



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, D.C. 20314-1000

OCT 10 2018

CECW-NAD

MEMORANDUM FOR COMMANDER NORTH ATLANTIC DIVISION NEW YORK DISTRICT

SUBJECT: Lake Champlain Basin Program, Vermont and New York, Section 542 of the Water Resources Development Act of 2000 Design Model Agreement.

1. References:

a. Memorandum, CENAD-PD-C, 24 April 2018, subject: New York District - Revised General Management Plan for the Section 542 Environmental Assistance Program for the Lake Champlain Watershed and Request for Approval of the Model Project Partnership Agreement

b. Headquarters/NAD/NAN teleconference call, 27 September 2018, subject: Model Agreement for Design Assistance, Lake Champlain Basin Program, Vermont and New York, Section 542 of the Water Resources Development Act of 2000, as amended, August 2018

2. Enclosed for your use is the model agreement for design assistance under the authority of Section 542 of WRDA 2000, Lake Champlain Watershed. The Division Commander has the authority to approve agreements conforming to the model or agreements that may have non-substantive changes, with delegation of signature authority to the District Commander. If there are substantive changes, then the agreement will require approval at Headquarters.

3. The General Management Plan (GMP) is an overarching decision document for implementation of Lake Champlain Watershed program. Approval authority for the GMP and its updates lies with the Division Commander. A Letter Report approved by the District Engineer will serve as a decision document supporting the design assistance agreement for each individual project and will be addressed in Article I.A. of the agreement. Integral and betterment determinations are subject to approval by the Division Commander.

4. If there are questions, please contact Ms. Catherine Shuman, Deputy Chief, North Atlantic Division Regional Integration Team, at (202) 761-1379, or you may contact Mr. Aaron Hostyk, Office of Chief Counsel at (202) 761-8525.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "J. Dalton".

JAMES C. DALTON, P.E.
Director of Civil Works

Encl

**MODEL AGREEMENT
FOR
DESIGN ASSISTANCE
LAKE CHAMPLAIN BASIN PROGRAM, VERMONT AND NEW YORK
SECTION 542 OF THE
WATER RESOURCES DEVELOPMENT ACT OF 2000, AS AMENDED
AUGUST 2018**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model cost sharing agreement must be used for all agreements for design assistance under the Lake Champlain Basin Program, Vermont and New York, authorized by Section 542 of the Water Resources Development Act (WRDA) of 2000, as amended by Section 3160 of WRDA 2007. The responsibility for review and approval of an agreement that does not deviate from the approved model has been delegated to the MSC Commander. Division Counsel concurrence that the agreement does not deviate from the subject model, and is appropriate for use for design assistance, is required prior to approval. In addition, the MSC Commander has been delegated authority to approve non-substantive deviations to the model agreement. Division Counsel review of such deviations, with a recommendation to approve such deviations, is required prior to approval by the MSC Commander.
2. The following options, including language for the agreement, are addressed in the Attachment:
 - a. Option 1: Not An Obligation of Future Appropriations (page A-1).
 - b. Option 2: Multiple Sponsors (page A-2).
 - c. Option 3: Accelerated Funds (page A-3).
 - d. Option 4: Credit for Pre-Agreement Design Work (page A-4).
3. Reminder: Make all required insertions, including language associated with an option; remove this cover page; remove the open and close brackets and any instructional text; ensure the spacing and page breaks throughout the agreement are appropriate; if more than one option is used, ensure the Article and paragraph numbering are correct; and delete the Attachment.
4. The Certificate of Authority, Certification Regarding Lobbying, the Non-Federal Sponsor's Self-Certification of Financial Capability, and the State's Certification under Section 542(d)(2) of WRDA 2000, as amended, should be included as a part of the agreement package. These certificates can be found at the following Corps website: http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/ppa_forms.aspx

