

**PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PORT OF PORTLAND, THE PORT OF VANCOUVER, THE PORT OF
KALAMA, THE PORT OF LONGVIEW, AND THE PORT OF WOODLAND
FOR CONSTRUCTION OF IMPROVEMENTS FOR
ECOSYSTEM RESTORATION AND NAVIGATION
ON THE COLUMBIA RIVER PORTION OF THE COLUMBIA AND LOWER
WILLAMETTE RIVERS FEDERAL NAVIGATION CHANNEL, OREGON AND
WASHINGTON**

THIS AGREEMENT is entered into this 23rd day of June, 2004, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), the PORT OF PORTLAND, represented by its Executive Director, the PORT OF VANCOUVER, represented by its Executive Director, the PORT OF KALAMA, represented by its Executive Director, the PORT OF LONGVIEW, represented by its Executive Director, and the PORT OF WOODLAND, represented by its Manager (hereinafter collectively referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, Section 101(b)(13) of the Water Resources Development Act of 1999, Public Law 106-53 and Division H, Section 123 of the Consolidated Appropriations Act of 2004, Public Law 108-199 authorized improvements for navigation and ecosystem restoration along the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington (hereinafter the "Authorized Project");

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the ecosystem restoration features of the authorized project and navigation features along the Columbia River portion of the Authorized Project (hereinafter the "Project" as defined in Article I.A. of this Agreement);

WHEREAS, Bachelor Slough and Tenasillahe Island are under the administrative jurisdiction of United States Fish and Wildlife Service (hereinafter the "USFWS");

WHEREAS, Bachelor Slough and Tenasillahe Island shall remain under the administrative jurisdiction of the USFWS both during the construction and after the completion of the Project;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 217(a) of the Water Resources Development Act of 1996 (Public Law 104-303, 33 U.S.C. 2326a) provides that the Government may provide additional capacity

at a dredged material disposal facility constructed by the Government beyond the capacity that would be required for project purposes, if the Non-Federal Sponsors agree to pay, during the period of construction, all costs associated with the construction of the additional capacity;

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

WHEREAS, Section 902 of the Water Resources Development Act, Public Law 99-662, as amended, establishes the maximum amount of costs for the Authorized Project and sets forth procedures for adjusting such maximum amount;

WHEREAS, the Government and Port of Portland entered into an agreement for pre-construction engineering and design of the Authorized Project (hereinafter the "Design Agreement") dated September 10, 1999 under which the Port of Portland contributed a percentage of the total costs for pre-construction engineering and design of the Authorized Project;

WHEREAS, Section 101(b)(13) of the Water Resources Development Act of 1999, Public Law 106-53 authorizes, in accordance with the recommendations contained in the final report of the Chief of Engineers, dated December 23, 1999, the Secretary of the Army to afford credit for the portions of the Project constructed by the Non-Federal Sponsors;

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

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

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the general navigation features and the ecosystem restoration features, and all lands, easements, rights-of-way, relocations, or removals that the

Government, in accordance with Article III of this Agreement, determines to be necessary for the construction, operation, and maintenance of the general navigation features and for the construction, operation, maintenance, repair, replacement and rehabilitation of the ecosystem restoration features, but shall not include aids to navigation or the local service facilities, all as generally described in the final report of the Chief of Engineers, Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, dated December 23, 1999 (hereinafter "Chief's Report"), and the Integrated Feasibility Report for Channel Improvement and Environmental Impact Statement, Columbia & Lower Willamette River Federal Navigation Channel, August 1999 (hereinafter "Feasibility Report"), and the Columbia River Channel Improvement Project Final Supplemental Integrated Feasibility Report and Environmental Impact Statement dated January, 2003, as updated by the Columbia River Channel Improvement Project Addendum dated November 2003 (hereinafter "Final Supplemental IFR/EIS"). The term also includes the work-in-kind described in Article I.V. of this Agreement. The term does not include the general navigation features for the Lower Willamette portion of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington.

B. The term "general navigation features" shall mean:

(1) Deepening of the existing 600-foot-wide navigation channel from -40 feet to -43 feet Columbia River Datum (CRD), from river mile 3 to river mile 106.5 on the Columbia River,

(2) Deepening three of the existing five turning basins on the Columbia River (located at river miles 15, 73.5, and 101.5, respectively) to -43 feet,

(3) Construction of environmental mitigation features on a total of 740 acres of land located at Woodland Bottoms, Martin Island and Webb Mitigation sites, and

(4) Construction of dredged or excavated material disposal facilities and mitigation sites;

all as generally described in the Chief's Report, the Feasibility Report, and the Final Supplemental IFR/EIS. The term does not include any lands, easements, rights-of-way or relocations; removals; betterments; aids to navigation; or local service facilities.

C. The term "ecosystem restoration features" shall mean:

(1) Purple Loosestrife Control: Bio-control of purple loosestrife for five years beginning 2005 from Columbia River Mile 18 to Columbia River Mile 52 by targeting stands and eradicating with herbicides and mechanical treatments,

(2) Tidegate Retrofits for Salmonid Passage: Retrofitting of existing levee tide gates with fish slides at identified locations along the lower Columbia River,

(3) Walker-Lord and Hump-Fisher Islands Embayment Complexes: Improvement of embayment circulation in order to improve water through flow for habitat restoration by constructing connecting channels at the upstream end of Walker-Lord and Hump-Fisher Islands,

(4) Shillapoo Lake Restoration: Construction of water supply and control structures and diked cells to manage water levels in order to restore wetland habitat,

(5) Tenasillahe Island Phase 1: Construction of controlled inlets at separate levee locations at the upstream end of the island and retrofitting improvement features for two downstream tidegates,

(6) Tenasillahe Island Phase 2: Providing secure habitat for Columbia White-Tailed Deer on **Cottonwood Island**,

(7) Tenasillahe Island Phase 3: Removal of downstream tidegates on the internal drainage channels and removal of upstream levee sections,

(8) Bachelor Slough Restoration: Dredging the slough and restoration of riparian forest along a narrow strip of land located immediately adjacent to the left bank of the slough, and

(9) Implementation of 5 year monitoring plans and adaptive management, as necessary, for Tenasillahe Island Phase 1, Tenasillahe Island Phase 3, and Bachelor Slough (hereinafter the “monitoring and adaptive management sites”);

all as generally described in the Chief's Report, the Feasibility Report, and the Final Supplemental IFR/EIS.

D. The term "total cost of construction of the general navigation features" shall mean all costs incurred by the Non-Federal Sponsors or the Government in accordance with the terms of this Agreement directly related to construction of the general navigation features. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's preconstruction engineering and design costs; the value of the non-Federal interest's contributions under the terms of the Design Agreement attributable to the general navigation features; the Government's engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Articles XV.A.1., XV.A.2., and XV.A.3. of this Agreement; the costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.D.1. of this Agreement; the Government's actual construction costs (including any costs of construction of dredged or excavated material disposal facilities incurred prior to the end of the period of construction or during any subsequent period of construction and the costs of alteration, lowering, raising, or replacement and attendant demolition of existing bridges over navigable waters of the United States); the credit amount for the work-in-kind performed by the Non-Federal Sponsors in accordance with Article II.U. of this Agreement to the extent they do not duplicate costs otherwise included in this paragraph; the Government's supervision and administration costs; costs of

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

E. The term "total cost of construction of the ecosystem restoration features" shall mean all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the environmental restoration features of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to, the Government's preconstruction engineering and design costs; the value of the non-Federal interest's contributions under the terms of the Design Agreement attributable to the ecosystem restoration features; the Government's 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.4. of this Agreement; the costs incurred by the Government for clean-up and response in accordance with Article XV.D. of this Agreement; costs of historic preservation activities in accordance with Articles XVIII.A. and XVIII.D. of this Agreement; actual construction costs; supervision and administration costs; monitoring and adaptive management costs in accordance with Article XXIV of this Agreement; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

F. The term "financial obligation for construction" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in the total cost of construction of the general navigation features or is or would be included in the total cost of construction of the ecosystem restoration features, or a financial obligation of the Non-Federal Sponsors for work-in-kind, if performed by the Non-Federal Sponsors, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, in connection with the ecosystem restoration features or general navigation features that results or would result in a cost that is or would be

included in the total cost of construction of the general navigation features or the total cost of construction of the ecosystem restoration features.

G. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsors' total cash contribution required in accordance with Article II.G. of this Agreement to total financial obligations for construction, as projected by the Government.

H. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsors in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for either issuance of the solicitation for the first contract for construction of the general navigation features or the ecosystem restoration features, as defined in Articles I.B. and I.C. of this Agreement, or commencement, using the Government's own forces, of construction of the general navigation features or the ecosystem restoration features to the date that the U.S. Army Engineer for the Portland District (hereinafter the "District Engineer") notifies the Non-Federal Sponsors in writing of the Government's determination that construction of the general navigation features and the ecosystem restoration features is complete, except for any construction of a dredged or excavated material disposal facility, or any expansion (including raising of dikes) of such a facility, that will contain material from maintenance, but not the construction, of the other general navigation features, and, except for any monitoring and adaptive management for the monitoring and adaptive management sites.

I. The term "subsequent period of construction" shall mean a period beginning with the date that the Government first notifies the Non-Federal Sponsors in writing of the scheduled date for either issuance of the solicitation for the contract or commencement, using the Government's own forces, of construction of a dredged or excavated material disposal facility, or any expansion (including raising of dikes) of such a facility, that will contain material from maintenance, but not the construction, of the other general navigation features and ending with the date that the District Engineer notifies the Non-Federal Sponsors in writing of the Government's determination that such construction or expansion is complete. There may be more than one subsequent period of construction and a subsequent period of construction may be concurrent with the period of construction.

J. The term "highway" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

K. 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.

L. The term "relocation" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (including any bridge thereof), or public facility, excluding any bridge 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.

M. The term "removal" shall mean eliminating an obstruction (other than a bridge over the navigable waters of the United States) where the Government determines, after consultation with the Non-Federal Sponsors, that: 1) elimination is necessary for the construction, operation, and maintenance of the general navigation features, including the borrowing of material or the disposal of dredged or excavated material associated therewith; 2) elimination must be accomplished before the end of the period of construction or during a subsequent period of construction; and 3) the Non-Federal Sponsors, the States of Oregon or Washington, 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, and maintenance of the general navigation features when such elimination is specifically provided for, and is identified as a removal, in the authorizing legislation for the Project or any report referenced therein.

N. 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.

O. The term "betterment" shall mean a change in the design and construction of an element of the Project accomplished at the request of the Non-Federal Sponsors 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. The term does not include any enlargement of the capacity of any dredged or excavated material disposal facility to enable disposal of dredged or excavated material from outside the other general navigation features or ecosystem restoration features.

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

Q. The term "over-depth" shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

R. The term "over-width" shall mean additional dimensions associated with a given width that are required to assure the authorized channel width is available in areas of the navigation channel where shoaling impacts the width of the channel.

S. The term "utility" shall mean a public utility defined pursuant to generally applicable state law by the States of Oregon or Washington, as applicable.

T. 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.

U. The term "local service facilities" shall mean the facilities that are necessary to realize the benefits of the general navigation features, as generally described in, and required of the Non-Federal Sponsors by the Chief's Final Report, the Feasibility Report, and subject to the terms and conditions contained in the Final Supplemental IFR/EIS. The local service facilities are berthing areas and docks.

V. The term "work-in-kind" shall mean construction of that portion of the general navigation features from Columbia River mile 95 to the upstream end of the Project at approximately river mile 106.5. The work-in-kind includes construction of the authorized improvements, supervision and administration, and other activities associated with construction, but does not include the construction of betterments or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the work-in-kind.

W. The term "functional portion of the ecosystem restoration features" shall mean a portion of the ecosystem restoration features that is suitable for tender to the Non-Federal Sponsors to operate and maintain in advance of completion of the entire Project. For a portion of the ecosystem restoration features to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors in writing of the Government's determination that the portion of the ecosystem restoration features is complete, except for monitoring and adaptive management for the monitoring and adaptive management sites, and can function independently and for a useful purpose, although the balance of the ecosystem restoration features is not complete.

X. The term "construction" shall mean all actions required to carry out the general navigation features, the ecosystem restoration features, and all actions required by the Non-Federal Sponsors to carry out the work-in-kind component of the Project, if performed by the Non-Federal Sponsors, and shall apply to both the period of construction, subsequent period of construction, and the period of monitoring and adaptive management.

Y. The term “monitoring” shall mean the acquisition, analysis, and distribution of data to evaluate the likely success of the monitoring and adaptive management sites in meeting their biological, hydrographic, topographic, bathymetric, and chemical conditions, or to comply with regulatory requirements, pursuant to a detailed written monitoring and adaptive management plan, developed in accordance with the process prescribed in Article XXIV of this Agreement.

Z. The term “adaptive management” shall mean project management actions taken to respond to data developed through the monitoring program, to be implemented if specific restoration standards are not met or if it appears that actual conditions will diverge from intended conditions to threaten the achievement of overall ecosystem restoration feature goals for the monitoring and adaptive management sites, pursuant to a detailed written monitoring and adaptive management plan developed in accordance with the process prescribed in Article XXIV

of this Agreement. Adaptive management may include adjustments for unforeseen circumstances and changes to structures or their operations or management techniques and shall be undertaken if the Government, after consultation with the Non-Federal Sponsors, determines adjustments are necessary to obtain the ecosystem restoration feature objectives for the monitoring and adaptive management sites.

AA. The term “period of monitoring and adaptive management” shall mean a period of five years beginning on the date of the District Engineer’s notice to the Non-Federal Sponsors in accordance with Article II.S. of this Agreement that the entire ecosystem restoration features are complete or a functional portion of the ecosystem restoration features that is identified as one of the monitoring and adaptive management sites is complete, or until the monitoring and adaptive management financial limit pursuant to Article XXIV has been reached, whichever is earlier. If the District Engineer’s notice only addresses completion of a functional portion of the ecosystem restoration features that is identified as one of the monitoring and adaptive management sites, the period of implementation of monitoring and adaptive management for that functional portion shall be a period of five years beginning on the date of such notice.

BB. The term “separable element” shall mean a portion of a Project which is physically separable from other portions of the project, and, which either achieves hydrologic effects, or produces physical or economic benefits. Such effects or benefits must be separately identifiable from those produced by other portions of the project.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsors, shall expeditiously construct the general navigation features and the ecosystem restoration features (including alteration, lowering, raising, or replacement and attendant removal of existing bridges over navigable waters of the United States), except for any work-in-kind, if performed by the Non-Federal Sponsors, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsors the 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 for the Project or commencement of construction of the Project using its own forces until the Non-Federal Sponsors have confirmed in writing their willingness to proceed with the Project and the local service facilities. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of

the Non-Federal Sponsors, but the contents of solicitations, award of contracts or commencement of construction using its own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the general navigation features and ecosystem restoration features (whether the work is performed under contract or by Government personnel) shall be exclusively within the control of the Government, except for any work-in-kind if performed by the Non-Federal Sponsors.

