Federal program funds" shall mean funds or grants provided by a Federal agency, other than the Department of the Army, and any non-Federal matching share required therefor.

T. The term "creditable portion of LERR values" shall mean that portion of the value of lands, easements, rights of way, and relocations (LERR) that the Government, in accordance with Article II.E. of this Agreement, assigns to the disposal of dredged or excavated material from the existing general navigation features.

U. The term "District financed portion of operation and maintenance obligations" shall mean that portion of financial obligations for operation and maintenance of the Confined Disposal Facility that the Government, in accordance with Article II.L. of this Agreement, assigns to the disposal of dredged or excavated material from the local service facilities.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE DISTRICT

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 or on behalf of the District, shall expeditiously construct the Confined Disposal Facility (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 District a reasonable opportunity to review and comment on the solicitations for all 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 District has confirmed in writing its willingness to proceed with the Project. The Government shall afford the District a reasonable opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the District with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall notify the District in writing at the earliest date possible. To the extent possible, the Government also shall afford the District 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 District, but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the Confined Disposal Facility (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction and during any subsequent period of construction, the District Engineer shall furnish the District with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Confined Disposal Facility.

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract for construction of the Confined Disposal Facility would result in the total cost of construction of the Confined Disposal Facility exceeding \$116,100,000.00, the Government and the District agree to defer award of that contract and all subsequent contracts for construction of the Confined Disposal Facility until such time as the Government and the District agree to proceed with further contract awards for the Confined Disposal Facility, 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 District, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

B. The District may request the Government to design or construct betterments. Such requests shall be in writing and shall describe the betterments requested to be performed. If the Government in its sole discretion elects to perform the requested betterments or any portion thereof, it shall so notify the District 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 District 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 District shall provide all lands, easements, or rights-of-way that the Government determines the District must provide for the construction, operation, or maintenance of the Confined Disposal Facility, 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 Confined Disposal Facility. The

District may use the lands, easements and rights-of-way for specific purposes not inconsistent with construction, operation, and maintenance of the Confined Disposal Facility, nor with any Federal or state laws or regulations nor with any existing permits.

D. The District may request the Government to provide lands, easements, or rights-of-way or to perform relocations for the Confined Disposal Facility on behalf of the District. 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 District 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 District 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 District shall be responsible, as between the Government and the District, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

E. During the period of construction and during each subsequent period of construction the following provisions shall apply:

1. The Government shall, at least annually, during the period of construction, in consultation with the District, estimate the total volume of dredged or excavated material from the existing general navigation features, and the total volume of dredged or excavated material from the local service facilities, to be disposed of in the capacity created by the stage 1 dike raising for the Confined Disposal Facility. The Government shall assign the total cost of construction of the Confined Disposal Facility incurred during the period of construction between the total cost shared construction cost and the total non-cost shared construction cost, and shall assign the total values of lands, easements, rights of way, and relocations provided prior to the end of the period of construction between the creditable portion of LERR values and the other, non-creditable LERR values, in the same proportion as the proportion between the total volume of material from the existing general navigation features and the total volume of material from the local service facilities, respectively, as estimated by the Government.

2. The Government shall, at least annually during each subsequent period of construction, in consultation with the District, estimate the total volume of dredged or excavated material from the existing general navigation features, and the total volume of dredged or excavated material from the local service facilities, disposed of in the capacity created by previous dike raisings and, if any, to be disposed of in the capacity created during that subsequent period of construction. The Government shall assign the total cost of construction of the Confined Disposal Facility incurred during each subsequent period of construction between the total cost shared construction cost and the total non-cost shared construction cost, and shall assign the total values of lands, easements, rights-of-way, and relocations provided prior to the end of that subsequent period of construction between the creditable portion of LERR values and the other, non-creditable LERR values, in the same proportion as the proportion between the total volume of material from the existing general navigation features and the total volume of material from the local service facilities, respectively, as estimated by the Government.

F. The District shall contribute during the period of construction or a subsequent period of construction a share of the total cost of construction of the Confined Disposal Facility as follows:

1. Twenty-five (25) percent of the total cost shared construction cost and,
2. One hundred (100) percent of the total non-cost shared construction cost.

G. If the Government projects that the contributions under paragraph P.3. of this Article, and contributions under Articles V, X.B., X.C., XV.A.1. and XVIII of this Agreement will be less than its share required by paragraph F. of this Article, the District shall provide a contribution of funds, in accordance with Article VI.B. of this Agreement, in the amount necessary to meet its share required by paragraph F. of this Article.

H. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the District's contributions provided in accordance with paragraphs B., D., F., P.3. and R. of this Article, and the District's contributions provided in accordance with Articles V, X.B., X.C., XV.A.1. and XVIII of this Agreement and to determine whether the District has met its obligations under paragraphs B., D., F. and R. of this Article. The final accounting also shall determine an amount equal to 10 percent of the total cost shared construction cost (hereinafter the "10 percent amount"). For each subsequent period of construction, the Government shall amend the final accounting in accordance with Article VI.E.5. of this Agreement.

I. Before furnishing the District with the results of the final accounting, the Government shall afford credit against the 10 percent amount for the creditable portion, as determined in accordance with paragraph E. of this Article, of LERR values, as determined in accordance with Article IV of this Agreement, for lands, easements, rights-of-way, or relocations provided before the end of the period of construction; provided, however, that such credit shall not exceed the 10 percent amount. In accordance with Article VI.E. of this Agreement, the District shall, over a period not to exceed thirty (30) years, pay an amount equal to the 10 percent amount reduced by such credit (hereinafter the "principal amount"), with interest. In accordance with Article VI.E.4. of this Agreement, the Government also shall afford credit against the principal amount for the creditable portion, as determined in accordance with paragraph E. of this Article, of LERR values, as determined in accordance with Article IV of this Agreement, for lands, easements, rights-of-way, or relocations provided after the period of construction. Upon the Government amending the final accounting in accordance with Article VI.E.5. of this Agreement, the District, in accordance with Article VI.E.5. of this Agreement, shall pay any additional portion of the principal amount that is outstanding as a consequence of the amended final accounting.

J. In accordance with Article VIII.B. of this Agreement, the District or third parties on behalf of the District, at no cost to the Government, shall operate and maintain, or cause to be operated and maintained, the local service facilities. The Government shall have no

responsibility under this Agreement for the operation or maintenance of the local service facilities or the operation or maintenance of any other facilities provided by the District or a third party.

K. The Government shall operate and maintain the Confined Disposal Facility in accordance with Article VIII.A. of this Agreement, including performing monitoring in compliance with RCRA after RCRA site closure.

L. At the end of each fiscal year, the Government shall determine the cumulative volume of dredged or excavated material disposed of in the Confined Disposal Facility and the proportion of that volume represented by material from the local service facilities. The Government shall assign a proportion of the financial obligations for operation and maintenance of the Confined Disposal Facility for the next fiscal year to the District financed portion of operation and maintenance obligations in the same proportion as the proportion of the cumulative volume of material from the local service facilities to the cumulative volume of all material.

M. As further specified in Article VIII.A. of this Agreement, the District shall pay 100 percent of the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with paragraph L. of this Article.

N. The District shall not use Federal program funds to meet its obligations for the Project under this Agreement unless the Federal agency providing the Federal program funds verifies in writing that such expenditure of funds is expressly authorized by statute.

O. The Government shall accomplish all removals that neither the District nor the State of Indiana has the legal capability to accomplish where both the District and the State of Indiana 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 District's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, pursuant to 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 Confined Disposal Facility and shared in accordance with the provisions of this Agreement.

P. The District shall accomplish all removals determined necessary by the Government, other than those removals specifically assigned to the Government by paragraph O. of this Article, in accordance with the provisions of this paragraph.

1. The Government in a timely manner shall provide the District with general written descriptions, including maps as appropriate, of such removals, in detail sufficient to enable the District to fulfill its obligations under this paragraph, and shall provide the District 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 Confined Disposal Facility, or prior to the Government incurring any financial obligation for construction, operation, or maintenance of the Confined Disposal Facility that it elects to perform with its own forces, the District 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 District's responsibility to provide lands, easements, and rights-of-way, or to perform relocations, as appropriate, pursuant to Article II.C. of this Agreement.

