



**MODEL AGREEMENT
FOR
SECTION 107 – CONTINUING AUTHORITIES PROGRAM
SMALL RIVER AND HARBOR NAVIGATION PROJECTS
JANUARY 19, 2018
(with updates as of SEPTEMBER 5, 2019)**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model project partnership agreement (PPA) is for a small river and harbor navigation project with a channel depth of 50 feet or less undertaken pursuant to Section 107 of the River and Harbor Act of 1960, as amended (33 U.S.C. 577). Any additional channel depths to provide for allowable over-depth, advanced maintenance, and entrance channel wave allowances are excluded in determining the channel depths for the purpose of calculating cost-sharing.
2. The PPA should include, if applicable, in the definition of the Project in Article I.A., construction of new dredged material placement facilities (DMPFs) or expansion of existing DMPFs that will be undertaken as part of initial construction of the Project. A separate Memorandum of Agreement will be developed and should be used for cost sharing of later phased expansions of, or construction of additional, DMPFs after initial construction of the Project. However, both the Federal costs of initial construction and the Federal costs for later phased expansions or construction of additional DMPFs count toward the per-project Federal participation limit.
3. The responsibility for review and approval of a Section 107 PPA that does not deviate from the approved model, or for an amendment to the January 19, 2018 model to include an approved option to the model, has been delegated to the MSC Commander. Division Counsel concurrence that the PPA does not deviate from the subject model, and is appropriate for use for the particular project, is required prior to approval. In addition, the MSC Commander has been delegated authority to approve non-substantive deviations to the model PPA. Division Counsel concurrence that a deviation is non-substantive and recommendation that the deviation be approved is required prior to approval by the MSC Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT, with MSC Division Commander recommendations, for review and approval by the Director of Civil Works.
4. 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: Additional 10 percent provided during construction (page A-3).
 - d. Option 4: Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (page A-4).
5. 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 page numbers, spacing and page breaks throughout the agreement are appropriate; if more than one option is used, ensure the Article and paragraph numbering and references therein are correct; and delete the Attachment.
6. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability should be included as a part of the agreement package. These certificates can be found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

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

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the **[INSERT TITLE]** and the **[FULL NAME OF THE NON-FEDERAL SPONSOR]** (hereinafter the “Non-Federal Sponsor”), represented by its **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, Section 107 of the River and Harbor Act of 1960, as amended (33 U.S.C. 577) (hereinafter “Section 107”), authorizes the Secretary to undertake construction of small river and harbor navigation projects not specifically authorized by Congress;

WHEREAS, pursuant to the authority provided in Section 107, design and construction of the **[Insert Full Name of the Project]** (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was approved by the Division Commander for **[Insert Name of USACE Division, e.g., Mississippi Valley Division]** (hereinafter the “Division Commander”) on **[Month Day, Year]**;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 107 may not exceed \$10,000,000; 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 and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means the general navigation features, which includes **[DESCRIBE FEATURES OF THE PROJECT, INCLUDING CONSTRUCTION OF NEW DREDGED MATERIAL PLACEMENT FACILITIES (DMPFS) OR EXPANSION OF EXISTING DMPFS THAT WILL BE UNDERTAKEN AS PART OF INITIAL**

CONSTRUCTION OF THE PROJECT], as generally described in the [FULL TITLE OF DECISION DOCUMENT], dated _____, ____ and approved by the [TITLE OF APPROVING OFFICIAL, e.g., Division Commander for Mississippi Valley Division, etc.] on [Month Day, Year].

B. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to design and construction of the Project, including mitigation, if applicable. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any highway or railroad bridges over navigable waters of the United States); the Government’s supervision and administration costs; the Government’s costs of removing obstructions acquired by the Non-Federal Sponsor or for which no compensation is owed and no owner can be located; the Non-Federal Sponsor’s creditable costs for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation and maintenance; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; or additional work, if any; or the Non-Federal Sponsor’s cost for negotiating this Agreement or for providing relocations or real property interests, except for those provided for mitigation. It also does not include any costs for local service facilities or for aids to navigation.

C. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities. Acquisition of real property interests may require the performance of relocations.

