



**MODEL AGREEMENT  
FOR  
ENVIRONMENTAL INFRASTRUCTURE  
DESIGN AND CONSTRUCTION ASSISTANCE UNDER  
SECTION 219 – WATER RESOURCES DEVELOPMENT ACT OF 1992, AS AMENDED  
JUNE 22, 2020**

**APPLICABILITY AND INSTRUCTIONS:**

1. The attached model cost sharing agreement must be used for all agreements for the provision of design and construction assistance for non-Federal water-related environmental infrastructure and resource protection and development projects, including waste water treatment and related facilities and water supply, storage treatment, and distribution facilities, under Section 219 of the Water Resources Development Act (WRDA) of 1992, as amended. Implementation guidance for Section 219 is provided in CECW-PD memorandum, dated December 12, 2001, subject: Implementation of Projects Under Section 219 of the Water Resources Development Act of 1992, as Amended. As required by Section 219(a), design or engineering assistance provided by the Government must be obtained by procurement from private sources, unless the service would require the use of a new technology unavailable in the private sector, or a solicitation or request for proposal has failed to attract two or more bids or proposals. This limitation does not apply to analysis and documentation to address NEPA requirements, which must be completed by the Corps prior to initiation of construction on each increment of work.
2. The scope of the agreement will initially be limited to an increment of work that can be implemented within available funds. However, if additional funds are provided in a subsequent fiscal year for additional increment(s) of work, the additional increment(s) of work may be undertaken without an amendment to the original agreement if all of the following conditions are met: (a) the additional increment of work can be implemented within such available additional funds and using the same Section 219 project authority; (b) the additional increment of work involves the same Non-Federal Sponsor(s) and the work is documented in a subsequent Letter Report; (c) the Letter Report includes written concurrence from the Non-Federal Sponsor(s) supporting implementation of the additional increment of work, including self-certification(s) of financial capability to satisfy the non-Federal obligations for the additional increment of work; and (d) the Letter Report is approved by the Division Commander, or District Commander if such approval authority has been delegated, prior to implementation of such work.
3. Authority to approve an agreement that does not deviate from the approved model has been delegated to the Division Commander. Division Counsel concurrence that the agreement does not deviate from the subject model, and is appropriate for use for the particular project, is required prior to approval. In addition, authority to approve non-substantive deviations to the model agreement also has been delegated to the Division Commander. Division Counsel concurrence that a deviation is non-substantive, with the recommendation to approved the deviation, is required prior to approval by the Division Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for Division review and then transmitted to the appropriate HQUSACE RIT, with Division Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the agreement after its approval.
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).
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 for Environmental Infrastructure Assistance, 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.

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

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for **[Insert Name of USACE District, e.g., New Orleans District]** (hereinafter the “District Commander”) and the **[FULL NAME OF THE NON-FEDERAL SPONSOR]** (hereinafter the “Non-Federal Sponsor”), represented by its **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, the provision of design and construction assistance for the non-Federal project for **[INSERT NAME OF THE SECTION 219 PROJECT]** at **[GENERAL LOCATION OF PROJECT, INCLUDING STATE OR COMMONWEALTH]** was authorized by Section 219 **[INSERT SPECIFIC AUTHORIZATION CITE UNDER SECTION 219 FOR THE PROJECT, e.g., (c)(2) and (e)(5), (f)(259), etc.]** of the Water Resources Development Act of 1992, Public Law 102-580, as amended;

WHEREAS, the Government will provide design and construction assistance by undertaking increment(s) of work, as defined in Article I.A. of this Agreement;

WHEREAS, Section 219(b) of the Water Resources Development Act of 1992, Public Law 102-580, as amended, specifies applicable cost-sharing requirements; 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 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 “increment of work” means design and construction of features, as generally described in a Letter Report, and approved by the **[INSERT TITLE OF APPROVING OFFICIAL, i.e., Division Commander for Mississippi Valley Division, or District Commander, if such approval authority has been delegated]**. The initial increment of work consists of **[DESCRIBE FEATURES]**, as generally described in the Letter Report, approved by the **[INSERT TITLE OF APPROVING OFFICIAL, i.e., Division Commander for**

**Mississippi Valley Division, or District Commander, if such approval authority has been delegated], on [Month, Day, Year].** Each additional increment of work, if any, will be described in a separate Letter Report, which will specify the amount of Federal funds available for such work.

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 directly related to design and construction of an increment of work and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, including preparation of Letter Reports and conducting environmental compliance activities, and construction; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests, relocations, and in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Coordination Team to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

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

D. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

E. The term “in-kind contributions” means those services or materials provided after the date of approval of the Letter Report for the increment of work by the Non-Federal Sponsor that are identified as being integral to an increment of work, and approved in writing, by the Division Commander for **[INSERT NAME OF CORPS DIVISION, e.g., Mississippi Valley Division]** (hereinafter the “Division Commander”). To be integral, the material or service must be part of work that the Government would otherwise need to undertake for the increment of work. 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 an increment of work.

F. The term “betterments” means a difference in design or construction of an increment of work that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that work.

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

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall design and construct each increment of work using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations. The amount of Federal funds for each increment of work is limited to the amount identified in the Letter Report for that increment of work, with the Non-Federal Sponsor responsible for all costs in excess of that amount.

B. The Non-Federal Sponsor shall contribute for each increment of work at least 25 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of each increment of work.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. The Non-Federal Sponsor shall begin operation and maintenance as functional portions of such work are completed. 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.