2. Throughout the period of construction, any subsequent period of construction, and the period of monitoring and adaptive management, the District Engineer shall furnish the Non-Federal Sponsors with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the general navigation features or ecosystem restoration features.

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract for construction of the general navigation features or the ecosystem restoration features would result in total cost of construction of the general navigation features and the total cost of construction of the ecosystem restoration features exceeding \$150,573,000, the Government and the Non-Federal Sponsors agree to defer award of that contract and all subsequent contracts for construction of the general navigation features or the ecosystem restoration features until such time as the Government and the Non-Federal Sponsors agree to proceed with further contract awards for the general navigation features or the ecosystem restoration features, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsors, 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.

4. As of the effective date of this Agreement, \$10,000,000.00 of Federal funds have been appropriated for the Project. This amount is less than the Federal share of the projected total cost of construction of the general navigation features and total cost of construction of the ecosystem restoration features, and the Government makes no commitment to budget for additional funds for the Federal share of the total cost of construction of the general navigation features or total cost of construction of the ecosystem restoration features. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project is limited to this amount together with any additional funds that the Congress may appropriate for the Project. In the event that the Congress does not appropriate funds sufficient to meet the Federal share of funds required to continue construction of the Project in the then-current or upcoming fiscal year, the Government shall notify the Non-Federal Sponsors of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsors in accordance with Article II.F. and Article II.R. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsors may request the Government to design or construct betterments. Such requests shall be in writing and shall describe the betterments requested to be performed. If the Government in its sole discretion elects to perform the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

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

D. The Non-Federal Sponsors may request the Government to provide lands, easements, or rights-of-way or to perform relocations for the general navigation features or ecosystem restoration features on behalf of the Non-Federal Sponsors. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsors 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 Sponsors shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, or rights-of-way, or performance of relocations by the Government, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response in accordance with Article XV.D. of this Agreement.

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

F. The Non-Federal Sponsors shall contribute: (1) An amount equal to 25 percent of the Government's estimate of total cost of construction of the general navigation features of the

National Economic Development plan (NED Plan) as that plan is described in the Chief's Report, the Feasibility Report, and the Final Supplemental IFR/EIS; and (2) An amount equal to 100 percent of the difference between the total cost of construction of the general navigation features and the estimate of total cost of construction of the general navigation features of the NED Plan.

G. If the Government projects that the value of the non-Federal interests' contributions under the terms of the Design Agreement, the Non-Federal Sponsors' contributions under paragraph M.3. of this Article, and the Non-Federal Sponsors' contributions under Articles II.U., V, X.B., X.C., XV.A. of this Agreement will be less than their share required by paragraph F. and paragraph R. of this Article, the Non-Federal Sponsors 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. and paragraph R. of this Article.

H. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the value of the non-Federal interests' contributions under the terms of the Design Agreement, the Non-Federal Sponsor's contributions provided in accordance with paragraphs B., D., G., M.3., N. and O. of this Article before the end of the period of construction, and the Non-Federal Sponsors' contributions provided in accordance with Articles II.R., II.U., V, X.B., X.C., XV.A., and XVIII of this Agreement before the end of the period of construction and to determine whether the Non-Federal Sponsors have met their obligations under paragraphs B., D., F., N., and R. of this Article for the period of construction. The final accounting also shall determine an amount equal to 10 percent of the total cost of construction of the general navigation features (hereinafter the "10 percent amount") before the end of the period of construction. In the event there is a 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 Non-Federal Sponsors with the results of the final accounting conducted in accordance with VI.D. of this Agreement, the Government shall afford credit against the 10 percent amount for the value, as determined in accordance with Article IV of this Agreement, of lands, easements, rights-of-way, or relocations provided for the general navigation features before the end of the period of construction plus the pro-rated share of the value of lands, easements, rights-of-way, or relocations for dredged or excavated material disposal facilities provided for the operation and maintenance of the existing 40-foot project, but only if that facility is needed for disposal of dredged or excavated material in connection with the construction and subsequent operation and maintenance of the Project. Such pro-rated value shall be based on the actual proportionate use of capacity at the dredged or excavated material disposal facility necessary for the maintenance of the existing 40-foot project versus the projected capacity that will be used for the construction, operation and maintenance of the Project. However, such credit afforded shall not exceed the 10 percent amount. In accordance with Article VI.E. of this Agreement, the Non-Federal Sponsors shall, over a period not to exceed 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 value, as determined in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, or relocations provided for the general navigation features after the period of construction.

In the event there is a subsequent period of construction and the Government amends the final accounting in accordance with Article VI.E.5. of this Agreement, the Non-Federal Sponsors, 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. The Government shall operate and maintain the general navigation features in accordance with Article VIII.1.A. of this Agreement.

K. The Non-Federal Sponsors 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.

L. The Government shall accomplish all removals that neither the Non-Federal Sponsors nor the States of Oregon or Washington have the legal capability to accomplish where both the Non-Federal Sponsors and the States of Oregon or Washington make a written request for the Government to accomplish such removals, and shall accomplish all removals that the Government is expressly required to accomplish in the authorizing legislation for the Project or any report referenced therein.

1. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such removal shall be reclassified as part of the Non-Federal Sponsors' 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 general navigation features and shared in accordance with the provisions of this Agreement.

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

1. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such removals, in detail sufficient to enable the Non-Federal Sponsors to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsors 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, and maintenance of the general navigation features, or prior to the Government incurring any financial obligation for construction, operation, and maintenance of the general navigation features that it elects to perform with its own forces, the Non-Federal Sponsors shall accomplish all removals set forth in such descriptions that the Government determines to be necessary for that work.

2. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such removal shall

be reclassified as part of the Non-Federal Sponsors' 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 Non-Federal Sponsors in accomplishing removals shall be included in the total cost of construction of the general navigation features, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shared in accordance with the provisions of this Agreement. Incidental costs may include legal and administrative costs (such as owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the Non-Federal Sponsors in accomplishing removals, but shall not include any costs that the Non-Federal Sponsors or the States of Oregon or Washington have the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

N. The Non-Federal Sponsors may request the Government to design, construct, or operate and maintain the local service facilities. Such requests shall be in writing and shall describe the local service facilities requested to be performed. If the Government in its sole discretion elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsors 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 Sponsors 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.

O. The Non-Federal Sponsors may request the Government to provide additional capacity, over and above the capacity needed solely for dredged or excavated material from the other general navigation features, at a dredged or excavated material disposal facility for dredged or excavated material from outside the general navigation features. Such requests shall be in writing and shall describe the additional capacity requested to be provided. If the Government in its sole discretion elects to provide the requested additional capacity or any portion thereof, it shall so notify the Non-Federal Sponsors 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. In the event the Government elects to provide the additional capacity, the Government shall allocate capacity costs between the total cost of construction of the general navigation features and the costs of the additional capacity. The Non-Federal Sponsors shall be solely responsible for all costs allocated by the Government to the additional capacity and shall pay all such costs in accordance with Article VI.C. of this Agreement.

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

Q. In accordance with Article VIII.1.D. of this Agreement, the Non-Federal Sponsors, at no cost to the Government, shall operate and maintain or cause to be operated and maintained the local service facilities, including dredging or excavation and disposal of material therefrom. The Government shall have no responsibility under this Agreement for the operation and maintenance of the local service facilities or the operation and maintenance of any other facilities provided by the Non-Federal Sponsors or a third party.

R. The Non-Federal Sponsors shall contribute 35 percent of the total cost of construction of the ecosystem restoration features in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement the Non-Federal Sponsors shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsors must provide for the construction, operation, and maintenance of the ecosystem restoration features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the ecosystem restoration features.

