

RESOLUTION OF THE CITY COUNCIL

No. 672

Approved October 13, 2000

WHEREAS, the City of Providence is the owner of the India Point Bridge.

WHEREAS, said bridge was originally designed for railway travel.

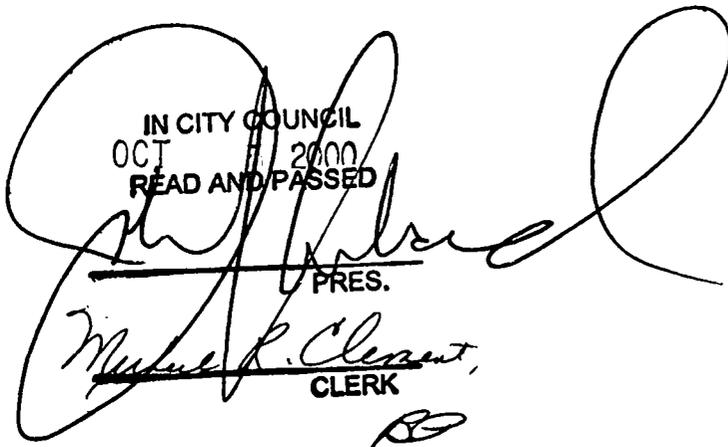
WHEREAS, said bridge is no longer utilized for such travel.

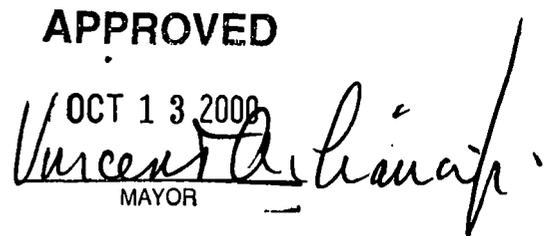
WHEREAS, said bridge presents a hazard for navigation.

WHEREAS, the City in conjunction with the federal government is planning the dismantling and removal of said bridge.

WHEREAS, as part of that Agreement between the City of Providence and the United States of America, a Project Cooperation Agreement and certain other documents must be executed.

NOW THEREFORE BE IT RESOLVED, that His Honor the Mayor and the City Solicitor are hereby authorized to execute a memorandum of agreement substantially in the form attached hereto and such other documents as may be necessary and prudent to effect said dismantling and removal.

IN CITY COUNCIL
OCT 13 2000
READ AND PASSED

PRES.
Michael P. Clement,
CLERK
RC

APPROVED
OCT 13 2000

MAYOR

IN CITY COUNCIL
SEP. 7 2000

FIRST READING
REFERRED TO COMMITTEE ON
PUBLIC WORKS

Michael A. Clement
CLERK

City Property

THE COMMITTEE ON
CITY PROPERTY & Public Works
Approves Passage of
The Within Resolution, as amended

Claire E. Bestwick
Clerk

Sept. 20, 2000

Clarkin (By Request)

~~DRAFT PCA~~
~~7 November 1999~~

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF PROVIDENCE, RHODE ISLAND
FOR REMOVAL AND DISPOSAL OF
THE CENTER SPAN OF THE INDIA POINT RAILROAD BRIDGE
SPANNING THE SEEKONK RIVER

THIS AGREEMENT is entered into this _____ day of _____, ~~199~~—2000, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the CITY OF PROVIDENCE, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter the "Non-Federal Sponsor"), represented by the Mayor

WHEREAS, removal and disposal of the center span of the India Point Railroad Bridge spanning the Seekonk River in the City of Providence, Rhode Island was authorized by Section 1166(c) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the removal and disposal of the center span of the India Point Railroad Bridge spanning the Seekonk River (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 301(a)(13) of the Water Resources Development Act of 1996, Public Law 104-303, authorized project modification in accordance with the Post Authorization Change Report, approved August ~~??~~, 1994;

WHEREAS, Section 1166(c) 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, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide 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, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;~~

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the ~~removal and disposal of the center span of the India Point Railroad Bridge spanning the Seekonk River~~ Project and sets forth procedures for adjusting such maximum amount; and

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

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the demolition, removal and disposal of the movable span, associated piles and timber fender system of the movable span, and any debris located within the footprint of the timber fender system of the movable span~~center span~~ of the India Point Bridge spanning the Seekonk River in the City of Providence, Rhode Island as generally described in the Post Authorization Change Report, dated February, 1994 and approved by Assistant Secretary of the Army (Civil Works) on August ??, 1994.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; 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 Article IX 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.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.D.21, and II.D.3, of this

Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the New England District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

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

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided 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 removal of the affected facility or part thereof.

H. 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.

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

J. The term "betterment" shall mean a change in the design and construction of an element of the Project 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.

