US Army Corps
of Engineers®

Pittsburgh District December 2007

Final
Detailed Project Report
And
Integrated Environmental Assessment

APPENDIX 2
Draft Project Cooperation Agreement

North Park Lake
Allegheny County, PA
Section 206 Aquatic Ecosystem Restoration Project

SECTION 206 – WRDA 96, AS AMENDED

AQUATIC ECOSYSTEM RESTORATION

MODEL PROJECT COOPERATION AGREEMENT FOR IMPLEMENTATION BY THE GOVERNMENT

(FEBRUARY 1998)
(REVISED SEPTEMBER 2002)
(REVISED JULY 2003)

GENERAL NOTES:

1. MULTIPLE SPONSORS. - In the event there are 2 or more entities serving as the Non-Federal Sponsor for the project, the agreement should be modified to identify all the entities collectively as the "Non-Federal Sponsors". The changes outlined below are not considered a deviation from the model.

A. Modify title to include name of each entity serving as Non-Federal Sponsor.

B. Modify first paragraph to include name of each entity serving as Non-Federal Sponsor. (example: … Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the "Non-Federal Sponsors").

C. Change "Non-Federal Sponsor" to "Non-Federal Sponsors" throughout the agreement. There are several paragraphs where this change will require additional changes immediately following the phrase "Non-Federal Sponsors" to reflect multiple sponsors. (i.e. "its" to "their" or "assumes" to "assume", etc.).

D. A separate Certificate of Authority will be required for each entity serving as Non-Federal Sponsor.

E. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

2. GENERAL. - Remove all bold type notes from the agreement prior to forwarding to HQ for review, if necessary.

3. GENERAL. - Choose (1) or (2) as appropriate to match title of Non-Federal Sponsor representative.

4. WORK-IN-KIND. - Include the following paragraph, sentence, or phrase, as indicated, if the Non-Federal Sponsor will perform work-in-kind.

5. FORMAT FOR DATE. – The civilian format for the date should be used (example: January 22, 2000).

6. NON-PROFIT ENTITY. - Include the following paragraph if the Non-Federal Sponsor is a non-profit entity.

7. VOLUNTARY COST CAP. – Include II.A.3. only if the Non-Federal Sponsor requests a voluntary cost cap. The amount shown in this paragraph should not be less than total project costs shown in Article VI.A. of the PCA.

8. NON-PROFIT ENTITY. - Choose (1) if the Non-Federal Sponsor is a public body or (2) if the Non-Federal Sponsor is a non-profit entity.

9. NON-PROFIT ENTITY. – Delete the phrase after the colon if the Non-Federal Sponsor is a non-profit entity. In addition, delete the second occurrence of "the".

10. NON-PROFIT ENTITY. - Choose OPTION I if the Non-Federal Sponsor is a public body or OPTION II if the Non-Federal Sponsor is a non-profit entity.

11. PAYMENT MECHANISMS. - Article VI.B. of OPTION I and Article VI.B.1. of OPTION II offers the Non-Federal Sponsor four mechanisms from which to choose in deciding how to provide its required monetary contribution to the Federal government. The Non-Federal Sponsor should indicate its choice during the course of negotiating the PCA, subject to the approval of the District Engineer, and in accordance with guidance governing the use of electronic funds transfers, escrow agreements, and irrevocable letters of credit. However, the Non-Federal Sponsor may use any of the methods or a combination of them, during the life of the PCA. Do not delete any of the four mechanisms.

12. LENGTH OF TIME TO REQUEST ADDITIONAL FUNDS. - The length of time should not exceed the time shown unless the District Engineer approves a longer period of time. If additional funds are determined to be required from the Non-Federal Sponsor, the determination and funds request should be made early enough such that the Non-Federal Sponsor can comply with the time limit set in Article VI.B. or Article VI.B.4. of the PCA and the Non-Federal Sponsor will make the additional funds available in time for the applicable financial obligations. Neither party's funds should be used to meet any shortfall in the other party's funds.

13. METHOD OF PAYMENT. - Choose (1) if use Method of Payment OPTION I or (2) if use Method of Payment OPTION II.

14. ARTICLE IX. - Include the phrase after the colon only if Article XX - Obligations of Future Appropriations is included in the PCA and the Non-Federal Sponsor requests this language. In addition, delete the second occurrence of "the".

15. ARTICLE XVI. – Input full address of sponsor and Government - including titles or office title/symbol of individuals to receive notice. Do not include name of individual to receive notice as they may change throughout life of agreement.

