

PROJECT COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE STATE OF NORTH CAROLINA

FOR

CONSTRUCTION OF THE

MOREHEAD CITY HARBOR NAVIGATION PROJECT

THIS AGREEMENT is entered into this 15th day of September, 1993, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the STATE OF NORTH CAROLINA (hereinafter referred to as the "State"), acting by and through the North Carolina Department of Environment, Health, and Natural Resources.

WITNESSETH THAT:

WHEREAS, the authority for construction of the Morehead City Navigation Project, Morehead City, North Carolina, (hereinafter referred to as the "Project") is contained in the Water Resources Development Act of 1992, Public Law 102-580;

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 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, construction of the Project is generally described in the report entitled Morehead City Harbor Improvement, Morehead City, North Carolina, Feasibility Report and Environmental Assessment, dated June 1990, and the Chief of Engineers Report, dated 21 May 1991;

WHEREAS, the State has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties 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 all other features as generally described in the Morehead City Harbor Improvement, Morehead City, North Carolina, Feasibility Report and Environmental Assessment, dated June 1990, and the Chief of Engineers Report, dated 21 May 1991.

b. The term "total project cost" shall mean the total cost of construction of the Project as described in Article I.a. of this Agreement.

c. The term "general navigation features of the Project" shall mean the following Project features assigned to commercial navigation:

1. Deepening the turning basin from 40 feet to 45 feet and widening the turning basin from the present diameter of 1,200 feet to 1,350 feet;

2. Deepening the east leg of the harbor along berths 2 and 3 from 40 feet to 45 feet;

3. Deepening the connecting channels from 40 feet to 45 feet;

4. Deepening the cutoff channel from 40 feet to 45 feet;

5. Deepening the ocean bar channel from 42 feet to 47 feet (2 additional feet for wave action). Widening the northernmost part of the ocean bar channel by adding channel wideners and a shoal intercept shelf. Construction of a 4,300 foot extension to Range A to reach the offshore contour corresponding to the new 47-foot depth.

6. Assumption of maintenance of the east leg extension and the northwest leg.

d. The term "total cost of construction of general navigation features assigned to commercial navigation" shall mean all costs incurred by the State and the Government directly related to construction of the general navigation features of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after 1 December 1987; costs of applicable engineering and design; actual construction costs, including costs of relocations not performed by or on behalf of the State; supervision and administration costs; and costs of contract dispute settlements or awards, but shall not

include the value of lands, easements, rights-of-way, and suitable borrow and excavated dredged material disposal areas, relocations performed by or on behalf of the State, non-Federal dredging of public or private channels and berthing areas, any non-Federal bridge alteration costs, aids to navigation, nor any costs for operation, maintenance, repair, replacement or rehabilitation.

e. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Contracting Officer certifies in writing to the State that construction of the general navigation features of the Project is complete. The Contracting Officer shall furnish to the State copies of the Government's Written Notice of Acceptance of Completed Work furnished to the contractor(s) for all contracts for the Project.

f. The term "Contracting Officer" shall mean the U.S. Army Engineer or the Principal Contracting Authority Responsible for Contracting for the Wilmington District.

g. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

h. The term "relocations" shall mean the preparation of all plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other public facilities, structures and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

i. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

j. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way, including suitable borrow and excavated or dredged material disposal areas, by eminent domain.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the

State and appropriated by the Congress of the United States, shall expeditiously construct the general navigation features of the Project (including alterations or relocations of highway and railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the State shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction of the Project can proceed, the State must concur in writing with issuance of the invitation for bids for the first construction contract. To the extent possible, the State will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the State, but award of contracts and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government. Notwithstanding any other provision of this Agreement, if the award of any contract for construction of the Project would, at the time of award, result in the total obligations for construction of the Project exceeding \$11,400,000, the award of that contract and subsequent contracts shall be deferred until such time as the Government and the State agree to resume construction of the Project.

b. The Government shall operate and maintain, at no cost to the State, the general navigation features of the Project assigned to commercial navigation.

c. The State shall provide and maintain, at its own expense, any features associated with the Project other than those for general navigation, including dredged depths commensurate with those in related general navigation features in berthing areas and ~~local access channels serving the general navigation features.~~

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d. The State shall provide to the Government all lands, easements, and rights-of-way, including suitable borrow and excavated or dredged material disposal areas, and perform, or assure performance of, all alterations or relocations of facilities and utilities (except alterations or relocations of highway bridges and railroad bridges and approaches thereto), determined by the Government to be necessary for construction, operation, maintenance, repair, replacement, and rehabilitation of the Project.