K. The term "value of salvage" shall mean revenue derived from the sale of scrap steel removed as part of the Project and creditable toward the Non-Federal Sponsor's contribution in accordance with Article II.D. of this Agreement.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws,

regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, 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.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$1,400,000.00, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

4. As of the effective date of this Agreement, \$ 900,000 of Federal funds have been appropriated for the Project. The Government makes no commitment to budget for additional funds for the Federal share of total project costs. 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 Sponsor of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend construction of the Project or terminate this Agreement in accordance with Article XIII.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by

the Non-Federal Sponsor pursuant to Article II.D. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

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

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously.

D. The Non-Federal Sponsor shall contribute 50 percent of total project costs in accordance with the provisions of this paragraph.

~~1. The Non-Federal Sponsor shall provide a minimum cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.~~

~~2. In accordance with Article III of this Agreement, the Non-Federal Sponsor 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 Sponsor must provide for the construction of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction of the Project.~~

~~32. Revenue derived from salvage of steel shall be creditable toward the Non-Federal Sponsor's contribution.~~ 4. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1., ~~D.2.~~ and D.34. of this Article and Articles V, IX, and XIV.A. of this Agreement will be less than 50 percent of total project costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 50 percent of total project costs.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions under paragraph D.1. and D.4. of this Article and Articles V, IX, and XIV.A. of this Agreement has exceeded 50 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 50 percent of total project costs.

4. As authorized by Section 1166(c) of the Water Resources Development Act of 1986, Public Law 99-662, the Government may afford credit for the value of salvage. As of the effective date of this Agreement, the estimated value of salvage is \$. To afford any such credit, the Government, as further specified in Article VI.B. of this Agreement, shall apply

38,500.

the actual amount of credit toward the cash contribution required by paragraph D.2. of this Article. The actual amount of credit shall not exceed the actual value of salvage. 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. The amount of credit for which the Non-Federal Sponsor may be eligible pursuant to this Agreement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the value of salvage is determined and the time that the credit is afforded. The Non-Federal Sponsor shall not receive credit for any amount in excess of the additional cash contribution required by paragraph D.2. of this Article, nor shall the Non-Federal Sponsor be entitled to any reimbursement for any excess credit amount.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, IX, and XIV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

~~H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.~~

H. The Non-Federal Sponsor shall transfer ownership of the India Point Bridge to the Government, at no cost to the Government, prior to the Government's issuance of plans and specifications for the first construction contract.

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

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction of the Project, including

those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction of the Project. 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, 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 proper disposal of dredged or excavated material 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.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

Improvements to Address
McMullan to call
pay for restoration

Plans + Specs by us

Money Account

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

~~F. The Non-federal Sponsor shall transfer ownership of the India Point Bridge to the Government, at no cost to the Government, prior to the Government's issue of plans and specifications for construction award.~~

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, & DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

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

2. General Valuation Procedure. Except as provided in paragraph B.3. 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.

Keep this
cost in
mind.

repair

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined 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 Sponsor, 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 Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

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

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

amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-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 required 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 Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article IX.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. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

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

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

3. 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 IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

Actual Costs

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

*Project
Coord.
Team*

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on 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, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

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

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XVIII of this Agreement, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, and of the non-Federal proportionate share. On the effective date of this Agreement, total project costs are projected to be \$1,400,000.00, and the Non-Federal Sponsor's ~~cash~~ contribution required under Article II.D. of this Agreement is projected to be \$700,000.00. Such amounts are estimates subject to adjustment by the

Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.D. of this Agreement in accordance with the following provisions. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government, after consideration of any credit afforded pursuant to Article II.D.4. of this Agreement, determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Article II.D. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, New England" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check or an Electronic Funds Transfer in accordance with procedure established by the Government for the full amount of the additional required funds.

30
prior
to
K

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check or an Electronic Funds Transfer in accordance with procedures established by the Government for the full amount of the additional required funds.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal

Sponsor 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 the Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete; ~~however, the Non-Federal Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement.~~ In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

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 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - INDEMNIFICATION

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

market's comp claims

ARTICLE IX - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and 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 Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other

evidence.

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

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE X - FEDERAL AND STATE LAWS

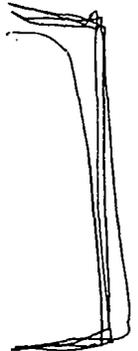
In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army.

ARTICLE XI - RELATIONSHIP OF PARTIES

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

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XII - 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 XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the 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 Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement 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 Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XIV 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.

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

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in

which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on 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 required for the construction of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, 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. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under 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.

D. The Non-Federal Sponsor and the Government shall consent with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either

delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

~~Mr. Fred Ihenacho~~, Director
Providence Department of Public Works
700 Allens Avenue
City of Providence, R.I. 02095

If to the Government:

U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742
ATTN: CE-NAE-PPC

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 XVI - 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 XVII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. 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)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost

shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements, as follows: 50 percent borne by the Non-Federal Sponsor, and 50 percent borne by the Government.

