

LOCAL COOPERATION AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE LITTLE ROCK PORT AUTHORITY, LITTLE ROCK, ARKANSAS

FOR THE CONSTRUCTION OF A SLACKWATER HARBOR

THIS AGREEMENT, entered into this 3rd day of September 1986, by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, and the LITTLE ROCK PORT AUTHORITY, Little Rock, Arkansas, hereinafter called the Local Sponsor,

WITNESSETH:

THAT WHEREAS, a river and harbor improvement project at the Port of Little Rock involving construction of a slackwater harbor and related facilities, including a harbor channel extending 4,800 feet landward from the right bank of the Arkansas River at Navigation Mile 111.5, hereinafter called the Project, has been recommended by the Chief of Engineers and approved by the Assistant Secretary of the Army (Civil Works), in accordance with authority contained in Section 107 of the River and Harbor Act of 1960, as amended (33 USC 577), and authority contained in Title 33 USC 560; and

WHEREAS, the general plan and description of the Project is set out in an October 1985 Detailed Project Report prepared by the Little Rock District, Corps of Engineers, as supplemented in April 1986, copies of which have been furnished to the Local Sponsor; and

WHEREAS, said Section 107, as amended, requires local interests to provide without cost to the United States all necessary lands, easements, and rights-of-way for any project constructed thereunder and further provides for additional local cooperation including the sharing of project costs by non-Federal interests to the extent deemed appropriate by the Chief of Engineers in view of any special or local nature of project benefits; and

WHEREAS, required elements of local cooperation, including cost sharing, have been established in accordance with said Section 107 and other applicable statutes and current policies, which elements are hereinafter set out in detail; and

WHEREAS, the Local Sponsor hereby represents that it has the authority and financial capability to provide said local cooperation including bearing costs in excess of the approved Federal project and the Federal monetary limitation imposed by Section 107, as amended. Provided, however, that in no instance shall Federal funds be expended or any features of work undertaken by this Agreement, other than general navigation facilities assigned to commercial navigation as defined herein.

NOW, THEREFORE, in consideration of the foregoing and the benefits which shall accrue to the Local Sponsor and the general public by construction of the Project, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Agreement:

A. The term "general navigation facilities assigned to commercial navigation" shall mean the dredged 130-foot channel 4,800 feet landward including

the 500-foot diameter turning basin, and shall also include one-half of the riprap for bank protection.

B. The term "total cost of construction of general navigation facilities assigned to commercial navigation" shall mean all costs incurred by the Local Sponsor 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, actual construction costs, costs of applicable engineering and design, and supervision and administrative costs. The total cost of construction of general navigation facilities assigned to commercial navigation shall not include the value of lands, easements, rights-of-way, relocations, the design and construction of dredged material disposal areas, non-Federal dredging of public or private channels and berthing areas, such costs to be borne exclusively by the Local Sponsor.

C. The term "Contracting Officer" shall mean the Commander, U.S. Army Engineer District, Little Rock, or his designee.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. As further specified in Article III hereof, the Local Sponsor shall provide all necessary interests in property and perform all necessary utility and facility alterations and relocations.

B. The Local Sponsor shall provide a cash contribution currently estimated at \$1,692,000.00, at the outset of construction for the following items:

1. As further specified in Article V hereof, the Local Sponsor shall provide prior to the start of construction a cash contribution equal to 20 percent of the Federal portion of construction of the general navigation

facilities assigned to commercial navigation. The total cost is currently estimated to be \$1,470,000.00, and the 20 percent cash contribution is currently estimated at \$294,000.00.

2. The Local Sponsor shall provide to the Government, prior to the start of construction, a cash contribution presently estimated to be \$1,384,000.00, for the following items of work to be performed by the Government which are not general navigation facilities assigned to commercial navigation:

- a. Dredging and landfill.
- b. One-half of the cost of the riprap for bank protection.
- c. Retention dikes.

3. The Local Sponsor shall provide a cash payment of costs assigned to land enhancement benefits resulting from disposal of dredged material, such cost currently estimated at \$14,000.00.