D. The term “relocation” means the alteration, lowering, raising, or replacement and attendant demolition of a utility (including privately and publicly owned pipelines, cables, and related facilities located in or under navigable waters of the United States, regardless of whether they serve the general public), cemetery, highway, railroad (including any bridge thereof), or public facility, excluding any highway or railroad bridges over navigable waters of the United States and any structure determined to be an “obstruction” as that term is defined in paragraph I. of this Article.

E. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

F. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor

to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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

H. The term “Federal Participation Limit” means the \$10,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the Project.

I. The term “obstruction” means any structure located in or under navigable waters of the United States that must be removed to construct, operate, and maintain the Project but that does not require replacement because it is no longer needed.

J. The term “additional work” means items of work related to, but not cost shared as part of, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. However, if after completion of the design portion of the Project the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.C.3. 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.

B. The Non-Federal Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. The Non-Federal Sponsor shall provide 10 percent of construction costs assigned to a channel depth not in excess of 20 feet and 25 percent of construction costs assigned to a channel depth in excess of 20 feet but not greater than 50 feet.

a. In providing in-kind contributions, if any, as part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

b. After considering the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year. No later than 60 calendar days after receipt

of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.C.

c. No later than August 1st prior to each subsequent fiscal year of construction, 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 in accordance with Article VI.C.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, acquire or compel the removal of obstructions, and perform or ensure the performance of relocations required for construction, operation, and maintenance of the Project. For each relocation of a utility, or portion thereof, located in or under navigable waters of the United States that is required to accommodate a channel depth over 45 feet, the Non-Federal Sponsor shall pay to the owner of the utility at least one half of the owner's relocation costs, unless the owner voluntarily agrees to waive all or a portion of the Non-Federal Sponsor's contribution.

3. The Non-Federal Sponsor shall pay an additional 10 percent of construction costs (hereinafter the "additional 10 percent payment"), less any credit afforded by the Government for the real property interests and relocations, over a period not to exceed 30 years in accordance with Article VI.D.

4. The Non-Federal Sponsor shall construct, operate, and maintain, at no cost to the Government, the local service facilities, including obtaining all applicable licenses and permits necessary for construction, operation, and maintenance of such work.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, 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.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the

Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. The Government, as it determines necessary and subject to the availability of funds, shall operate and maintain the Project, which includes operation and maintenance of dredged material placement facilities, using funds appropriated by the Congress and, if applicable, funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Non-Federal Sponsor shall ensure that use of any additional capacity provided by the Government as additional work under 33 U.S.C. 2326a(a) complies with the operations plan approved by the Government. Except for such additional capacity, the Non-Federal Sponsor shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Non-Federal Sponsor shall not otherwise modify or improve the dredged material placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408.

F. 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 Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

H. The Non-Federal Sponsor may request in writing that the Government perform additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

I. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the Federal Participation Limit.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLIANCE
WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained 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 relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall identify obstructions to construction, operation, and maintenance of the Project and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such obstructions and shall provide the Non-Federal Sponsor with a written notice to proceed with acquiring or compelling the removal of such obstructions. The Non-Federal Sponsor shall acquire or compel the removal of such obstructions in accordance with the Government's construction schedule for the Project. If the owner of an obstruction cannot be located, the Government shall remove the obstruction during construction of the Project after following all applicable procedures in Parts 325 and 326 of Title 33 of the Code of Federal Regulations.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, perform the necessary relocations, or invoke navigation servitude to compel utility relocations or removal of obstructions under navigable waters of the United States.

1. In General. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of

such work in advance of the Government performing the work. The Government shall acquire the real property interests, perform the relocations, or invoke navigation servitude to compel utility relocations or removal of obstructions under navigable waters of the United States, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

2. Relocations of Utilities Located in or under Navigable Waters of the United States. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude to compel relocation of utilities located in or under navigable waters of the United States, the Non-Federal Sponsor must demonstrate that it has made a good faith effort to negotiate with the owner(s) for relocation of the utilities; that it lacks authority to compel relocation of the utilities through eminent domain or other legal proceedings; and that payment obligations for relocation costs, as between the Non-Federal Sponsor and the utility owner(s), are clear under the laws of the **[State of _____ or Commonwealth of _____]** and the terms of applicable non-Federal permits, licenses, or agreements. The Non-Federal Sponsor must also obtain a letter from the **[State of _____ or Commonwealth of _____]**, signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude. The Government's exercise of the navigation servitude to compel relocation of utilities does not negate or otherwise affect the Non-Federal Sponsor's payment obligations for relocation costs under the laws of the **[State of _____ or Commonwealth of _____]**; the terms of applicable non-Federal permits, licenses, or agreements; or Section 101(a)(4) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2211(a)(4)).