16. ARTICLE XX. - Include Article XX only after District Counsel determines that the Non-Federal Sponsor is a state agency or a political sub-division of the State that derives its funds for the project directly from appropriations and the Non-Federal Sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in Article XX.A. should identify the body that makes the appropriations (example: Legislature of the State of Ohio or City Counsel of the City of Cleveland).

17. ARTICLE XX.A. - Include the text after the colon if requested by the Non-Federal Sponsor. The information to be added in this optional phrase should provide more detailed information on the location of the restriction to creating an obligation of future appropriations (example: Section 7 of the City Charter of Cleveland).

18. SPONSOR'S BUDGET CYCLE. - Choose (1) if the Non-Federal Sponsor has a 1 year budget cycle or (2) if the Non-Federal Sponsor has a 2 year budget cycle.

19. ARTICLE XXI. - Include the following article only if the Non-Federal Sponsor is an Indian Tribe.

20. PREPARING PCA FOR SIGNATURE. - When printing agreement for execution: 1) remove all bold type notes from the agreement; 2) be sure that titles of articles are not the last thing at the bottom of the page; and 3) that there are no page breaks which allow half empty pages. Before signature by the Government representative: 1) add your DE's signature block (use the civilian version of the signature block) and 2) ensure that the sponsor <u>signs</u> and <u>dates</u> a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are <u>signed</u> and <u>dated</u> by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement not the sponsor. The Government should retain two copies of the executed agreement. All other copies should be provided to the sponsor.

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR THE
[FULL NAME OF PROJECT]

THIS AGREEMENT is entered into this _____ day of _____, 20 __, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer for the **[LOCATION OF DISTRICT]** District (hereinafter the "District Engineer") and the **[NON-FEDERAL SPONSOR]** (hereinafter the "Non-Federal Sponsor"), represented by **[SEE GENERAL NOTE - 3 - CHOOSE: (1)** the **(2)** its**] [TITLE OF THE PERSON SIGNING THE AGREEMENT]**.

WITNESSETH, THAT:

WHEREAS, this Project is authorized by Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended;

WHEREAS, Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended, authorizes the Secretary of the Army to carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project will improve the quality of the environment, is in the public interest, and is cost-effective;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for implementation of the **[NAME OF THE PROJECT OR A SEPARABLE ELEMENT OF THE PROJECT]** (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 206(b) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, specifies the cost-sharing requirements applicable to this Project;

WHEREAS, Section 206(c) of the Water Resources Development Act of 1996, Public Law 104-303, as amended, provides that the Secretary of the Army shall not commence construction of any project, or separable element thereof, under the Section 206 authority, until each non-Federal sponsor has entered into a binding agreement to pay the non-Federal share of the costs of construction required by Section 206(b) and to pay 100 percent of any operation, maintenance, replacement, and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary;

[SEE GENERAL NOTE - 4]

WHEREAS, the Non-Federal Sponsor desires to perform certain work (hereinafter the "work-in-kind", as defined in Article I.L. of this Agreement) which is a part of the Project;

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 implementation 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 **[DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL TO AVOID ANY CONFUSION OVER WHAT WORK IS OR IS NOT INCLUDED]** as generally described in **[SPECIFY THE APPROVED ECOSYSTEM RESTORATION REPORT OR OTHER APPROVED DOCUMENTATION – NOTE: NEITHER A PRP OR EA ARE APPROPRIATE DOCUMENTS TO REFERENCE IN THIS PARAGRAPH]**, dated **[SEE GENERAL NOTE - 5] _____**, 20___, and approved by the **[TITLE OF THE APPROVING OFFICIAL]**, on **[SEE GENERAL NOTE - 5] _____**, 20___ . **[SEE GENERAL NOTE - 4:** The Project includes the work-in-kind described in Article I.L. of this Agreement.**]**

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 implementation of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to, feasibility phase planning costs; all engineering and design costs, including those incurred in the feasibility phase; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; the costs incurred by the Government for clean-up and response in accordance with Article XV.C. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual implementation costs; **[SEE GENERAL NOTE - 4:** the credit amount for the work-in-kind performed by the Non-Federal Sponsor in accordance with Article II.D.4. of this Agreement;**]** 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 X 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 implementation" shall mean a financial obligation of the Government **[SEE GENERAL NOTE - 4:** or a financial obligation of the Non-Federal Sponsor for work-in-kind**]**, 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 "implementation" shall mean all actions required to carry out the Project.

E. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.D.2. of this Agreement to total financial obligations for implementation as projected by the Government.