2. If the Government projects that the value of the Non-Federal Sponsors' contributions under paragraph R.1. of this Article and Articles V., X., and XV.A. of this Agreement attributable to the ecosystem restoration features will be less than 35 percent of the total cost of construction of the ecosystem restoration features, the Non-Federal Sponsors shall provide an additional cash contribution in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsors' total contribution for the ecosystem restoration features equal to 35 percent of the total cost of construction of the ecosystem restoration features.

3. If the Government determines that the value of the Non-Federal Sponsors' contributions provided under paragraphs R.1. and R.2. of this Article and Articles V., X., and XV.A. of this Agreement attributable to the ecosystem restoration features has exceeded 35 percent of the total cost of construction of the ecosystem restoration features, the Government, subject to the availability of funds, shall reimburse the Non-federal Sponsors for any such value in excess of 35 percent of the total cost of construction of the ecosystem restoration features. After such a determination, the Government, in its sole discretion, may provide any remaining ecosystem restoration feature easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining ecosystem restoration feature relocations on behalf of the Non-Federal Sponsors. Notwithstanding the provisions of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government under this paragraph, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response in accordance with Article XV.D. of this Agreement.

S. When the District Engineer determines that, except for monitoring and adaptive management, the ecosystem restoration features are complete or that a portion of the ecosystem restoration features have become a functional portion of the ecosystem restoration features, the District Engineer shall so notify the Non-Federal Sponsors and the USFWS in writing and

furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the ecosystem restoration features or the functional portion of the ecosystem restoration features that have not been provided previously. Upon such notification and except for the ecosystem restoration features located on lands under the administrative jurisdiction of the USFWS, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the ecosystem restoration features or the functional portion of the ecosystem restoration features in accordance with Article VIII.2. of this Agreement. The operation, maintenance, repair, replacement and rehabilitation of ecosystem restoration features located on lands under the administrative jurisdiction of the USFWS shall be accomplished in accordance with the Memorandum of Understanding between the U.S. Fish and Wildlife Service, Region 1 National Wildlife Refuge System and Ecological Services and the U.S Army Corps of Engineers, Portland District dated June 17, 2004. Further, on the date of such notice, the period of monitoring and adaptive management shall begin for all the monitoring and adaptive management sites, or for the functional portion of the ecosystem restoration features that is identified as one of the monitoring and adaptive management sites, as applicable. The monitoring and adaptive management shall be performed concurrently with the Non-Federal Sponsors' responsibilities for operation, maintenance, repair, replacement, and rehabilitation of the ecosystem restoration features in accordance with Article VIII.2. of this Agreement.

T. The Government shall perform a final accounting in accordance with Article VI.G. of this Agreement to determine the Non-Federal Sponsors' contributions provided in accordance with paragraphs B., D., and R.2. of this Article before the end of the period of monitoring and adaptive management, and the Non-Federal Sponsors' contributions provided in accordance with Articles II.R., V, X.B., X.C., XV.A., and XVIII of this Agreement before the end of the period of monitoring and adaptive management and to determine whether the Non-Federal Sponsors have met their obligations under paragraphs B., D., and R. of this Article for the period of monitoring and adaptive management.

U. The Government shall afford credit against the Non-Federal Sponsors' share of total cost of construction of the general navigation features for any work-in-kind, if performed by the Non-Federal Sponsors, in accordance with this paragraph. The credit to be afforded in accordance with the provisions of this paragraph shall be based on the Government's estimate of the work if it were to be performed by the Government, or the full operating cost of the Port of Portland's dredge while performing initial construction dredging of the work-in-kind, including the proportionate cost of maintenance of the dredge, based on the period of time the dredge is performing work for the Government, whichever is less. The affording of such credit shall be subject to an on-site inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Project. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs and the limitations below.

1. No credit shall be afforded unless and until the Government has certified that the work-in-kind has been performed in accordance with this Agreement.

2. No credit shall be afforded for any work-in-kind which does not, in the judgment of the Government, conform to the description set forth in Article I.B. of this Agreement or does not conform to approved plans and specifications, contract modifications, or change orders.

3. The amount of credit is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the work is completed and the time that the credit is afforded.

4. Any credit afforded for work-in-kind is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsors' failure to comply with its obligations under these laws.

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

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, or rights-of-way necessary for the construction, operation, and maintenance of the Project, including those lands, easements, or rights-of-way necessary for the borrowing of material, the disposal of dredged or excavated material, or relocations, and including those lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude. The Government also shall determine which of such lands, easement, and rights-of-way are necessary for the general navigation features and which are necessary for the ecosystem restoration features. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, or rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors 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, the subsequent period of construction, or the period of monitoring and adaptive management, as applicable, the Non-Federal Sponsors, shall acquire all lands, easements, or rights-of-way necessary for the construction of the Project, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for construction, operation, and maintenance of the Project or prior to the Government incurring any financial obligation for construction, operation, and maintenance it elects to perform with its own forces, the Non-Federal Sponsors, shall acquire all lands, easements, or rights-of-way the Government determines the Non-Federal Sponsors must provide for that work and shall provide the Government with authorization for entry thereto. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership or control for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for the construction, operation, and maintenance of the Project including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government also shall determine which of such relocations are necessary for the general navigation features and which are necessary for the ecosystem restoration features. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors 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, and maintenance of the Project or prior to the Government incurring any financial obligation for construction, operation, and maintenance it elects to perform by its own forces, the Non-Federal Sponsors 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. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with the construction, operation, and maintenance of the ecosystem restoration features. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction or the period of monitoring and adaptive management, as applicable, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material from the ecosystem restoration features under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

D. Until the Government furnishes the Non-Federal Sponsors 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 Non-Federal Sponsors 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 a timely manner shall afford credit for the value of such contribution in accordance with Article II.I. of this Agreement.

E. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49

C.F.R. Part 24, in acquiring lands, easements, or rights-of-way necessary for the construction, operation, and maintenance of the Project and the local service facilities, including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

A. The Non-Federal Sponsors shall receive credit in accordance with Article II.I. and Article II.S.1. of this Agreement, as applicable, for the value of the lands, easements, or rights-of-way that the Non-Federal Sponsors must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsors must perform or for which they must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsors shall not receive credit for the value of any lands, easements, rights-of-way, or relocations that have been provided previously as an item of cooperation for another Federal project except as provided by Article II.I. of this Agreement. The Non-Federal Sponsors also shall not receive credit for the value of lands, easements, rights-of-way, or relocations to the extent that such items are provided or performed using Federal 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 Non-Federal Sponsors 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 Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provide the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement that are required for the construction of the work-in-kind, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsors award the first construction contract for the work-in-kind, or, if the Non-Federal Sponsors perform the construction with its own labor, the date that the Non-Federal Sponsors begin construction of the work-in-kind. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors 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 Non-Federal Sponsors shall obtain, for that real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and the Government. The Non-Federal Sponsors shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsors provide the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, the Non-Federal Sponsors choose not to obtain a second appraisal, or the Non-Federal Sponsors do not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors 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 Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, 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 Non-Federal Sponsors, 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 Non-Federal Sponsors shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

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

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of

disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors 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 Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five-year period preceding the effective date of the authorizing legislation for the Project, 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 Non-Federal Sponsors 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.E. 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 Non-Federal Sponsor 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 Non-Federal Sponsors, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

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

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

3. For a relocation of a utility, the value shall be only that portion of relocation costs borne by the Non-Federal Sponsors 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. Any credit afforded for the value of relocations performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

5. 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 Non-Federal Sponsors and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction, during each subsequent period of construction, and during the period of monitoring and adaptive management. The Government's Project Manager and counterparts named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' counterparts 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, during each subsequent period of construction, and during the period of monitoring and adaptive management, 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; work-in-kind performed by the Non-Federal Sponsors; contract awards or modifications; contract costs; the application of and compliance with applicable laws, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations and the non-Federal work-in-kind; 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 general navigation features; development and implementation of the monitoring and adaptive management plan; anticipated requirements for operation, maintenance, repair, replacement, and rehabilitation of the ecosystem restoration features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of schedules for the Project and the local service facilities. Oversight of the Project shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, except for the work-in-kind if performed by the Non-Federal Sponsors, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations. Further, the Project Coordination Team may make recommendations to the Non-Federal Sponsors on matters related to the work-in-kind, if performed by the Non-Federal Sponsors, that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsors in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsors, having the legal authority and responsibility for work-in-kind performed by the Non-Federal Sponsors, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as related to compliance with applicable Federal, State, or local laws or regulations as otherwise provided in this Agreement.