3. The documented incidental costs incurred by the District in accomplishing removals, shall be included in the total cost of construction of the Confined Disposal Facility, 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 (such as owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the District in accomplishing removals, but shall not include any costs that the District or the State of Indiana has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

Q. In accordance with Section 217 of Public Law 104-303 (33 USC 2326a), the Government agrees that the District shall have the first and exclusive right to negotiate, conclude and enter into any use agreements for the disposal in the Confined Disposal Facility of dredged or excavated material from the local service facilities. Such agreements shall conform to Confined Disposal Facility rules of operation established by the Government. The Government shall communicate, within a reasonable time of the effective date of this Agreement, its minimum requirements for provisions to be included in such agreements. The District shall submit draft use agreements to the Government for review and comment at least thirty (30) days prior to execution. However, the Government shall not be liable or responsible for any agreements made by the District pursuant to this paragraph. The District shall provide a copy of each executed use agreement to the Government upon execution. Upon receipt of an executed agreement, the Government agrees to provide for such use of the Confined Disposal Facility with the following exception: The Government may Refuse to permit such use where either technical concerns or concerns about the capacity of the Confined Disposal Facility exist.

R. The Non-Federal sponsor may request the Government to dredge and dispose of material from the local service facilities. Such requests shall be in writing and shall describe the scope of activities desired to be performed to maintain the local service facilities. If the Government in its sole discretion elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor of its desire to do so 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 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 District, shall determine the lands, easements, or rights-of-way necessary for the construction, operation, or maintenance of the Confined Disposal Facility, 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 District with general written descriptions, including maps as appropriate, of the lands, easements, or rights-of-way that the Government determines the District must provide, in detail sufficient to enable the District to fulfill its obligations under this paragraph, and shall provide the District 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 District shall acquire all lands, easements, or rights-of-way necessary for the construction of the Confined Disposal Facility, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for construction, operation, or maintenance of the Confined Disposal Facility or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform with its own forces, the District shall acquire all lands, easements, or rights-of-way the Government determines the District must provide for that work and shall provide the Government with authorization for entry thereto.

B. The Government, after consultation with the District, shall determine the relocations necessary for the construction, operation, or maintenance of the Confined Disposal Facility, 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 District with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the District to fulfill its obligations under this paragraph, and shall provide the District 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 Confined Disposal Facility or prior to the Government incurring any financial obligation for construction, operation, or maintenance it elects to perform by its own forces, the District 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 District with the results of the final accounting pursuant to Article VI.D. of this Agreement, or the credit afforded pursuant to Article II.I. of this Agreement equals the 10 percent amount, whichever occurs later, the District 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 pursuant to paragraph A. or B. of this Article. Upon receipt of such documents the Government, in accordance with Article II.I. of this Agreement, in a timely manner shall afford credit for the creditable portion of LERR values.

D. The District 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 and performing relocations necessary for the construction, operation, or maintenance of the Confined Disposal Facility, 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 District shall receive credit in accordance with Article II.I. of this Agreement for creditable portion of LERR values, as assigned by the Government pursuant to Article II.E. of this Agreement, for the lands, easements, or rights-of-way that the District must provide pursuant to Article III. of this Agreement, and for the creditable portion of LERR values, as assigned by the Government in accordance with Article II.E. of this Agreement, for the relocations that the District must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the District shall not receive credit for any portion of 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 District also shall not receive credit for any portion of the value of lands, easements, rights-of-way, or relocations, to the extent that such items are provided or performed using Federal program funds unless the Federal agency providing the Federal program funds 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 the borrowing of material, the disposal of dredged or excavated material, or relocations, other than those the Government acquires on behalf of the District pursuant to 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 District on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the District provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the District 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.4. 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 District shall obtain, for that real property interest, an appraisal that is prepared by a qualified appraiser, who is acceptable to the District and the Government. The District shall provide the Government with the appraisal no later than 6 months after the District 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 District's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the District's appraisal, the District may obtain a second appraisal, and the fair market value shall be the amount set forth in the District's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the District's second appraisal, the District chooses not to obtain a second appraisal, or the District 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 District. In the event the District does not approve the Government's appraisal, the Government, after consultation with the District, shall consider the Government's and the District'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 District for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the District, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the District, may approve in writing an amount greater than the amount determined pursuant to 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 District, but no less than the amount determined pursuant to 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 District 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 District 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 District 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 District agree as to an appropriate amount, then the District 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 District cannot agree as to an appropriate amount, then the District 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 Confined Disposal Facility, 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 District 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, 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 pursuant to Article III.A. of this Agreement, the District 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, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.D. of this Agreement.

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 the borrowing of material, the disposal of dredged or excavated material, or relocations that the Government acquires on behalf of the District pursuant to 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 District, 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 State of Indiana 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 District 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.