F. The term "period of implementation" shall mean the time from the effective date of this Agreement to the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that implementation of the Project is complete.

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

H. 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 when such action is authorized in accordance with applicable legal principles of just compensation. 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.

I. 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.

J. 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.

K. 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.

[SEE GENERAL NOTE - 4]

L. The term "work-in-kind" shall mean **[WORK-IN-KIND MAY INCLUDE A FACILITY, SUPPLY, OR SERVICE THAT IS NECESSARY TO CARRY OUT THE PROJECT OR MEASURE. DESCRIBE THE WORK TO BE PERFORMED BY THE NON-FEDERAL SPONSOR IN DETAIL SUFFICIENT TO AVOID ANY CONFUSION OVER WHAT IS OR IS NOT INCLUDED]**, as approved by **[CITE THE APPROPRIATE APPROVAL AUTHORITY]** in a **[CITE APPROVAL DOCUMENT OR MEMORANDUM NOTE: A PRP IS NOT THE APPROPRIATE DOCUMENT TO REFERENCE IN THIS PARAGRAPH]** dated **[SEE GENERAL NOTE - 5]** **_____**, 20__. The work-in-kind includes implementation of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with implementation, but does not include the implementation of betterments or the provision of lands, easements, rights-

of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the work-in-kind.

[SEE GENERAL NOTE - 6]

M. The term “non-profit entity” shall mean an organization that is incorporated under the applicable laws of the State of **[IDENTIFY APPROPRIATE STATE]** as a non-profit organization; is exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501); and is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code (26 U.S.C. 170(h)(4)(A)).

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

A. The Government, subject to the availability of funds and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously implement the Project, 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 contract for implementation 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 implementation, 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.

[SEE GENERAL NOTE - 7]

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for implementation of the Project, cumulative total project costs would exceed $_____, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for implementation 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.

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 and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 35 percent of total project costs in accordance with the provisions of this paragraph.

1. 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 implementation, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the implementation, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 35 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 35 percent of total project costs.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 35 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 35 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor. 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 under this paragraph, 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 XV.C. of this Agreement.

[SEE GENERAL NOTE - 4]

4. The Government has determined that the work-in-kind is compatible with the Project and has approved a credit in the estimated amount of $_____ **[NOTE: THE AMOUNT OF CREDIT ALLOWED CAN NOT BE MORE THAN 100 PERCENT OF THE 35-PERCENT NON-FEDERAL SHARE OF THE TOTAL PROJECT COSTS]** for implementation of such work by the Non-Federal Sponsor. The affording of such credit shall be subject to an on-site inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Project. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. To afford such credit, the Government shall apply the credit amount toward any additional cash contribution required under paragraph D.2. of this Article. The Non-Federal Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Non-Federal Sponsor be entitled to any reimbursement for any excess credit amount. In no event shall the Non-Federal Sponsor perform work-in-kind that would result in either the credit afforded under this paragraph exceeding 100 percent of the Non-Federal Sponsor’s share of total project costs or the credit afforded under this paragraph, plus 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, exceeding 35 percent of total project costs.

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 under this paragraph, 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 XV.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, X, and XV.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 its 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.

[SEE GENERAL NOTE - 4]

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

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 implementation, operation, and maintenance 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 implementation, 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. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation

and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained **[SEE GENERAL NOTE – 8 – CHOOSE: (1)** in public ownership for uses compatible **(2)** in the ownership of a non-profit entity, or in public ownership, for uses compatible**]** with the authorized purposes of the Project.

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 implementation, operation, and maintenance 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 implementation, 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 implementation, operation, and maintenance 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 implementation, 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.

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 implementation, operation, and maintenance 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.

ARTICLE IV - CREDIT FOR LANDS, RELOCATIONS, AND 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. **[SEE GENERAL NOTE - 4:** However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the construction of the work-in-kind, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the work-in-kind, or, if the Non-Federal Sponsor performs the implementation with its own labor, the date that the Non-Federal Sponsor begins implementation of the work-in-kind.**]** 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. **[SEE GENERAL NOTE - 9:** Except as provided in paragraph B.3. of this Article, the**]** 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.

[NOTE: SEE DRAFT CHAPTER 12 OF ER 405-1-12 FOR GUIDANCE ON THE USE OF FEDERAL VERSUS STATE RULES IN PREPARING AN APPRAISAL.]

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.