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

ARTICLE VI - METHOD OF PAYMENT

A. Until the Government furnishes the Non-Federal Sponsors with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of the total cost of construction of the general navigation features and total cost of construction of the ecosystem restoration features and costs due to additional work under Article II.B., II.D., II.N., or II.O. of this Agreement. At least quarterly during the period of construction, during each subsequent period of construction, and during the period of monitoring and adaptive management, as applicable, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the total cost of construction of the general navigation features and the total cost of construction of the ecosystem restoration features, of total costs due to additional work under Article II.B., II.D., II.N., or II.O. of this Agreement, of the maximum amount determined in accordance with Article XXI of this Agreement, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B., II.D., II.G., II.N., and II.O. of this Agreement, of the non-Federal proportionate share, of the funds required from the Non-Federal Sponsor for the upcoming fiscal year, of the credit to be afforded pursuant to Article II.U. of this Agreement for the value of the work-in-kind contributed before the end of the period of construction, of the credit to be afforded pursuant to Article II.I. of this Agreement for the value of lands, easements, rights-of way, or relocations contributed before the end of the period of construction and during any subsequent period of construction, of the 10 percent amount, of the principal amount, and of the installments to be paid in accordance with paragraph E.2. of this Article. Thereafter, until the outstanding portion of the principal amount equals \$0, the Government, at least annually, shall provide the Non-Federal Sponsors with a report setting forth the outstanding portion of the principal amount and the current projection of the remaining installments to be paid in accordance with paragraph E.2. of this Article. On the effective date of this Agreement, the total cost of construction of the general navigation features is projected to be \$101,807,000 and the Non-Federal Sponsors' contribution required under Article II.G. of this Agreement in connection with the general navigation features is projected to be \$27,119,000; and the total cost of construction of the ecosystem restoration features is projected to be \$14,731,000, and the Non-Federal Sponsor's contribution required under Article II.R. of this Agreement in connection with ecosystem restoration features is projected to be \$5,155,950; all dollar amounts are based on October, 2002 price levels. These amounts are subject to adjustment by the Government, after consultation with the non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Non-Federal Sponsor shall provide the contribution required by Article II.G. 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 Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines after consideration of the funds a non-Federal interest contributed under the Design Agreement, and after consideration of any credit afforded pursuant to Article II.U. of this Agreement, to be required from the Non-Federal Sponsors 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. Not later than such scheduled date, the Non-Federal Sponsors shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Portland" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsors, 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 Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government, after consideration of any credit afforded pursuant to Article II.U. of this Agreement, determines to be required from the Non-Federal Sponsors to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year (including the construction of or modifications to a dredged or excavated material disposal facility during any subsequent period of construction). No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsors shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government, after consideration of any credit afforded pursuant to Article II.U. of this Agreement, deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction or during the subsequent period of construction, as applicable; and (c) the non-Federal share of financial obligations for construction as they are incurred during the period of monitoring and adaptive management.

4. If at any time during the period of construction, any subsequent period of construction, or the period of monitoring and adaptive management, the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required, and the Non-Federal Sponsors, 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., II.D., II.N., or II.O. of this Agreement, the Non-Federal Sponsors shall provide the Government with the full amount of the funds required to pay for such financial obligation through any of the payment mechanisms specified in paragraph B.1. of this Article. The Government shall draw from the funds provided by the Non-Federal Sponsors

such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsors must provide additional funds to meet such financial obligations, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsors 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. Upon completion of the period of construction or termination of this Agreement before the end of the period of construction, and upon resolution of all relevant proceedings, claims, and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the results of the final accounting. The Government may perform an interim accounting, if requested by the Non-Federal Sponsors.

1. The final accounting shall determine the total cost of construction of the general navigation features and total cost of construction of ecosystem restoration features before the end of the period of construction, 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 before the end of the period of construction under Article II.B., II.D., II.N., or II.O. of this Agreement and the Non-Federal Sponsors' contribution provided before the end of the period of construction in accordance with Article II.B., II.D., II.N., or II.O. of this Agreement.

a. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors before the end of the period of construction is less than its required share of the total cost of construction of the general navigation features and total cost of construction of ecosystem restoration features before the end of the period of construction plus costs due to additional work before the end of the period of construction under Article II.B., II.D., II.N., or II.O. of this Agreement, the Non-Federal Sponsors shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsors' required share of the total cost of construction of the general navigation features and total cost of construction of ecosystem restoration features before the end of the period of construction plus costs due to additional work before the end of the period of construction under Article II.B., II.D., II.N., or II.O. of this Agreement by delivering a check payable to "FAO, USAED, Portland" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors before the end of the period of construction exceeds its required share of the total cost of construction of the general navigation features and total cost of construction of ecosystem restoration features before the end of the period of construction plus costs due to additional work before the end of the period of construction under Article II.B., II.D., II.N., or II.O. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsors no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the

Non-Federal Sponsors, 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 value, as determined in accordance with Article IV of this Agreement, of lands, easements, rights-of-way, or relocations provided for the general navigation features before the end of the period of construction.

E. The Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsor with the results of the final accounting, the Government shall notify the Non-Federal Sponsors 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 Non-Federal Sponsors 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 Non-Federal Sponsors 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 general navigation features or commences construction using its own forces, plus a premium of one-eighth of one percentage point for transaction costs. In the case of recalculations, the interest rate shall be determined by the Secretary of the Treasury taking into consideration such average market yields during the month preceding the fiscal year in which the sixth installment is to be paid, and thereafter during the month preceding the fiscal year in which each fifth installment is to be paid, plus a premium of one-eighth of one percentage point for transaction costs.

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

3. Notwithstanding paragraph E.2. of this Article, the Non-Federal Sponsors, in their 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 Non-Federal Sponsors of the principal amount.

4. After the Government furnishes the Non-Federal Sponsors with the results of the final accounting, the Government shall afford credit against the principal amount for the value, as determined in accordance with Article IV of this Agreement, of lands, easements, rights-of-way, or relocations provided for the general navigation features 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 Non-Federal Sponsors have paid at the time the credit is afforded, by refunding such portion to the Non-Federal Sponsors, subject to the availability of funds. In the event existing funds are not available to refund such portion to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

5. In the event there is a subsequent period of construction or this Agreement is terminated after the end of the period of construction, the Government, after completion of the construction of the applicable dredged or excavated material disposal facility or facilities, and upon resolution of all relevant proceedings, claims, and appeals, 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 payment period, and shall furnish the Non-Federal Sponsors with the results of the amended final accounting and the aforesaid recalculations. Thereafter, if the payment period has not elapsed, the Non-Federal Sponsors shall pay the aforesaid recalculated installments in lieu of the previously calculated installments. If the payment period has elapsed, the Non-Federal Sponsors, 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, Portland" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

F. The Non-Federal Sponsors shall provide the contribution of funds required by Article VIII.1.A. of this Agreement in accordance with the provisions of this paragraph.