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.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the District 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. The Project Coordination Team shall be comprised of six (6) members, three (3) of which shall be appointed by the Government and three (3) by the District. The Government appointees shall include its Project Manager, and the District's appointees shall include its Executive Director. Members of the Project Coordination team shall serve at the pleasure of the appointing party, and the parties shall give each other written notice of the appointment or removal of any member. The Project Coordination Team shall meet regularly until the end of the period of construction and each subsequent period of construction not less than four (4) times each year. The Government's

Project Manager and a counterpart named by the District shall co-chair the Project Coordination Team. Meetings shall be held pursuant to reasonable written or telephone notice, at a convenient location determined by the Project Coordination Team, and the Project Coordination Team shall keep accurate and written minutes of its meetings which shall be distributed to its members, the Government and the District.

B. The Co-chairs 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; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the Government's cost projections; 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 Confined Disposal Facility; and other Project-related matters, including a periodic review of technical literature pertinent to sediment remediation methodologies and any other new technologies that may be applicable to the Project. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project. Oversight of the Project shall be consistent with a project management plan developed by the Government after consultation with the District.

D. During the period of construction, between the period of construction and a subsequent period of construction, and during each subsequent period of construction, the Project Coordination Team may, from time to time, recommend to the Government and the District that a public interest meeting be held to provide significant new information about the Project to the public, and to allow for public comment on the Project.

E. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Confined Disposal Facility, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations. Recommendations of the Project Coordination Team shall be transmitted to the Government in writing, and the Government shall respond to same within a reasonable time in writing, giving its reasons for declining or refusing to accept any of the Project Coordination Team's recommendations, in whole or part. If the representatives of the Government and the District fail to agree on a matter, either party may invoke the disputes procedures outlined in Article VII of this Agreement.

F. The Government, in coordination with the District, shall perform technical literature reviews related to the disposal of dredged materials at such times and under such conditions as directed by the Project Coordination Team, but not less frequently than once every five years.

The results of such reviews shall be reported to the Project Coordination Team and be made available to the public. In the event that the District and the Government concur that a technological advancement should be implemented for the Project, the Government, subject to the availability of appropriations, and the District shall use all reasonable efforts to obtain any approvals, including if necessary legislative authorization, permits, amendments to this Agreement in accordance with Article XXI of this Agreement, or other actions which are necessary to implement such advancements.

G. The costs of participation in the Project Coordination Team shall be included in the total cost of construction of the Confined Disposal Facility and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. Until the Government furnishes the District 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 Confined Disposal Facility, the total cost shared construction cost, the total non-cost shared construction cost, and costs due to additional work under Article II.B., Article II.D., or Article II. R. of this Agreement.

1. At least quarterly, the Government shall provide the District with a report setting forth all contributions provided to date and the current projections of the total cost of construction of the Confined Disposal Facility, of the total cost shared construction cost, of the total non-cost shared construction cost, of total costs due to additional work under Article II.B., Article II.D., or Article II. R. of this Agreement, of the District's total contributions required in accordance with Articles II.B., II.D., II.F., and Article II. R. of this Agreement, of the non-Federal proportionate share, of the funds required from the District for the upcoming fiscal year, of the credit to be afforded pursuant to Article II.I. of this Agreement for the creditable portion of LERR values, as determined by the Government pursuant to Article II.E. of this Agreement, for 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 10 percent amount, of the principal amount, and of the installments to be paid in accordance with paragraphs E.2. and E.5. of this Article. Thereafter, until the outstanding portion of the principal amount equals \$0, the Government, at least annually, shall provide the District 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. and E.5. of this Article.

2. On the effective date of this Agreement, the total cost of construction of the Confined Disposal Facility is projected to be \$116,100,000.00, and the District's contribution required under Article II F. 1. and II F.2. of this Agreement is projected to be \$47,300,000.00. These amounts are subject to adjustment by the Government, after consultation with the District, and are not to be construed as the total financial responsibilities of the Government and the District.

B. The District shall provide the contribution required by Article II.F. of this Agreement in accordance with the provisions of this paragraph.

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

2. For the second and subsequent fiscal years of construction, the Government shall notify the District in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the District to meet the non-Federal proportionate share of projected financial obligations for construction. No later than 30 calendar days prior to the beginning of the fiscal year, the District shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the District 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 or subsequent period of construction, as applicable; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction or during the subsequent period of construction, as applicable.