3. Removal of Obstructions. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude to compel removal of obstructions, the Non-Federal Sponsor must demonstrate that the owner of the obstruction has no compensable interest under the laws of the **[State of _____ or Commonwealth of _____]** or the terms of applicable non-Federal permits, licenses, or agreements; that it has made a good faith effort to negotiate with the owner(s) for removal of the obstructions; and that it lacks authority to compel removal of obstructions through eminent domain or other legal proceedings. The Non-Federal Sponsor must also obtain a letter from the **[State of _____ or Commonwealth of _____]**, signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude to compel removal of the obstructions.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be

provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations 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. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander for the **[Insert Name of USACE District, e.g., New Orleans District]** (hereinafter the “District Commander”) 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.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor’s responsibilities under this Article upon direction

by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government, in accordance with the following procedures, requirements, and conditions, shall credit the value of real property interests and relocations required for the Project against the additional 10 percent payment. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for such real property interest.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value. For any real property interests required for in-kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests 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) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, 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 appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the

Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall credit the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such relocations.

a. For a relocation other than a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation.

b. For a relocation of a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the costs borne by the Non-Federal Sponsor but shall not exceed the total value of the relocation as determined by the Government.

c. In general, the value of a relocation shall be equivalent to the costs, documented to the satisfaction of the Government, incurred to provide the relocation. The value may not exceed the amount 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. For the relocation of a highway or road, including any bridge thereof, that is owned by a public entity, a functionally equivalent facility may be constructed to the current design standard that the **[State of _____ or Commonwealth of _____]** would apply under similar conditions of geography and traffic load. Relocation costs include 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, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

B. The Government, in accordance with the following procedures, requirements, and conditions, shall include in construction costs, the costs for in-kind contributions determined by the Government to be integral to the Project and credit such costs against the non-Federal share of construction costs. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

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 in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government; or against the additional 10 percent payment.

C. If the Government exercises the navigation servitude to compel relocation of utilities and removal of obstructions located in or under navigable waters of the United States that interfere with construction, operation, and maintenance of the Project, the Government shall credit the costs incurred by the Government and paid by the Non-Federal Sponsor pursuant to Article III.D. against the additional 10 percent payment.

D. Any credit afforded under the terms of this Agreement 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 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit 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.

E. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project. In addition, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for the cost of real property interests, relocations, or the Government exercising navigation servitude in excess of the additional 10 percent payment.

ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs [**NOTE: construction costs do not include the costs of providing relocations or real property interests, except for those provided for mitigation**] are projected to be \$ _____, with the Government's share of such costs projected to be \$ _____ and the Non-Federal Sponsor's share of such costs projected to be \$ _____, which includes creditable in-kind contributions projected to be \$ _____, and the amount of funds to be provided during construction projected to be \$ _____. In addition, the Non-Federal Sponsor's additional 10 percent payment is projected to be \$ _____, reduced to \$ _____ after deducting creditable real property interests and relocations, which are projected to be \$ _____. These amounts are estimates only that are 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. While undertaking construction, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction 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 real property interests and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide funds by delivering a check payable to "FAO, USAED, [**INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)**]" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such 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 funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal cost share 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 such costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

3. Upon completion of construction of the Project, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the

Non-Federal Sponsor to meet its cost share, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its cost share, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its cost share, the Government shall refund such excess amount, subject to the availability of funds for the refund.

D. Payment of Additional 10 Percent.

1. As a part of the final accounting conducted pursuant to Article VI.C.3., the Government shall determine the additional 10 percent payment and then deduct the creditable value, in accordance with Article V, of real property interests and relocations. If the remainder is greater than zero, the Government shall calculate initial annual installments amortized over a period of 30 years using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The payment period begins on the date the Government notifies the Non-Federal Sponsor of the amount of the initial annual installments.

2. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of this amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

3. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government's notification pursuant to paragraph D.1. of this Article, and each annual installment thereafter on the anniversary date of such notification, by delivering a check payable to "FAO, USAED, **[INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]**" to the District Commander or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

E. If the Government agrees to provide real property interests or relocations on behalf of the Non-Federal Sponsor, invoke the navigation servitude to compel utility relocations or removal of obstructions, or undertake additional work, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, 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, **[INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]**" to the District Commander, 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 such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - 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 construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. 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 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 VIII - HOLD AND SAVE

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

ARTICLE IX - 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 X - MAINTENANCE OF RECORDS AND AUDITS

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 Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Federal Participation 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 XI - 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 XII - 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[TITLE]

[FULL NAME OF NON-FEDERAL SPONSOR]

[ADDRESS]

If to the Government:
District Commander
_____ District
[ADDRESS]

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

ARTICLE XIII - 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 XIV - 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 a 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 **[INSERT TITLE OF THE GOVERNMENT REPRESENTATIVE]**.

DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL SPONSOR]

BY: _____
[TYPED NAME]
[FULL TITLE]

BY: _____
[TYPED NAME]
[FULL TITLE]

DATE: _____

DATE: _____

Option 1: Not An Obligation of Future Appropriations. Section 221(a) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that 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. However, Section 221(a) 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 PPA as the last Article the following:

“ARTICLE XV - 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 the New York City Council]**, 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.”

Option 2: Multiple Non-Federal Sponsors. It is strongly preferred that there is one party only as the Non-Federal Sponsor for the PPA. Nonetheless, it is permissible to have more than one Non-Federal Sponsor if the Non-Federal Sponsors are jointly and severally responsible for all non-Federal obligations and responsibilities under the PPA. **The PPA 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.** In addition, insert into the PPA as the last Article the following:

“ARTICLE XV – 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.”

Option 3: Additional 10 percent provided during construction. If the Non-Federal Sponsor elects to provide the additional 10 percent during construction in lieu of making such payments over a 30-year period after completion of construction, make the following changes:

1. Add as the last sentence in Article II.B.1. the following:

“In addition, the Non-Federal Sponsor shall pay an additional 10 percent of construction costs (hereinafter the “additional 10 percent payment”), less any credit afforded by the Government for real property interests and relocations.”

2. Delete the phrase “to meet its cost share” from Article II.B.1.c.

3. Delete paragraph 3 from Article II.B., and re-number paragraph 4 as paragraph 3.

4. Replace the first and second sentences in Article VI.A. with the following:

“As of the effective date of this Agreement, construction costs [**NOTE: construction costs do not include the costs of providing relocations or real property interests, except for those provided for mitigation**]are projected to be \$_____, with the Government’s share of such costs projected to be \$_____ and the Non-Federal Sponsor’s share of such costs projected to be \$_____, which includes creditable in-kind contributions projected to be \$_____, and funds projected to be \$_____. In addition, the Non-Federal Sponsor’s additional 10 percent payment is projected to be \$_____, reduced to \$_____ after deducting creditable real property interests and relocations, which are projected to be \$_____.”

5. Delete Article VI.D., re-designate subsequent paragraph as Article VI.D., and replace references to “Article VI.E.” with “Article VI.D.” throughout the PPA.

Option 4: Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304).

In accordance with Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2310), up to \$484,000 in non-Federal cost-sharing is waived. The following changes to the PPA should be made:

1. Replace Article II.B.1. with the following:

“1. The Non-Federal Sponsor shall provide 10 percent of construction costs assigned to a channel depth not in excess of 20 feet and 25 percent of construction costs to a channel depth in excess of 20 feet but not greater than 50 feet, subject to a reduction of up to \$484,000.”

2. Replace Article II.B.1.b. in its entirety with the following:

“b. After considering the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year. In accordance with Section 1156 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2310), the Government shall reduce the amount of funds required from the Non-Federal Sponsor by up to \$484,000 and notify the Non-Federal Sponsor of funds required for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.C.”