3. After considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its minimum 25 percent cost share 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 required funds to the Government in accordance with Article VI.

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

5. If all Federal funds available for an increment of work will be exhausted prior to completion of such work, the Government shall notify the Non-Federal Sponsor of the full amount of funds required to complete the increment of work, and the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI within 60 days of such notification or shall complete such work as in-kind contributions in accordance with paragraph B.2. above.

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 available for each increment of work 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 each increment of work, 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. When the District Commander determines that construction of an increment of work is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing. The Non-Federal Sponsor is responsible for operation and maintenance of such increment of work, at no cost to the Government.

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 increment of work. 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, the Government and the Non-Federal Sponsor may establish a Coordination Team to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsor's costs for participation on the Coordination Team shall be included in construction costs for cost-sharing purposes.

H. 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 Commander. If the Government agrees to such request, the Non-Federal Sponsor must provide funds sufficient to cover the costs of the betterments in advance of the Government performing the work. No later than 60 calendar days of receiving written notice from the Government of the costs of betterments, 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 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 each increment of work. 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 such work, 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 such work. The Non-Federal Sponsor shall ensure that real property interests provided for such work are retained in public ownership.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of each increment of work 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 such work.

C. 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 each increment of work. 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 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. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of each increment of work for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate and maintain each increment of work in a manner that will not cause liability to arise under CERCLA.

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

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of real property interests and relocations, and the costs of in-kind contributions provided by the Non-Federal Sponsor and determined by the Government to be required for each increment of work, except that only the value of real property interests the Non-Federal Sponsor acquires from private owners and in-kind contributions the Non-Federal Sponsor provides after the date of approval of the Letter Report for the increment of work are eligible for credit. Any publicly owned real property interests or real property interests owned by the Non-Federal Sponsor on the date of approval of the Letter Report for the increment of work and required for that increment of work will be provided by the Non-Federal Sponsor at no cost to the Government and without credit or reimbursement.

B. 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 the real property interest in accordance with paragraphs C.1. of this Article. 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 other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. 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. Only the value of real property interests acquired from private owners after the date of approval of the Letter Report for an increment of work are eligible for credit. The Non-Federal Sponsor shall obtain, for each creditable 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.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor after the date of approval of the Letter Report for an increment of work 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 date of approval of the Letter Report for an increment of work, 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, 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 date of approval of the Letter Report for an increment of work, 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 C.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 include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in acquiring any real property interests from private owners required pursuant to Article III for an increment of work after the date of approval of the Letter Report for such work. 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.C., 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. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of an increment of work. Only relocations performed after approval of the Letter Report for an increment of work are eligible for credit.

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

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the **[State of \_\_\_\_\_ or Commonwealth of \_\_\_\_\_]** would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. 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 additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs for an increment of work and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to that work.

a. 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 constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. 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 any in-kind contributions performed prior to the date of approval of the Letter Report for an increment of work; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

c. Although design performed by the Non-Federal Sponsor prior to approval of the Letter Report for an increment of work is not creditable as in-kind contributions under this Agreement, the Non-Federal Sponsor, at no cost to the Government, may voluntarily provide such design to the Government. The Government, in its sole discretion, may accept, modify, or reject such design, or any portion thereof, for use in constructing that increment of work. Prior to commencement of review by the Government of such design, the Non-Federal Sponsor shall provide a written certification and warranty to the Government that such design is free from any legal encumbrances and use restrictions, including but not limited to, any intellectual property rights and outstanding licensing requirements.

4. Compliance with Federal Labor Laws. 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.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for the value of real property interests, relocations, and in-kind contributions that exceeds 25 percent of construction costs for each increment of work or real property interests that were previously provided as an item of local cooperation for a Federal project.

#### ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs for the initial increment of work are projected to be \$\_\_\_\_\_, with the amount of Federal funds available for such work limited to \$\_\_\_\_\_ **[INSERT AMOUNT OF FEDERAL FUNDS]**. The Non-Federal Sponsor's share of construction costs for the initial increment of work is projected to be \$\_\_\_\_\_, which includes creditable real property interests and relocations projected to be \$\_\_\_\_\_, creditable in-kind contributions projected to be \$\_\_\_\_\_, and the amount of funds required to meet its minimum 25 percent cost share projected to be \$\_\_\_\_\_. The

Letter Report for each additional increment of work will include information on the Federal funds available for the increment of work and the Non-Federal Sponsor's share of construction costs for such work. 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 Non-Federal Sponsor.

B. For each increment of work, 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. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs 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 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 construction 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 such construction 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.

E. Upon completion of each increment of work, 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, 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 share of construction costs, including contract claims or any other liability that may become known after the final accounting.

## 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 design or construction.

B. 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.

C. In the event of termination, the parties shall conclude their activities relating to design and construction and conduct a final accounting in accordance with Article VI.E. 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.

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 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, or operation and maintenance of any work under this Agreement, 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. 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.

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 District Commander.

DEPARTMENT OF THE ARMY

**[INSERT FULL NAME OF SPONSOR]**

BY: \_\_\_\_\_  
**[INSERT TYPED NAME]**  
**[Insert Rank]**, U.S. Army  
District Commander

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. However, inclusion of this option 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 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 Maryland]**, 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.** It is strongly preferred that there is one party only as the Non-Federal Sponsor for the agreement. 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 agreement. **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.** In addition, insert into the agreement 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.”