[SEE GENERAL NOTE - 10]

OPTION I

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 implementation, 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 X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

OPTION II

3. 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 X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. 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 **[IDENTIFY APPROPRIATE STATE]** 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 X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

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 X.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.

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 implementation. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination 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 implementation 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 implementation, 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 application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations **[SEE GENERAL NOTE – 4:** and the construction portion of the non-Federal work-in-kind**]**; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters.

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 implementation 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

[USE OPTION I IF IMPLEMENTATION OF THE PROJECT WILL BE COMPLETED WITHIN ONE FISCAL YEAR, OR IF NON-FEDERAL SPONSOR ELECTS TO PROVIDE ITS SHARE IN ONE LUMP SUM, OTHERWISE USE OPTION II. . DELETE THE ENTIRE OPTION IF IT DOES NOT APPLY.]

OPTION I

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 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 $_____, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be $_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF CONSTRUCTION.]** 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.

[SEE GENERAL NOTE - 11]

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.D.2. of this Agreement in accordance with the following provisions: Not less than **[NUMBER OF DAYS, 30 OR MORE]** 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 **[SEE GENERAL NOTE – 4:** , 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.2. 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, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government **[SEE GENERAL NOTE – 4:** , after consideration of any credit afforded pursuant to Article II.D.4. of this Agreement,**]** deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for implementation incurred prior to commencement of the period of implementation; and (b) the non-Federal proportionate share of financial obligations for implementation as they are incurred during the period of implementation. 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 and provide an explanation of why additional funds are required. Within **[NOT TO EXCEED 60 – SEE GENERAL NOTE 12]** calendar days after receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified above.

OPTION II

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. By **[SPECIFIC DATE, BASED ON THE TIMING OF THE NON-FEDERAL SPONSOR'S FISCAL CYCLE]** of each year and at least quarterly thereafter, 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 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, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be $_____, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be $_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF CONSTRUCTION.]** 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.2. of this Agreement in accordance with the provisions of this paragraph.

[SEE GENERAL NOTE - 11]

1. Not less than **[NUMBER OF DAYS, 30 OR MORE]** 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 **[SEE GENERAL NOTE – 4:** , 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 the non-Federal proportionate share of projected financial obligations for implementation through the first fiscal year of implementation, including the non-Federal proportionate share of financial obligations for implementation incurred prior to the period of implementation. 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, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of implementation, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines **[SEE GENERAL NOTE - 4:** , after consideration of any credit afforded pursuant to Article II.D.4. of this Agreement,**]** to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for implementation for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. 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 implementation incurred prior to the period of

implementation; and (b) the non-Federal proportionate share of financial obligations for implementation as they are incurred during the period of implementation.

4. If at any time during the period of implementation the Government determines **[SEE GENERAL NOTE – 4:** , after consideration of any credit afforded pursuant to Article II.D.4. of this Agreement,**]** that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for implementation for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **[NOT TO EXCEED 60 – SEE GENERAL NOTE 12]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

[INCLUDE PARAGRAPHS C. AND D. FOR BOTH OPTIONS I AND II IN ARTICLE VI.]

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 provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in **[SEE GENERAL NOTE - 13 - CHOOSE: (1)** B. **(2)** B.1.**]** of this Article. 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 and provide an explanation of why additional funds are required. Within **[NOT TO EXCEED 30 – SEE GENERAL NOTE 12]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in **[SEE GENERAL NOTE - 13 - CHOOSE: (1)** B. **(2)** B.1.**]** of this Article.

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 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 by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE**

DISTRICT]" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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. 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 - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor 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 an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of the notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property the Non-Federal Sponsor 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 by the Government shall operate to relieve the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

[**SEE GENERAL NOTE - 14:** Subject to the provisions of Article XX of this Agreement, the] The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the implementation, operation, maintenance, repair, replacement and rehabilitation of the Project, and any Project related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal 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 **[SEE GENERAL NOTE - 8 - CHOOSE: (1)** to State and Local Governments at 32 C.F.R. Section 33.20. **(2)** with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, OMB Circular A-110.**]** 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 implementation 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 **[SEE GENERAL NOTE - 8 - CHOOSE: (1)** A-87 and A-133, **(2)** A-122 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. **[SEE GENERAL NOTE - 8 - CHOOSE: (1)** A-87 **(2)** A-122**]** 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 XI - FEDERAL AND STATE LAWS