4. If at any time during the period of construction or any subsequent period of construction the Government determines that additional funds will be needed from the District to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the District in writing of the additional funds required and provide an explanation of why additional funds are required, and the District, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., Article II.D., or Article II.R. of this Agreement, the District shall provide the Government with the full amount of the funds required to pay for such

additional work through any of the payment mechanisms specified in paragraph B.1. of this Article. The Government shall draw from the funds provided by the District 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 District must provide additional funds to meet its contribution, the Government shall notify the District in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the District shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

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

1. The final accounting shall determine the total cost of construction of the Confined Disposal Facility, the total cost shared construction cost, the total non-cost shared construction cost, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine total costs due to additional work under Article II.B., Article II.D., or Article II.R. of this Agreement and the District's contribution provided in accordance with Article II.B., Article II.D., or Article II.R. of this Agreement.

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

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

2. The final accounting also shall determine the 10 percent amount and the creditable portion, as determined by the Government in accordance with Article II.E. of this Agreement, of LERR values, as determined in accordance with Article IV of this Agreement, for lands, easements, rights-of-way, or relocations provided before the end of the period of construction.

E. The District shall pay the principal amount required by Article II.I. of this Agreement in accordance with the provisions of this paragraph.

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

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

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

4. After the Government furnishes the District with the results of the final accounting, the Government shall afford credit against the principal amount for the creditable portion, as determined by the Government pursuant to Article II.E. of this Agreement, of LERR values, as determined in accordance with Article IV of this Agreement, for lands, easements, rights-of-way, or relocations provided after the period of construction; provided, however, that the amount of credit afforded pursuant to this paragraph shall not exceed the principal amount. Credit shall be afforded against the portion of the principal amount that is outstanding at the time the credit is afforded. If the credit exceeds the portion of the principal amount outstanding at the time credit is afforded, the Government shall afford the excess credit against the portion of the

principal amount that the District has paid at the time the credit is afforded, by refunding such portion to the District, subject to the availability of funds. In the event existing funds are not available to refund such portion to the District, the Government shall seek such appropriations as are necessary to make the refund.

5. After each subsequent period of construction, and upon resolution of all relevant proceedings, claims, and appeals, the Government shall amend the final accounting (including recalculating the 10 percent amount), recalculate the principal amount and the principal amount outstanding, and, if the payment period has not elapsed, recalculate the annual installments by amortizing the principal amount outstanding over the remaining portion of the repayment period, and shall furnish the District with the results of the amended final accounting and the aforesaid recalculations. Thereafter, if the payment period has not elapsed, the District shall pay the aforesaid recalculated installments in lieu of the previously calculated installments. If the payment period has elapsed, the District, not later than 90 days after being furnished the aforesaid results, shall pay to the Government any principal amount outstanding by delivering a check payable to "FAO, USAED, Chicago" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

F. As required by Article VIII.A. of this Agreement, the District, in accordance with this paragraph, shall pay the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with Article II.L. of this Agreement.

1. By the first day of November of each year, the Government shall provide the District with the current projections for the upcoming fiscal year of the Government's total financial obligations for operation and maintenance of the Confined Disposal Facility, of the District financed portion of operation and maintenance obligations, and of the funds required from the District to cover the District financed portion of operation and maintenance obligations.

2. The Government shall notify the District in writing, no later than 60 calendar days prior to the beginning of each fiscal year, of the funds the Government determines to be required from the District to cover the District financed portion of operation and maintenance obligations projected for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the District shall provide the Government with the full amount of the required funds 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 District such sums as the Government deems necessary to cover the District financed portion of operation and maintenance obligations as those obligations are incurred.

4. If at any time the Government determines that additional funds will be needed from the District to cover the District financed portion of operation and maintenance obligations projected for the current fiscal year, the Government shall notify the District in writing of the additional funds required and provide an explanation of why additional funds are required, and the District, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in paragraph B.1. of this Article.