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL SPONSOR]
FOR
DESIGN ASSISTANCE
FOR THE
[INSERT FULL NAME OF PROJECT OR ELEMENT]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, New York District (hereinafter the “District Engineer”) and the **[Insert Full Name of Non-Federal Sponsor]** (hereinafter the “Non-Federal Sponsor”), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized by Section 542 of the Water Resources Development Act of 2000, Public Law 106-541, as amended by Section 3160 of the Water Resources Development Act of 2007, Public Law 110-114 (hereinafter “Section 542”), to participate in critical restoration projects in the Lake Champlain watershed located in Vermont and New York (hereinafter the “Section 542 Program”);

WHEREAS, Section 542 specifies that the Secretary of the Army may provide assistance for a critical restoration project only if the project is publicly owned or if the Non-Federal Sponsor demonstrates that the critical restoration project will provide a substantial public benefit in the form of water quality improvement; and only if the appropriate State official for the critical restoration project certifies to the Secretary that the project will contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed;

WHEREAS, the [name and title of State official], has certified that the [name and location of project] (hereinafter the “Project”) will contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed;

WHEREAS, Section 542 provides that \$32,000,000 in Federal funds are authorized to be appropriated to carry out the Section 542 Program;

WHEREAS, the U.S. Army Engineer, New York District (hereinafter the “District Engineer”) has determined that the Project is eligible for Design Assistance (as defined in Article I.A. of this Agreement) under Section 542;

WHEREAS, Section 542 authorizes the Non-Federal Sponsor to provide the required non-Federal share in the form of services, materials, supplies, or other in-kind contributions; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Design Assistance” means **[Insert description]** as generally described in the **[Insert title of the Decision Document]**, dated **[e.g., Month Day, Year]** and approved by **[Insert Title of Approving Official]** on **[Month Day, Year]**.

B. The term “total design costs” means the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs for engineering and design, economic and environmental analyses, and evaluation; for contract dispute settlements or awards; for supervision and administration; for Agency Technical Review and other review processes required by the Government; for any required Independent External Peer Review for Safety Assurance; and the Non-Federal Sponsor’s creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation in the Design Assistance Coordination Team; audits; or betterments; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

D. The term “in-kind contribution” mean services, supplies, or materials provided after the effective date of this Agreement by the Non-Federal Sponsor that are identified as being integral to the Design Assistance and approved in writing by the Division Engineer for the North Atlantic Division. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for the Design Assistance. The term does not include the design of betterments.

E. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

F. The term “betterment” means a difference in the portion of the Design Assistance that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to that portion.

G. The term “Section 542 Program Limit” shall mean the amount of Federal funds authorized to be appropriated for the Section 542 Program. As of the effective date of this Agreement, such amount is \$32,000,000.

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

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Design Assistance using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies.

B. The Non-Federal Sponsor shall contribute 35 percent of total design costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the initial fiscal year of the Design Assistance. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the Design Assistance, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. The Government shall credit towards the Non-Federal Sponsor's share of total design costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions integral to the Design Assistance, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VII to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to the effective date of this Agreement; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

3. No reimbursement will be provided for any in-kind contributions that exceed the Non-Federal Sponsor's share of the total design costs under this Agreement.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Design Assistance. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. If Independent External Peer Review for Safety Assurance is required for the Design Assistance, the Government shall conduct such review in accordance with Federal laws, regulations, and policies.

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Design Assistance, the Government and the Non-Federal Sponsor may establish a Design Assistance Coordination Team consisting of Government's Project Manager and the Non-Federal Sponsor's counterpart and one senior representative each from the Government and Non-Federal Sponsor to discuss significant issues or actions. The Government's costs for participation on the Design Assistance Coordination Team shall not be included in the total design costs but shall be included in calculating the Section 542 Program Limit. The Non-Federal Sponsor's costs for participation on the Design Assistance Coordination Team shall not be included in the total design costs. The Non-Federal Sponsor's costs for participation on the Design Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit.

J. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Engineer for the North Atlantic Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article III.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

K. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the Section 542 Program Limit.