ARTICLE XVIII - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the ~~Project the removal and disposal of the center span of the India Point Railroad Bridge spanning the Seekonk River.~~ Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$1,591,000.00, as calculated in accordance with ER 1105-2-100 using October 1, 1998 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

IN WITNESS WHEREOF, the parties 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 CITY OF PROVIDENCE

By: _____
Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

BY: _____
Vincent A. Cianci, Jr.
Mayor

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, John T. D'Amico, Jr., do hereby certify that I am the principal legal officer of ~~the~~ City of Providence, R.I. that the City of Providence, R.I. 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 City of Providence, R.I. in connection with the removal and disposal of the center span of the India Point Bridge spanning the Seekonk River 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 City of Providence, R.I. have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 19 2000.

John T. D'Amico, Jr., Esq.
Senior City Assistant Solicitor

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.

Vincent A. Cianci, Jr.
Mayor

DATE: _____



Programs/Project Management

**U.S. Army Corps
of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751**

Fax Number (978) 318 - 8891

Date: 14 Sept 00

Subject: Indic Point RR Bridge

To: John D'Amico

Fax #: 401 351-7546

Number of Pages (including header) 4

From: Thomas J. Rosato **Releaser:** TJR
Project Manager
Phone #: (978) 318-8620
E-mail: thomas.j.rosato@usace.army.mil

Comments:

John
Attached is 3 page MDA as you requested.
Follow-up letter to be faxed to you this afternoon
w/ revised schedule

Tom Rosato

**MEMORANDUM OF AGREEMENT
PURSUANT TO 36 CFR 800.6 (c)
REGARDING PROPOSED DEMOLITION OF THE
INDIA POINT RAILROAD BRIDGE
PROVIDENCE, RI**

WHEREAS, the U.S. Army Corps of Engineers, New England District (Corps), has determined that the demolition of the India Point Railroad Bridge (the undertaking) will have an effect upon this property that is eligible for the National Register of Historic Places; and,

WHEREAS, the Corps has consulted with the Rhode Island State Historic Preservation Officer (RI SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National historic Preservation Act of 1966 (16 U.S.C., Part 470f); and

WHEREAS, the City of Providence, the project proponent, has participated in the consultation and has been invited to concur in the Memorandum of Agreement; and,

WHEREAS, the Corps has completed an Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) documentation of the India Point Railroad Bridge which has been accepted by the HABS/HAER division of the National Park Service and the RI SHPO;

NOW THEREFORE, the Corps and the RI SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The Corps will insure that the following measures are carried out:

I. MARKETING OF THE INDIA POINT RAILROAD BRIDGE

A. The Corps will market the bridge for reuse. An advertisement will be placed in the local newspaper (Providence Journal) for thirty (30) days. Advertisements will also be placed in at least two engineering periodicals such as Railway Age and the Engineering News Record for the same period of time. The content of the advertisement and the periodicals selected will be submitted to the RI SHPO for review and approval.

B. The Corps will provide a copy of the advertisement to the RI SHPO at the time of publication. The RI SHPO will distribute this advertisement to local and/or national historical groups at their discretion. These groups will be given thirty (30) days to respond to the advertisement.

2. UNIDENTIFIED HISTORIC PROPERTIES

A. The Corps will ensure that if additional previously unidentified historic properties are discovered which may be affected by the undertaking, the Corps and the RI SHPO will apply the National Register criteria of eligibility and consult pursuant to 36 CFR 800.4.

3. DISPUTE RESOLUTION

A. Should any party to this agreement object to any action carried out or proposed by the Corps with respect to the undertaking or implementation of this agreement, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (Council). Within 30 days after receipt of all pertinent documentation, the Council will either: 1) provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding the dispute; or, 2) notify the Corps that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the Corps responsibility to carry out all actions under this Memorandum of Agreement that are not subjects of the dispute will remain unchanged.

B. At any time during implementation of the measures stipulated in this agreement should any objection to any such measure or its manner of implementation be raised by a member of the public, the Corps shall take the objection into account and consult as needed with the objecting party, the RI SHPO, the City of Providence, or the Council to resolve the objection.

4. DELAYS IN EXECUTION OF THE UNDERTAKING

A. If stipulations have not been implemented by September 30, 2005, this agreement shall be considered null and void, and the Corps, if it chooses to continue with the undertaking, shall re-initiate its review in accordance with 36 CFR 800.

Execution of this Memorandum of Agreement by the Corps and the RI SHPO, its subsequent filing with the Council, and the implementation of its terms, shall establish that the Corps has afforded the Council an opportunity to comment on the proposed demolition of the India Point Railroad Bridge and its effects on historic properties, and that the Corps has taken into account the effects of the undertaking on historic properties.

UNITED STATES ARMY CORPS OF ENGINEERS

By: _____ Date: _____
Brian E. Osterndorf
Colonel, Corps of Engineers
District Engineer

RHODE ISLAND STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Frederick C. Williamson
Executive Director

CONCUR:

CITY OF PROVIDENCE

By: _____ Date: _____