~~e. The State shall provide, during the period of construction, a cash contribution equal to 25 percent of the total cost of construction of the general navigation features assigned to commercial navigation.~~

f. As further specified in Article VI hereof, the State shall

repay with interest, over a period not to exceed 30 years following completion of the period of construction of the Project, an additional 0 to 10 percent of the total cost of construction of general navigation features assigned to commercial navigation, depending on the value of the credit, as calculated under Article IV hereof, of items pursuant to Article II.d. If the credit allowed for such items is less than 10 percent of the total cost of construction of the general navigation features, the State shall repay a percentage of said total cost equal to the difference between 10 percent of the total cost and the percentage of the total cost represented by the value of such items. If the credit allowed is equal to or greater than 10 percent of said total cost, the State shall not be required to repay any additional percentage of said assigned cost.

g. No Federal funds shall be used to meet the State's share of project costs under this agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

h. The State shall prohibit erection of any structures that would encroach on the authorized general navigation features of the Project.

ARTICLE III - LANDS, FACILITIES AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The State shall furnish to the Government all lands, easements and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the State's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The State shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

c. Upon notification from the Government, the State shall accomplish or arrange for accomplishment, at no cost to the Government, all alterations and relocations of highways, railroads, storm drains, and other facilities, structures, and improvements, determined by the Government to be necessary for construction,

operation, or maintenance of the general navigation features of the Project.

d. Upon notification from the Government, the State shall perform or assure performance of all necessary alterations or relocations of pipelines, cables, and other utilities. Nothing herein shall be deemed to affect the ability of the State to seek compensation from other non-Federal entities for costs it incurs under this paragraph.

e. The State shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies 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 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The State shall not receive any credit for lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided for another Federal project nor shall the value thereof be included in total project costs. The value of the lands, easements and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be credited toward the additional 10 percent of total costs the State must repay pursuant to Article II.f. will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the State as of the date the first construction contract for the general navigation features of the Project is awarded, the credit shall be the fair market value of the interest provided to the Government at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the State, which has been prepared by a qualified appraiser who is acceptable to both the State and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements or rights-of-way are to be acquired by the State after the date of award of the first construction contract for the general navigation features of the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1 of this Agreement. If the State pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the State has secured prior written approval from the Government of its offer

to purchase such interest.

3. If the State acquires more lands, easements or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited towards the State's share.

4. Credit for lands, easements and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed, or which occur after the date this Agreement is signed, will be based on court awards, or on stipulated settlements that have received prior written approval of the Government.

5. Credit for lands, easements or rights-of-way acquired by the State within a five-year period preceding the date this Agreement is signed, or any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., 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 the obligations under this Agreement.

b. The costs of alterations or relocations of facilities or utilities incurred by the State that will be credited pursuant to Article II.f. of this Agreement shall be that portion of the actual costs as determined below, and approved by the Government:

1. Highways: Only that portion of the cost as would be necessary to construct substitute highways to the design standard that the State of North Carolina would use in constructing a new highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities: Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocations if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited to the State's share.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication, the State and the Government shall, prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims, and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total project costs. The Project Coordination Team shall make recommendations as it deems are warranted to the Contracting Officer, including suggestions to avoid potential sources of dispute.

c. The Contracting Officer shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement and rehabilitation of the Project. The Contracting Officer, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject or modify the recommendations of such representatives.

ARTICLE VI - METHOD OF PAYMENT

a. The State shall provide, during the period of construction, the percentages of the total cost of construction of general navigation features assigned to commercial navigation specified in Article II.e. of this Agreement. The total costs of construction of the general navigation features assigned to commercial navigation are currently estimated to be \$10,780,000. In order to meet its share, the State must provide a cash contribution currently estimated to be \$2,680,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the State.

b. The State shall provide the required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the State by 30 June of each year of the estimated funds that will be required from the State to meet its share of total project costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the award of the first construction contract, the Government shall notify the State of the State's share of the total project costs required for the first year of construction, including the State's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 15 calendar days thereafter, the State shall verify to the satisfaction of the Government that the State has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the State.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 days prior to the beginning of the fiscal year, notify the State of the State's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2 of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the State, the Government shall so notify the State, and the State, no later than 30 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow account provided by the State such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

d. Upon completion of the general navigation features of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total cost of construction of the general navigation features assigned to commercial navigation and tender to the State a final accounting of the State's share of Project costs. In the event the total contribution by the State is less than its initial required share, the State shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its initial required share of Project costs.