ARTICLE III - METHOD OF PAYMENT

A. As of the effective date of this Agreement, total design costs are projected to be \$_____, with the Government's share of such costs projected to be \$_____, the Non-Federal Sponsor's share of such costs projected to be \$_____; and the costs for betterments are projected to be \$_____. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated total design costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Design Assistance.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to "FAO, USAED, New York District **EROC code**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of the total design costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of the total design costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

E. Upon conclusion of the Design Assistance and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-

Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of total design costs, including contract claims or any other liability that may become known after the final accounting.

F. Payment of Costs for Betterments Provided on Behalf of the Non-Federal Sponsor. No later than 60 calendar days after receiving written notice from the Government of the amount of funds required to cover any such costs, as applicable, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, New York District **[Insert EROC code]**" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover any such costs, as applicable, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE IV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate the Design Assistance unless the Assistant Secretary of the Army (Civil Works) determines that continuation of the Design Assistance 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 determines at any time that the Federal funds made available for the Design Assistance are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend the Design Assistance until there are sufficient Federal funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow the Design Assistance to resume.

C. In the event of termination, the parties shall conclude their activities relating to the Design Assistance and conduct an accounting in accordance with Article III.E. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at the Current Value of Funds Rate as

determined by the Secretary of the Treasury that is applicable on the date that the payment became delinquent, with such penalty charge and administrative fee as may be required by Federal law or regulation. This provision shall not be construed as giving the Non-Federal Sponsor a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the Non-Federal Sponsor.

ARTICLE V – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from any claim or damage that may arise from carrying out the Design Assistance or any betterments, except any claim or damage that may arise from the negligence of the Government or a contractor of the Government.

ARTICLE VI - 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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Design Assistance. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Design Assistance shall not be included in total design costs, but shall be included in calculating the Section 542 Program Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-

Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE VIII - RELATIONSHIP OF PARTIES

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. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE IX - 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 delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[Insert Title and Address of Sponsor representative to receive notices]

If to the Government:

[Insert Title and Address of Government representative to receive notices]

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

ARTICLE X - 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 XI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

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

[INSERT FULL NAME OF SPONSOR]

BY: _____
[INSERT TYPED NAME]
[Insert Colonel, U.S. Army or
Lieutenant Colonel, U.S. Army, as
applicable]
District Engineer

BY: _____
[INSERT TYPED NAME]
[Insert Full Title]

DATE: _____

DATE: _____

Attachment

Option 1: Not An Obligation of Future Appropriations. An agreement may reflect that it does not obligate future appropriations when doing so is inconsistent with constitutional or statutory limitations of a State or political subdivision thereof. Federal law, however, does NOT provide that the Non-Federal Sponsor's performance and payments are subject to appropriations of funds. The Government retains the right to exercise any legal rights it has to protect the Government's interests. If applicable and requested by the Non-Federal Sponsor, insert into the agreement as the last Article the following:

“ARTICLE XII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the **[Insert name of the legislative body that makes the appropriations, e.g., legislature of the State of New York or legislature of the State of Vermont]**, where creating such an obligation would be inconsistent with **[Insert the specific citation to the constitutional or statutory limitation on committing future appropriations]**. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.”

Attachment

Option 2: Multiple Non-Federal Sponsors. While it is preferable that there is one party only as the Non-Federal Sponsor for the agreement, it is permissible to have more than one Non-Federal Sponsor and in such case, the agreement should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural. The Non-Federal Sponsors need to understand that they will be jointly and severally liable for all non-Federal obligations and responsibilities under the agreement. Any proposal to allow for a division of responsibilities between Non-Federal Sponsors will require approval of the HQUSACE. Insert into the agreement as the last Article the following:

“ARTICLE XII – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.”

Attachment

Option 3: Accelerated Funds, following Committee notification. Following completion of the Committee notification process, the agreement may include the following changes:

1. Delete the “and” at the end of the next to last WHEREAS clause and insert the following WHEREAS clause after the next to last WHEREAS clause in the agreement:

“WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds for the immediate use by the Government for the Design Assistance; and”

2. Add new paragraph L. to Article II as follows.

“L. The Non-Federal Sponsor understands that execution of this Agreement shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this Design Assistance or to match any funds accelerated by the Non-Federal Sponsor; that the funds accelerated by the Non-Federal Sponsor will be credited toward the Non-Federal Sponsor’s cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsor is not entitled to any repayment for any of the funds accelerated and obligated by the Government even if the Design Assistance ultimately is not completed.”