5. Upon completion of each fiscal year, the Government shall conduct an accounting of the Government's financial obligations for operation and maintenance for that fiscal year (including all relevant claims and appeals resolved during that fiscal year) and furnish the District with the results of such accounting. Such accounting shall determine the Government's total financial obligation for operation and maintenance for that fiscal year, the District financed portion of operation and maintenance obligations for that fiscal year, and the District's contribution provided for such portion for that fiscal year.

a. In the event such accounting shows that the total contribution provided by the District is less than the District financed portion of operation and maintenance obligations, the District shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to cover such insufficiency by delivering a check payable to "FAO, USAED, Chicago" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. In the event such accounting shows that the total contribution provided by the District exceeds the District financed portion of operation and maintenance obligations, the Government shall afford credit for the excess against the District's contribution for the next fiscal year, or, subject to the availability of funds, and at the request of the District, refund the excess to the District no later than 90 calendar days after such accounting is complete. In the event existing funds are not available to refund the excess to the District, the Government shall seek such appropriations as are necessary to make the 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. E. of this Agreement, a 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 pursuant to this Agreement.

ARTICLE VIII - OPERATION AND MAINTENANCE

A. The Government, as it determines necessary, shall operate and maintain the Confined Disposal Facility (including performing monitoring in compliance with RCRA after RCRA site closure) and shall be responsible for all operation and maintenance costs of the Confined Disposal Facility, except that the District shall pay, in accordance with Article VI.F. of this Agreement, 100 percent of the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with Article II.L. of this Agreement.

B. 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 existing general navigation features, the District, 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. The District shall be responsible for taking all actions to enable such operation and maintenance.

C. The District hereby authorizes the Government to enter at reasonable times and in a reasonable manner, upon property that the District now or hereafter owns or controls for the purpose of operating and maintaining the Confined Disposal Facility. Nothing contained herein, however, shall convey to the Government any interest in real property owned or controlled by the District.

D. Further, to the extent not inconsistent with the interest in real property owned by the District, the District hereby authorizes the Government to perform all activities on the lands, easements, and rights-of-way provided by the District 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 Confined Disposal Facility; and removal and reuse of previously deposited dredged or excavated material without charge to the Government.

ARTICLE IX – HOLD AND SAVE

The District shall hold and save the Government free from all damages arising from the construction, operation, or maintenance of the Project, and 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 District shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the District 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 District shall each allow the

other to inspect such books, documents, records, or other evidence. Questions regarding costs and expenses incurred pursuant to this Agreement may be referred to the Project Coordination Team, in accordance with Article V of this Agreement.

B. In accordance with 32 C.F.R. Section 33.26, the District is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the District and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the District and independent auditors any information necessary to enable an audit of the District's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph before the Government furnishes the District 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 Confined Disposal Facility and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the District is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph before the Government furnishes the District with the results of the final accounting shall be included in the total cost of construction of the Confined Disposal Facility and cost 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 District and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not necessarily limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 31 of the Code of Federal Regulations, and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XII – RELATIONSHIP OF PARTIES

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

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or

purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE 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 District fails to fulfill its obligations under Article II.C., II. D., II. F., II. G., II. J. II. M and II.R. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Confined Disposal Facility 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. Prior to such termination or suspension, the Government shall send a written notice to the District describing the obligations that it has failed to perform. The District shall have a reasonable amount of time, not to exceed 60 days, to cure such non-performance.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for the Confined Disposal Facility for the then-current or upcoming fiscal year, the Government shall so notify the District in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the District elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV.C. of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement or an accounting in accordance with Article VI.F. 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.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the District 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 District shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the District 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, pursuant to Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the Confined Disposal Facility. However, 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 District with prior specific written direction, in which case the District shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the District or 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 Confined Disposal Facility 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 District 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 pursuant to Article II.H. 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 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 Confined Disposal Facility, of which the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with Article II.L. of this Agreement, shall be paid in accordance with Article VIII.A. of this Agreement.

B. 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, pursuant to Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the Confined Disposal Facility, the District and the Government shall, in addition to providing any other notice required by applicable law, provide prompt written notice to each other, and the District shall not proceed with the acquisition of the real property interests until both parties agree that the District should proceed.

C. The Government and the District shall determine whether to initiate construction, operation, or maintenance of the Confined Disposal Facility, or, if already in construction, operation, or maintenance, whether to continue with construction, operation, or maintenance of the Confined Disposal Facility, 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, pursuant to Article III of this Agreement, to be necessary for the construction, operation, or maintenance of the Confined Disposal Facility. Should the Government and the District determine to initiate or continue with construction, operation, or maintenance after considering any liability that may arise under CERCLA, the District shall be responsible, as between the Government and the District, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total cost of construction of the Confined Disposal Facility. In the event the District fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the District's responsibilities under this paragraph 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 Confined Disposal Facility.