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

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement the Government and the Non-Federal 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 XIII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.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 appropriations are not available in amounts sufficient to meet the Government's share of 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 XV 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 XV of this Agreement shall not relieve the parties of 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 XV - 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 implementation, operation, and maintenance of the Project, except for any such lands that the Government determines to be subject to the navigation servitude. 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 or the Government 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 X.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, the Non-Federal Sponsor must provide for the implementation, operation, and maintenance 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 implementation of the Project, or, if already in implementation, 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 implementation, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with implementation 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 on lands, easements or rights of way that the Government determines, pursuant to Article III of this Agreement, to be required for the implementation, operation, and maintenance of the Project, except for any such lands, easements, or rights-of-way owned by the United States and administered by the Government. 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. The Government 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 on lands, easements, or rights of way owned by the United States and administered by the Government. All costs incurred by the Government shall be included in total project costs and cost shared in accordance with the terms of this Agreement.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup 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 operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

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

[SEE GENERAL NOTE – 15]

If to the Non-Federal Sponsor:

If to the Government:

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

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

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

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

B. Pursuant to 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 the Government is authorized to expend 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 be included in total project costs and shall be cost shared in accordance with the provisions of this Agreement.

ARTICLE XIX - LIMITATION ON GOVERNMENT EXPENDITURES

Notwithstanding any other provisions of this Agreement, the Government's financial participation in the Project is limited to $5,000,000. The Non-Federal Sponsor shall be responsible for all total project costs that exceed this amount. In lieu of further construction of the Project at the Non-Federal Sponsor's expense, the Government shall, at the request of the Non-Federal Sponsor suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.D. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

[SEE GENERAL NOTE - 16]

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ **[SEE GENERAL NOTE - 17:** , where creating such an obligation would be inconsistent with _____ of the _____ of _____**]**.

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each **[SEE GENERAL NOTE - 18 - CHOOSE: (1)** year **(2)** biennium**]**, and will use all reasonable and lawful means to secure the appropriations for that **[SEE GENERAL NOTE - 18 - CHOOSE: (1)** year **(2)** biennium] sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not

provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE GENERAL NOTE - 19]

ARTICLE XXI - SPECIAL PROVISIONS FOR AN INDIAN TRIBE

A. The Non-Federal Sponsor agrees to waive its sovereign immunity solely for the purposes of suit in an appropriate Federal court by the Government for any breach by the Non-Federal Sponsor of this Agreement, including suit to hold and save the Government free from damages arising on or after the date of this Agreement due to the implementation and subsequent operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

B. The Non-Federal Sponsor agrees to maintain liability insurance in an amount not less than $_____ to insure against bodily injury and property damage arising from the implementation, operation, maintenance, repair, replacement, or rehabilitation of the Project and to assure that the Government will be held free from damages due to implementation, operation, maintenance, repair, replacement, and rehabilitation of the Project except for damage due to the fault or negligence of the Government or its contractors. The insurance policy shall specify that the defense of sovereign immunity of the Non-Federal Sponsor, its individual tribal members, or the Government will not be raised by the insurer as a defense against payment under the policy.

C. The Non-Federal Sponsor agrees to provide the Government security acceptable to the Government to secure performance of the non-Federal maintenance responsibility set forth in Article VIII of this Agreement. The maintenance is estimated to cost $_____annually. The type of security, which must be a non-trust tribal asset, will be determined and secured prior to the construction contract being awarded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY	**[FULL NAME OF NON-FEDERAL SPONSOR]**
BY:_____	BY:_____ **[TYPED NAME]** **[TITLE IN FULL]**

*DATE:*_____ *DATE:*_____

CERTIFICATE OF AUTHORITY

[SEE GENERAL NOTE - 10]

OPTION I

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** 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 **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with the **[FULL NAME OF "PROJECT"]**, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

OPTION II

I, _____, do hereby certify that I am the **[FULL TITLE OF PERSON SIGNING CERTIFICATE OF AUTHORITY]** of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted non-profit entity with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with the **[FULL NAME OF "PROJECT"]**, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their corporate authority.

[**INCLUDE IN WITNESS LINE AND SIGNATURE BLOCK FOR BOTH OPTIONS I AND II.]**

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 20 [YEAR].

[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

[NOTE: THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY CAN NOT BE THE SIGNATORY TO THE AGREEMENT. THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY IS CERTIFYING THAT THE SIGNATORY TO THE AGREEMENT HAS THE AUTHORITY TO OBLIGATE THE NON-FEDERAL SPONSOR.]

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.

[SIGNATURE OF PCA SIGNATORY]
[TYPED NAME]
[TITLE IN FULL]

DATE: _____