1. By the first day of June of each year, the Government shall provide the Non-Federal Sponsors with the current projections, for the upcoming fiscal year, of the Government's total financial obligations for operation and maintenance and of the funds required from the Non-Federal Sponsors to cover their share of financial obligations for operation and maintenance.

2. The Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each fiscal year in which the Government projects that it will make financial obligations for operation and maintenance of the general navigation features, of the funds the Government determines to be required from the Non-Federal Sponsors to meet the Non-Federal Sponsors' share of the financial obligations for operation and maintenance through that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, the Non-Federal Sponsors shall make the full amount of the

required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover the Non-Federal Sponsors' share of the financial obligations for operation and maintenance as financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' share of such financial obligations for operation and maintenance in the current fiscal year, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsors 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.

4. Upon completion of each fiscal year in which the Government incurs financial obligations for operation and maintenance, the Government shall conduct an accounting of the Government's financial obligations for operation and maintenance incurred in that fiscal year and furnish the Non-Federal Sponsors with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting for such fiscal year from being conducted in a timely manner, the Government shall conduct an interim accounting for such fiscal year and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals for such fiscal year are resolved, the Government shall amend the interim accounting for such fiscal year to complete the final accounting for such fiscal year and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for operation and maintenance incurred in that fiscal year, each party's contribution provided for the financial obligations for operation and maintenance incurred in that fiscal year as of the date of such accounting, and each party's required share of the financial obligations for operation and maintenance incurred in that fiscal year.

a. Should the final or interim accounting, as applicable, show that the Non-Federal Sponsors' required share of the financial obligations for operation and maintenance incurred in that fiscal year exceeds the total contribution of funds provided thereto by the Non-Federal Sponsors, the Non-Federal Sponsors, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Portland to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final or interim accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsors for the financial obligations for operation and maintenance incurred in that fiscal year exceeds its required share thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsors no later than 90 calendar days after providing written notice. In the event funds are not available to refund the excess, the Government shall seek such appropriations as are necessary to make the refund.

G. Upon completion of the period of monitoring and adaptive management or termination of this Agreement before the end of the monitoring and adaptive management, and upon resolution of all relevant proceedings, claims, and appeals, the Government shall amend the final accounting and furnish the Non-Federal Sponsors with the results of the amended final accounting. The amended final accounting shall determine the total cost of construction of ecosystem restoration features before the end of the period of monitoring and adaptive management, each party's contribution provided thereto, and each party's required share thereof. The amended final accounting also shall determine total costs due to additional work before the end of the period of monitoring and adaptive management under Article II.B. of this Agreement and the Non-Federal Sponsors' contribution provided before the end of the period of monitoring and adaptive management in accordance with Article II.B. of this Agreement.

1. In the event the amended final accounting shows that the total contribution provided by the Non-Federal Sponsors before the end of the period of monitoring and adaptive management is less than its required share of the total cost of construction of ecosystem restoration features before the end of the period of monitoring and adaptive management plus costs due to additional work before the end of the period of monitoring and adaptive management under Article II.B. of this Agreement, the Non-Federal Sponsors shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsors' required share of the total cost of construction of ecosystem restoration features before the end of the period of monitoring and adaptive management plus costs due to additional work before the end of the period of monitoring and adaptive management under Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, Portland" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the amended final accounting shows that the total contribution provided by the Non-Federal Sponsors before the end of the period of monitoring and adaptive management exceeds its required share of the total cost of construction of ecosystem restoration features before the end of the period of monitoring and adaptive management plus costs due to additional work before the end of the period of monitoring and adaptive management under Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsors no later than 90 calendar days after the amended final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsors, 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, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay an equal share 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

1. General Navigation Features

A. The Government, as it determines necessary, shall operate and maintain the general navigation features and shall be responsible for all financial obligations for operation and maintenance of the general navigation features, except that the Non-Federal Sponsors shall contribute, in accordance with Article VI.F. of this Agreement, an amount equal to 100 percent of the difference between the annual operation and maintenance costs of the general navigation features and the estimate of the annual operation and maintenance costs of the general navigation features of the NED Plan, to be determined by the Government after consideration of any operation and maintenance performed by the Non-Federal Sponsors, in accordance with subparagraphs 1.A.1., 1.A.2., and 1.A.3. of this Article.

1. The Government and the Non-Federal Sponsors acknowledge and agree that the Non-Federal Sponsors shall be solely responsible for the operation and maintenance of O-105.0 West Hayden Island, W-101.0 Gateway, W-97.1 Fazio Sand and Gravel, W-96.9 Adjacent to Fazio, O-91.5 Lonestar, O-87.8 Railroad Corridor, W-86.5 Austin Point, O-82.6 Reichold, W-82.0 Martin Bar, W-71.9 Northport, O-67.0 Rainier Beach, W-67.5 International Paper, O-54.0 Port Westward, O-42.9 James River, and W-33.4 Skamokawa, which are located on real property under the ownership or control of the Non-Federal Sponsors and the operation, maintenance, and management of these facilities shall be accomplished at full non-Federal cost without reimbursement.

2. At the discretion of the Government, the Non-Federal Sponsors may carry out, or cause to have carried out, on behalf of the Government, all or a portion of the operation and maintenance of the dredged or excavated material disposal facilities in accordance with Article XXIII of this Agreement. If the Non-Federal Sponsors sell material from a dredged or excavated material disposal facility for which they are performing the operation and maintenance, the proceeds from the sale, less any State royalties, shall be deducted from the Government's payment for operation, maintenance and management of the dredged or excavated material disposal facilities.

3. At the discretion of the Government, the Non-Federal Sponsors may carry out, or cause to have carried out, on behalf of the Government, all or a portion of the operation and maintenance of the main ship channel in the Columbia River Federal Navigation Channel, Oregon and Washington in accordance with Article XXIII of this Agreement. If requested to perform all or a portion of the operation and maintenance of the main ship channel, the Non-Federal Sponsors shall make available to the Government a suitable pipeline dredge in good operation condition, with full crew and equipment, and the Government shall reimburse the Non-Federal Sponsors for the full operating cost of the dredge on a basis approved by the Chief of Engineers. The reimbursement to be afforded, subject to Government audit in accordance with Article X of this Agreement to determine reasonableness, allocability, and allowability of costs,

shall be based on the full operating cost of Non-Federal Sponsor Port of Portland's dredge while performing maintenance dredging of the Project, and shall include the proportionate cost of maintenance of the dredge based on the period of time the dredge is performing work for the Government that fiscal year or the actual fiscal year appropriations identified for that portion of maintenance dredging that are made available, whichever is less.

B. The Non-Federal Sponsors hereby authorize the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter own or control for the purpose of operating and maintaining the general navigation features. However, nothing contained herein, shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsors.

C. Subject to the provisions of paragraph A. of this Article, the Non-Federal Sponsors hereby authorize the Government to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsors 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, and maintenance of the dredged or excavated material disposal facilities; disposal of dredged or excavated material associated with the construction, operation, and maintenance of the general navigation features. In addition, as between the Government and the Non-Federal Sponsors, for so long as a dredged or excavated material disposal facility is required for the construction, operation, and maintenance of the general navigation features as determined by the Government, subject to the provisions of paragraph A. of this Article the Government shall have the full authority and exclusive right to operate, maintain, and manage such facility including the exclusive right to remove, use or reuse the materials placed therein for any purpose without charge to the Government.