C. The Government, using funds provided by the Local Sponsor as hereinafter set out, along with funds appropriated by Congress, shall construct the harbor channel, the turning basin, and related structures, including the retaining dikes for the dredged material disposal area, applying those procedures usually followed or applied in Federal projects pursuant to Federal laws, regulations, and policies. Award of the project construction contract and related administrative actions shall be within the exclusive control of the Contracting Officer or his representative. ~~The Contracting Officer shall notify the Local Sponsor in writing at least 30 days in advance of the scheduled advertising date for the construction contract.~~

D. The Government has a Federal monetary limitation of Two Million Dollars (\$2,000,000), which includes the Government's pre-authorization cost, to expend on the general navigation facilities assigned to commercial navigation.

Any costs in excess of this \$2,000,000 limit for the general navigation facilities must be borne by the Local Sponsor. In addition, in no instance shall Federal funds be expended on any features other than general navigation features as defined in this Agreement. All costs other than those for the general navigation facilities shall be borne exclusively by the Local Sponsor. The Government shall use its best efforts to ensure that the costs to be paid by the Local Sponsor do not exceed the estimates set forth in this Agreement.

ARTICLE III - LANDS, FACILITIES, AND RELOCATION ASSISTANCE

A. The Local Sponsor shall provide without cost to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Chief of Engineers to be necessary for construction and subsequent maintenance of the Project. Prior to the award of any construction contract, the Local Sponsor shall convey to the Government all interests in real estate required for construction, operation, and maintenance of the Project, together with evidence supporting the Local Sponsor's legal authority to convey such interests.

B. The Local Sponsor shall accomplish without cost to the Government all alterations and relocations of buildings, streets, storm drains, utilities, roads, highways, bridges, and other structures or improvements made necessary by construction of the Project.

C. The Local Sponsor shall continue to provide and maintain without cost to the Government adequate public transfer facilities open to all on equal terms in accordance with plans approved by the Contracting Officer;

and shall provide, prior to construction, and without cost to the Government, a master plan for the entire port facility, including this Project.

D. The Local Sponsor shall retain fee ownership of project lands developed for port operation during the economic life of the Project, regulate the use, growth, and development of the harbor facilities, and limit occupancy of the area to activities dependent upon water transportation.

E. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, approved January 2, 1971, 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 - PHASING AND MANAGEMENT

A. To provide for consistent and effective communication between the Local Sponsor and the Government, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project.

B. The representatives appointed above shall meet as necessary as the Project is implemented and shall make such recommendations as they deem warranted to the Contracting Officer.

C. The Contracting Officer shall consider the recommendations of said representatives in all matters pertaining to the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has

complete discretion to accept, reject, or modify the recommendations of the representatives.]

ARTICLE V - METHOD OF PAYMENT

A. The Local Sponsor shall provide to the Government ~~and to the start~~ of project construction a cash contribution, as calculated by the Contracting Officer in accordance with the Detailed Project Report as supplemented, which shall cover both its share of the costs of the general navigation facilities as well as the reimbursements to be made to the Government for work done on facilities not assigned to general navigation. Such cash contribution is presently estimated at \$1,692,000.00. The Local Sponsor shall make those funds available to the Government through deposit of cash in an escrow account at a bank acceptable to the Government under the terms of a written agreement approved by the Contracting Officer. No later than 10 days after receipt of the 30-day written notice specified in Article II hereof, the Local Sponsor shall verify to the satisfaction of the Contracting Officer that sufficient funds to meet its share of construction are available to the Government in the escrow account.

B. The cost sharing method set out in the Detailed Project Report as supplemented will be applied by the Contracting Officer to the amount of the successful construction contract bid in order to arrive at an updated estimate of the Local Sponsor's share of project costs. Prior to award of the contract, if the updated estimate exceeds the balance of the escrow account, the Local Sponsor shall within 15 days of demand deposit an additional sum in the escrow account in an amount sufficient to meet the total updated estimate.

C. During the period of project construction, the Government will draw on the escrow account for such sums as it deems necessary to cover contractual and in-house fiscal obligations as they occur.

D. Upon completion of the Project and resolution of all contract claims and appeals, the Government shall compute the total cost of construction and tender to the Local Sponsor a final accounting of its share of project costs calculated in accordance with the method set out in the Detailed Project Report as supplemented. In the event that its final share is more than its prior contributions, the Local Sponsor shall pay to the Government within 30 calendar days after receipt of written notice the sum required to meet its final share. In the event the Local Sponsor has deposited funds in the escrow account in excess of its share, such excess will be returned to it in accordance with the terms of the escrow agreement.