e. In the event the State has made excess cash contributions which results in the State having provided more than its initial required share of Project costs, the Government shall first credit the excess to the additional amount the State must repay pursuant to Article II.f. of this Agreement. In the event the excess cash contribution exceeds the additional amount the State must repay pursuant to Article II.f., the Government shall, no later than 90

calendar days after final accounting is complete, subject to the availability of appropriations, return said excess to the State. In the event existing funds are not available to repay the State for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the State.

f. The State shall repay the additional amount required pursuant to Article II.f. of this Agreement, reduced by any excess cash contribution made during the period of construction, in equal annual installments over a period of not more than 30 years from the completion of the period of construction of the general navigation features. Such repayment shall include interest at a rate to 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 repayment period, during the month preceding the fiscal year in which costs for construction of the Project are first incurred, or, in the case of recalculating, the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury at five-year intervals. Nothing herein shall preclude the State from repaying this additional amount in full upon receipt of the final accounting. Should this full repayment be made within 90 days of the final accounting, there shall be no charges for interest or transaction costs.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION

a. The State shall operate, maintain, repair, replace, and rehabilitate all project features other than the general navigation features assigned to commercial navigation at no cost to the Government.

b. The Government shall operate and maintain the general navigation features assigned to commercial navigation at no cost to the State.

c. The State hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of

inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If the inspection shows that the State for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the State. If the State persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the State owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation of the Project by the Government shall operate to relieve the State of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this agreement.

ARTICLE IX - RELEASE OF CLAIMS

The State shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement or rehabilitation of the Project, except for damages due to the fault or negligence of the Government or its contractors. As provided in 42 U.S.C. § 1962d-5b(a), this provision does not obligate future State legislative appropriations for such performance and payment.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the State shall keep books, records, documents and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the State shall maintain such books, records, documents and other evidence for a minimum of three years after completion of construction of the Project and resolution of all claims arising therefrom, and shall make available at their offices at reasonable times such books, records, documents and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the State's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the State agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352 and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The State warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the State fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the State is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) 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 other non-Federal interests in connection with the Project. Any delinquent payment 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.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State. After 60 calendar days, either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the General Assembly of the State of North Carolina.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the State: Director
 State of North Carolina Department of
 Environment, Health, and Natural
 Resources
 Division of Water Resources
 512 North Salisbury Street
 P. O. Box 27687
 Raleigh, North Carolina 27611

If to the Government: District Engineer

U.S. Army Engineer District, Wilmington
P.O. Box 1890
Wilmington, NC 28402

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 such time as it is personally delivered or seven days after it is mailed, as the case may be.

ARTICLE XIX - 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 XX - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the State shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the State to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the State which are properly allowable and allocable to performance of any such environmental investigations shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired for the Project contain any hazardous substances regulated under CERCLA, the State and the Government shall provide prompt notice to each other and the State shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the State shall determine whether to

initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the State determine to proceed or continue with construction after considering any liability that may arise under CERCLA, as between the Government and the State, the State shall be responsible for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the State fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The State and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear all necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph c of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The State shall perform its responsibilities under this Agreement, including the dredging of berthing areas or access channels, and operation and maintenance of any required disposal facilities, in a manner so that liability will not arise under CERCLA.

ARTICLE XXI - SECTION 902 PROJECT COST LIMITS

The State has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes a maximum construction cost for the project. For purposes of this Agreement, the Section 902 cost limit is \$13,680,000 as calculated on April 3, 1992. This amount was calculated using procedures set forth in Appendix P of ER 1105-2-100. It shall be adjusted to allow for appropriate increases for inflation and changes in the project cost as provided for in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE STATE OF NORTH CAROLINA

BY: *G. Edward Dickey*
G. Edward Dickey
Acting Assistant Secretary
of the Army (Civil Works)

BY: *Franklin B. Lewis*

DATE: *9/15/93*

DATE: *1/20/93*

CERTIFICATE OF AUTHORITY

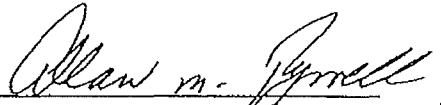
I, Daniel C. Oakley, do hereby certify that I am an Assistant Attorney General for the State of North Carolina, that the State of North Carolina is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of North Carolina, in connection with the Morehead City Harbor Navigation Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the person who has executed this Agreement on behalf of the State of North Carolina has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certificate this 19th day of August, 1993.

Daniel C. Oakley
Special Deputy Attorney General
State of North Carolina

CERTIFICATION OF LEGAL REVIEW

The Project Cooperation Agreement for the Morehead City Harbor Navigation Project has been fully reviewed by the Office of Counsel, USAED, Wilmington.


Allan M. Tyrrell 16 August 1993
District Counsel