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

2. Ecosystem Restoration Features

A. Upon notification in accordance with Article II.S. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsors shall, operate, maintain, repair, replace, and rehabilitate the ecosystem restoration features or the functional portion of the ecosystem restoration features, except for Purple Loosestrife Control and the ecosystem restoration features located on lands under the administrative jurisdiction of the USFWS, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter own or control for access to the ecosystem restoration features for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the ecosystem restoration features. If an inspection shows that the Non-Federal Sponsors for any reason are failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors. If, after 30 calendar days from receipt of the notice, the Non-Federal Sponsors continue to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property the Non-Federal Sponsors own or control for access to the ecosystem restoration features for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the ecosystem restoration features. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - HOLD AND SAVE

Subject to the provisions of Article XX of this Agreement, the Non-Federal Sponsors shall hold and save the Government free from all damages arising from the construction and operation and maintenance of the general navigation features and construction, operation, maintenance, repair, replacement, and rehabilitation of the ecosystem restoration features, any Project related betterments, and the local service facilities, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. Sections 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall

provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsors with the results of the final accounting shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in the total cost of construction of the general navigation features or included in the total cost of construction of the ecosystem restoration features, as applicable, and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph before the Government furnishes the Non-Federal Sponsors with the results of the final accounting shall be included in the total cost of construction of the general navigation features or included in the total cost of construction of the ecosystem restoration features, as applicable, and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

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

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors 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, no party shall provide, without the consent of the other parties any contractor with a release that waives or purports to waive any rights the other parties, and each of them, may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party or parties may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for the general navigation features or ecosystem restoration features for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsors in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsors elect 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.D. of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement, or an amended accounting in accordance with Article VI.E.5. of this Agreement, as applicable.

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

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsors shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determine 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

provided by the Non-Federal Sponsors for the construction, operation, and maintenance of the Project. For lands under the administrative jurisdiction of the USFWS that are required to implement the Project, the Government shall coordinate with the USFWS for the performance of any such investigations. 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 Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction.

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

2. All actual costs incurred by the Non-Federal Sponsor after the period of construction, other than during a subsequent period of construction, for such investigations for hazardous substances that are determined by the Government to be attributable to the general navigation features shall be considered incidental costs under Article IV.B.4. of this Agreement and be credited pursuant to Article II.I. 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 that are determined by the Government to be attributable to the general navigation features shall be considered financial obligations for operation and maintenance of the general navigation features and shared in accordance with Article VIII.1. of this Agreement.

4. All actual costs incurred by the Non-Federal Sponsors or the Government for such investigations for hazardous substances that are determined by the Government to be attributable to the ecosystem restoration features shall be included in total cost of construction of the ecosystem restoration features and cost 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.

B. The Non-Federal Sponsor may perform, or cause to be performed, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, or rights-of-way necessary solely for the construction, operation, and maintenance of the local service facilities. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this

paragraph shall be borne entirely by the Non-Federal Sponsors. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

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

D. The Government and the Non-Federal Sponsors shall determine whether to initiate construction, operation, and maintenance of the Project or a separable element of the Project, or, if already in construction, operation, and maintenance, whether to continue with construction, operation, and maintenance of the Project or a separable element of the Project, 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, and maintenance of the Project. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction, operation, and maintenance after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Department of the Army and the Non-Federal Sponsors, 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. The responsibility for costs of clean-up and response located on lands under the administrative jurisdiction of the USFWS shall be determined in accordance with the provisions of CERCLA. Such costs shall not be considered a part of the total cost of construction of the general navigation features or total cost of construction of the ecosystem restoration features. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsors' 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 Project. The Government shall have no obligation under this Agreement for the costs of any clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the local service facilities.

E. The Non-Federal Sponsors 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 D. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

F. To the maximum extent practicable, the Government and the Non-Federal Sponsors shall perform their responsibilities for the Project under this Agreement in a manner that will not cause liability to arise under CERCLA. Following notification in accordance with Article II.C. of this Agreement, as between the Department of the Army and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the ecosystem restoration features for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the ecosystem restoration features in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

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

If to the Non-Federal Sponsors:

Senior Project Manager
Columbia River Channel Improvement Project
c/o Port of Portland
PO Box 3529
Portland, OR 97208

If to the Government:

District Engineer
USAED, Portland
P.O. Box 2946
Portland, Oregon 97208-2946

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 - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey, and evaluation of historic properties incurred before the end of the period of construction, during a subsequent period of construction, or during the period of monitoring and adaptive management shall be included in the total cost of construction of the general navigation features or included in the total cost of construction of the ecosystem restoration features, as applicable, and shared in accordance with the provisions 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 or during the period of monitoring and adaptive management, shall be considered financial obligations for operation and maintenance of the general navigation features or ecosystem restoration features and shared in accordance with the provisions of this Agreement.

C. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in the total cost of construction of the general navigation features nor included in the total cost of construction of the ecosystem restoration features, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the construction of the general navigation features and ecosystem restoration features.

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

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

2. Any costs of archeological data recovery activities that exceed the one percent limit and are incurred after the period of construction, other than during a subsequent period of construction, shall be considered financial obligations for operation and maintenance of the general navigation features or of the ecosystem restoration features, as applicable, and shared in accordance with the provisions 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

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Oregon or by the Legislature of the State of Washington, where creating such an obligation would be inconsistent with the laws of the States of Oregon or Washington.

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

ARTICLE XXI - NON-LIABILITY OF OFFICERS AND EMPLOYEES

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

ARTICLE XXII - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsors have reviewed the provisions set forth in Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and understand that Section 902 establishes the maximum cost of the Authorized Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Authorized Project financial obligation, make a Authorized Project expenditure, or afford credit toward total cost of construction of the general navigation features or toward total cost of construction of the ecosystem restoration features for the value of any contribution provided by the Non-Federal Sponsors, if such obligation, expenditure, or credit would result in the total cost of construction

of the general navigation features and total cost of construction of the ecosystem restoration features plus the value of any contribution provided by the Non-Federal Sponsors in accordance with Article III of this Agreement exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$238,710,600.00, as calculated in accordance with ER 1105-2-100 using October 1, 2002 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended.

ARTICLE XXIII – O&M ACTIVITIES

A. The Government has the legal authority and responsibility for operation and maintenance of the general navigation features.

B. The Government, working with the Non-Federal Sponsors shall develop a Five-Year O&M Plan to identify proposed future fiscal year funding requirements for operation and maintenance of the general navigation features. The Five-Year O&M Plan shall be updated every year based on actual O&M activities for the general navigation features accomplished. The Government shall use the Five-Year O&M Plan for development of future fiscal year budget requests.

C. To aid in the development of annual scopes of work, the Government shall notify the Non-Federal Sponsors in writing, no later than 90 calendar days prior to the end of the then current fiscal year, of the amount of anticipated appropriations for accomplishment of O&M activities for the general navigation features for the next fiscal year. The Government working jointly with the Non-Federal Sponsors shall develop a preliminary scope of work, including an estimate of costs, for accomplishment of scheduled O&M activities for the general navigation features based on the anticipated appropriations for the upcoming fiscal year. The Government shall have final approval of the preliminary scope of work and estimate of costs.

D. No later than 30 calendar days following receipt of appropriations for that fiscal year, the Government shall notify the Non-Federal Sponsors of the actual funds appropriated for accomplishment of the O&M activities for the general navigation features. The Government working jointly with the Non-Federal Sponsors shall develop a final scope of work, including an estimate of costs, for accomplishment of O&M activities for the general navigation features. The Government shall have final approval of the final scope of work and estimate of costs for such O&M activities for the general navigation features to be accomplished for that fiscal year.