D. The District 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 pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. To the maximum extent practicable, the Government and the District 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 District:

Executive Director
East Chicago Waterway Management District
4522 Indianapolis Blvd.
East Chicago, Indiana 46312

If to the Government:

District Engineer
U.S. Army Corps of Engineers
Chicago District
111 North Canal Street, Suite 600
Chicago, Illinois 60606

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII – PUBLIC ACCESS AND CONFIDENTIALITY

A. The Government and the District shall, pursuant to applicable law, treat this Agreement and all related documents, financial records, technical drawings, laboratory and test reports as public documents. Such documents shall be available upon written request to the parties pursuant to applicable law and regulation.

B. Notwithstanding paragraph A. of this Article, when requested to do so by the providing party, and to the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information.

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 Confined Disposal Facility and shared in accordance with Articles II.F. and II.I. 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 Confined Disposal Facility, of which the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with Article II.L. of this Agreement, shall be paid in accordance with Article II. M. 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 mitigation and 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 Confined Disposal Facility, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the construction of the Confined Disposal Facility.

D. The Government shall not incur costs for mitigation and data recovery 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 in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)).

1. Any costs of mitigation and data recovery 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 Confined Disposal Facility and shall be shared in accordance with Articles II.F. and II.I. of this Agreement.

2. Any costs of mitigation and data recovery 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 Confined Disposal Facility, of which the District financed portion of operation and maintenance obligations, as determined by the Government in accordance with Article II.L. of this Agreement, shall be paid in accordance with Article II.M. of this Agreement.

ARTICLE XIX – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XX – OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Indiana.

ARTICLE XXI – AMENDMENTS TO THIS AGREEMENT

Amendments to this Agreement shall be in writing, and based on mutual agreement between the parties. Such amendments may be required, from time to time, if necessary in order to reflect changes to the Project.

ARTICLE XXII – NON-LIABILITY OF OFFICERS AND EMPLOYEES

Neither the President, nor the Board of Directors of the District, nor any officer, agent, consultant, counsel, or employee thereof, nor the attorney executing the Attorney's Certification

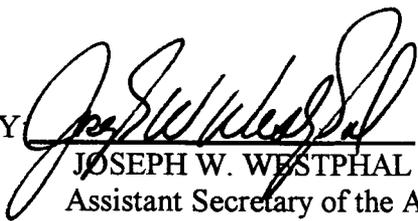
for this Agreement, not any officer, agent, consultant, employee of the Government, may be charged personally with liability, or held liable under the terms or provisions of this Agreement, or because of its execution or attempted execution, or because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912 of the Water Resources Development Act of 1986, Public Law 99-662, or other applicable law.

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 EAST CHICAGO WATERWAY
MANAGEMENT DISTRICT

BY:



JOSEPH W. WESTPHAL
Assistant Secretary of the Army
(Civil Works)

BY:



ROSE PARKER
President
Board of Directors

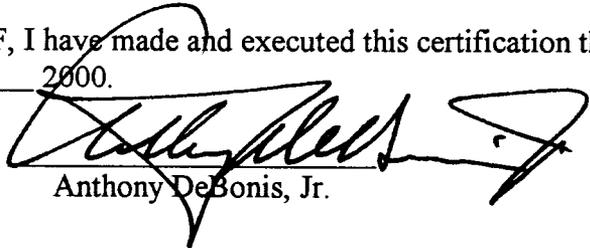
DATE: 07 AUG 2000

DATE: 7/28/2000

CERTIFICATE OF AUTHORITY

I, _____ do hereby certify that I am the principal legal officer of the East Chicago Waterway Management District, that the East Chicago Waterway Management District 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 East Chicago Waterway Management District in connection with the Maintenance Dredging and Disposal Activities, Indiana Harbor and Canal, 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 East Chicago Waterway Management District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 28th day of July, 2000.



Anthony DeBonis, Jr.

CERTIFICATION REGARDING LOBBYING

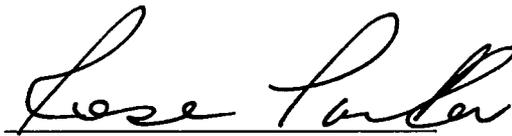
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



ROSE PARKER

President, Board of Directors
East Chicago Waterway Management District

7/28/2000
DATE