ARTICLE VI - 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 with the other party.

ARTICLE VII - PROJECT OPERATION AND MAINTENANCE

A. The Government shall operate and maintain the general navigation features of the Project consisting of the harbor channel and turning basin, including bank protection works, but exclusive of berthing areas, terminal facilities, and related project features.

B. The Local Sponsor shall operate and maintain: the berthing areas at a width of not less than 50 feet measured from the Federal navigation channel; the terminal facilities; and related project features at depths commensurate with navigation requirements.

C. The Local Sponsor 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. If such inspection shows that the Local Sponsor for any reason is failing to complete, operate, repair, and maintain the Project as constructed by the Government in accordance with this Agreement, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have the further right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, repairing, or maintaining the non-Federal portion of the Project. No completion, operation, repair, or maintenance by the Government shall operate to relieve the Local Sponsor 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 VIII - CLAIMS AND DAMAGES

The Local Sponsor shall hold and save the United States free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the United States or its contractors.

ARTICLE IX - MAINTENANCE OF RECORDS

The Government and the Local Sponsor 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, and the Government shall furnish to the Local Sponsor monthly progress reports during the period of project construction. The Government and the Local Sponsor 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 X - FEDERAL AND STATE LAWS

A. In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations.

B. The Local Sponsor agrees to comply with 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, in connection with the construction, operation, and maintenance of the Project.

C. The Local Sponsor shall establish regulations prohibiting discharge of pollutants into the waters of the improved channels by users thereof, which regulations shall be in accordance with applicable laws or regulations of Federal, State, and local authorities responsible for pollution prevention control.

D. The provisions of Section 221 of the River and Harbor Act of 1970 (Public Law 91-611) shall apply to this Agreement.

ARTICLE XI - 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 XII - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor 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 Local Sponsor 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 XIII - 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 XIV - TERMINATION AND SUSPENSION

A. If at any time the Local Sponsor fails to make the payments required under this Agreement, or there are insufficient funds in the escrow account to meet progress payments, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Secretary determines that continuation of work on the Project is in the

interest of the United States. Any action taken by the Secretary under this Article shall not prejudice other rights the United States has with respect to the enforcement of this Agreement. 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 beginning of each additional 3-month period if the delinquency exceeds 3 months.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet expenditures for the then-current fiscal year, the Government shall so notify the Local Sponsor. After 60 days either party may elect without penalty to terminate the Agreement or to suspend performance thereunder, and the parties shall proceed to wind up their activities relating to the Project and proceed to a final accounting in accordance with Article V, subparagraph D.

C. Notwithstanding any other provision of this Agreement, if the award of the contract for construction of the work to be performed under this Agreement would result in the total obligations and expenditures of the Local Sponsor exceeding its presently estimated total costs of \$1,692,000, either party may elect to defer award of the contract until such time as both parties agree to initiate construction of the Project; however, once the parties have agreed to award the construction contract, the Local Sponsor shall be obligated to provide its share of costs in accordance with the provisions of this Agreement.

D. If at any time subsequent to award of the construction contract the Local Sponsor notifies the Contracting Officer that excess costs over and above those in the original bid which are due to overruns or changes to the Project not previously within the scope of the Project have reached the point

where the Local Sponsor will be unable to pay its share of such costs, the Contracting Officer shall suspend work on the Project unless the Secretary determines that continuation of work is in the interest of the United States. In making such determination, the Secretary shall take into consideration, among other things, the sponsor's desires and ability to pay. No penalties shall be imposed on the Local Sponsor for requesting this action, but the Local Sponsor shall remain obligated to provide its share of costs in accordance with the provisions of this Agreement.

ARTICLE XV - STATEMENT OF INTENT

The Local Sponsor hereby affirms its willingness and capability to meet its cost-sharing obligations for construction of this Project as set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE UNITED STATES OF AMERICA

BY Robert W. Whitehead

FOR THE DEPARTMENT OF THE ARMY

DATE: 3 Sept 1986

THE LITTLE ROCK PORT AUTHORITY

BY Frank Brown Jr
Chairman, Little Rock Port
Authority

DATE: September 3, 1986