Attachment

Option 4: Pre-Agreement Design Work. The Non-Federal Sponsor is entitled to receive credit for the reasonable costs of design work carried out before the date of execution of the agreement, if the design work is integral to the Design Assistance. If applicable, include the following changes:

1. Insert the following WHEREAS clause after the fifth WHEREAS clause in the agreement:

“WHEREAS, Section 542 provides that the Non-Federal Sponsor shall receive credit for the reasonable costs of design work carried out by the Non-Federal Sponsor before the date of execution of an agreement for the critical restoration project, if the Secretary finds that the design work is integral to the project;”

2. Replace Article I.A. and Article I.B. in their entirety with the following:

“A. The terms “Design Assistance” means **[Insert description]** as generally described in the **[Insert title of the Decision Document]**, dated **[e.g., Month Day, Year]** and approved by **[Insert Title of Approving Official]** on **[Month Day, Year]**. The term includes the pre-Agreement design work described in paragraph H. of this Article.

“B. The term “total design costs” means the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs for engineering and design, economic and environmental analyses, and evaluation; for contract dispute settlements or awards; for supervision and administration; for Agency Technical Review and other review processes required by the Government; for any required Independent External Peer Review for Safety Assurance; the Non-Federal Sponsor’s creditable costs for in-kind contributions, if any; and the Non-Federal Sponsor’s creditable costs for pre-Agreement design work. The term does not include any costs for dispute resolution; participation in the Design Assistance Coordination Team; audits; or betterments; or the Non-Federal Sponsor’s cost of negotiating this Agreement.”

3. Add a new paragraph H. to Article I as follows:

“H. The term "pre-Agreement design work” means services or materials provided prior to the effective date of this Agreement by the Non-Federal Sponsor that are identified as being integral to the Design Assistance and approved in writing by the Division Engineer for the North Atlantic Division, or by the District Engineer for pre-Agreement design work of less than \$100,000. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for design of the Design Assistance. The term does not include design of betterments.”

4. Replace Article II.B. and II.C. in their entirety with the following:

“B. The Non-Federal Sponsor shall contribute 35 percent of total design costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, and the estimated amount of credit for pre-Agreement design work, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the initial fiscal year of the Design Assistance. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the Design Assistance, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. The Government shall credit towards the Non-Federal Sponsor’s share of total design costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions integral to the Design Assistance or that the Non-Federal Sponsor incurred in providing or performing pre-Agreement design work integral to the Design Assistance, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VII to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. The Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor’s employees, as in-kind contributions are completed but no later than 60 calendar days after such completion, or in the case of pre-Agreement design work no later than 60 calendar days after the effective date of this Agreement. Failure to provide such documentation in a timely manner may result in denial of credit.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time of completion of the in-kind contributions or the pre-Agreement design work and the time credit is afforded; for the value of non-Federal design work obtained at no cost to the Non-Federal Sponsor; or for costs that exceed the Government’s estimate of the cost for such item if it had been performed by the Government.

3. No reimbursement will be provided for any in-kind contributions or for any pre-Agreement design work that exceeds the Non-Federal Sponsor's share of the total design costs under this Agreement."

5.. Replace Article III.B. in its entirety with the following:

"B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated total design costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; the estimated amount of creditable pre-Agreement design work; and the estimated remaining cost of the Design Assistance."

STATE CERTIFICATION

I, _____, do hereby certify that I am the official of the State of [Vermont] [New York] with primary responsibility for the [Full Name of Project], a critical restoration project under the Lake Champlain Basin Program, that the Project will contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed, and that special consideration is being given to projects that implement plans, agreements, and measures that preserve and enhance the economic and social character of the communities in the Lake Champlain area.

INWITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20__.

[INSERT TYPED NAME]

[Insert Full Title]