E. The Non-Federal Sponsors, in contracting for the performance of any O&M activities for the general navigation features under this Agreement, shall include provisions consistent with all applicable Federal laws and regulations.

F. The Non-Federal Sponsors shall not issue a solicitation for any contract for O&M activities for the general navigation features until the Government has approved the relevant plans and specifications. The Non-Federal Sponsors shall not award a contract, execute a

contract modification, issue a change order, or resolve a contract claim without the prior written approval of the Government.

G. The Government shall review all plans and specifications, contract modifications, change orders, and contract claims submitted by the Non-Federal Sponsors, and shall advise the Non-Federal Sponsors in writing of the results of its review.

H. The Government shall inspect all O&M activities for the general navigation features accomplished by the Non-Federal Sponsors under this Agreement to ensure that such work is accomplished in accordance with the approved final scopes of work, designs, and plans and specifications.

I. Not later than 90 days after the completion of the O&M activities for the general navigation features performed that fiscal year, the Non-Federal Sponsors shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of the O&M activities for the general navigation features performed that fiscal year and determine the reimbursement. Upon receipt of such documents the Government shall conduct an accounting for the O&M activities for the general navigation features performed that fiscal year, to determine costs eligible for reimbursement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

J. Subject to the limitations in this Article and Articles VIII.1.A.2. and VIII.1.A.3. of this Agreement and subject to the availability of funds, the Government shall reimburse the Non-Federal Sponsors an amount equal to the actual costs for accomplishment of O&M activities for the general navigation features performed that fiscal year or the actual fiscal year appropriations identified for O&M activities for the general navigation features, whichever is less. The Government shall not reimburse the Non-Federal Sponsors for any costs which exceed the actual fiscal year appropriations for O&M activities for the general navigation features, nor shall the Government be obligated to seek any such additional appropriations from Congress.

K. No reimbursement shall be made for any O&M activities for the general navigation features which do not, in the judgment of the Government, conform to approved plans and specifications, contract modifications, change orders, and all applicable Federal laws and regulations.

L. The amount of reimbursement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the O&M activities for the general navigation features are completed and the time that the reimbursement is afforded.

M. No costs, whether approved by the Government or otherwise, incurred by the Non-Federal Sponsors for performance of O&M activities for the general navigation features can be used as a credit against the Non-Federal Sponsors' required contributions for construction of the Project.

N. The Government and the Non-Federal Sponsors may elect to enter into further agreements to reflect details regarding the accomplishment of O&M activities for the general navigation features by the Non-Federal Sponsors. Any such agreements shall be consistent with the provisions of this Agreement. In the event of a conflict, the provisions of this Agreement shall govern.

O. The Government and the Non-Federal Sponsors shall consult with each other in accordance with Article V of this Agreement in an effort to ensure efficient accomplishment of O&M activities for the general navigation features.

ARTICLE XXIV – MONITORING AND ADAPTIVE MANAGEMENT

A. In consultation with the Non-Federal Sponsors, the Government shall prepare a detailed monitoring and adaptive management plan in coordination with other concerned agencies. The monitoring and adaptive management plan shall include, but not be limited to, the biological, topographic, hydrological, bathymetric, and chemical conditions to be monitored and discussion of how these parameters relate to achieving the desired project outcomes; methods for measuring those attributes; monitoring frequency and duration; preparation and distribution of monitoring reports; adaptive management techniques that would be used to adjust the project; estimated monitoring and adaptive management costs; and criteria for likely success of the monitoring and adaptive management sites with respect to both physical and biological functions. This detailed monitoring and adaptive management plan shall be developed in accordance with the process prescribed in Article V.C. of this Agreement.

B. As of the effective date of this Agreement, the costs of monitoring and adaptive management are projected to be \$700,000. Monitoring and adaptive management activities shall be performed during the period of monitoring and adaptive management, as defined in Article I.AA. of this Agreement.

C. Monitoring and adaptive management costs are limited to \$700,000, as adjusted for inflation in accordance with Corps regulations and policy. The Government and the Non-Federal Sponsors will manage monitoring and adaptive management costs through the Project Cooperation Team such that the cost limit for monitoring and adaptive management will not be exceeded.

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).

DEPARTMENT OF THE ARMY

BY: Signed
 Charles S. Markham
 Lieutenant Colonel, Corps of Engineers
 Acting Commander

DATE: 23 June 04

THE PORT OF PORTLAND

BY: Signed
William Wyatt
Executive Director

DATE: 23 June 04

THE PORT OF VANCOUVER

BY: Signed
Lawrance Paulson
Executive Director

DATE: 23 June 04

THE PORT OF KALAMA

BY: Signed
Lanny Cawley
Executive Director

DATE: 23 June 04

THE PORT OF LONGVIEW

BY: Signed
Kenneth O'Hollaren
Executive Director

DATE: 23 June 04

THE PORT OF WOODLAND

BY: Signed
David Ripp
Manager

DATE: 23 June 04

CERTIFICATE OF AUTHORITY

I, Carla L. Kelley, do hereby certify that I am the principal legal officer of the Port of Portland, that the Port of Portland 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 Port of Portland in connection with the Project for Navigation Improvements of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, 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 Port of Portland have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 21st day of June 2004.

FOR THE PORT OF PORTLAND:

Signed
Name: Carla L. Kelley
Title: General Counsel

CERTIFICATE OF AUTHORITY

I, Alicia L. Lowe, do hereby certify that I am the principal legal officer of the Port of Vancouver, that the Port of Vancouver 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 Port of Vancouver in connection with the Project for Navigation Improvements of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, 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 Port of Vancouver have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 21st day of June 2004.

FOR THE PORT OF VANCOUVER:

Signed
Name: Alicia L. Lowe
Title: Attorney

CERTIFICATE OF AUTHORITY

I, M. Jamie Imboden, do hereby certify that I am the principal legal officer of the Port of Kalama, that the Port of Kalama 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 Port of Kalama in connection with the Project for Navigation Improvements of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, 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 Port of Kalama have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 21st day of June 2004.

FOR THE PORT OF KALAMA:

Signed
Name: M. Jamie Imboden
Title: Attorney

CERTIFICATE OF AUTHORITY

I, D.S. Donaldson, do hereby certify that I am the principal legal officer of the Port of Longview, that the Port of Longview 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 Port of Longview in connection with the Project for Navigation Improvements of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, 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 Port of Longview have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
21st day of June 2004.

FOR THE PORT OF LONGVIEW:

Signed
Name: D. S. Donaldson
Title: Counsel

CERTIFICATE OF AUTHORITY

I, Earl W. Jackson, do hereby certify that I am the principal legal officer of the Port of Woodland, that the Port of Woodland 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 Port of Woodland in connection with the Project for Navigation Improvements of the Columbia and Lower Willamette Rivers Federal Navigation Channel, Oregon and Washington, 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 Port of Woodland have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 21st day of June 2004.

FOR THE PORT OF WOODLAND:

Signed
Name: Earl W. Jackson
Title: Attorney

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.

FOR THE PORT OF PORTLAND:

Signed
William Wyatt
Executive Director

DATE: 21 June 04

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.

FOR THE PORT OF VANCOUVER:

Signed
Lawrance Paulson
Executive Director

DATE: 21 June 04

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.

FOR THE PORT OF KALAMA:

Signed
Lanny Cawley
Executive Director

DATE: 21 June 04

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.

FOR THE PORT OF LONGVIEW:

Signed
Kenneth O'Hollaren
Executive Director

DATE: 21 June 04

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.

FOR THE PORT OF WOODLAND:

Signed
David Ripp
Manager

DATE: 21 June 04