



**MODEL AGREEMENT  
FOR  
COASTAL WETLANDS PLANNING, PROTECTION, AND RESTORATION ACT  
PROJECTS  
OCTOBER 28, 2020**

**APPLICABILITY AND INSTRUCTIONS:**

1. The attached model agreement is for projects undertaken pursuant to the authority contained in the Coastal Wetlands Planning, Protection, and Restoration Act, Title III of Public Law 101-646, as amended (16 U.S.C. 3951-3956). Based on approval of the Louisiana Coastal Wetlands Conservation Plan, the model PPA specifies that the Federal share of project costs is 85 percent. However, in the event the Secretary of the Army, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency later determine the Non-Federal Sponsor is not taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan, cost-sharing should be revised to reflect a Federal share of 75 percent for any project without an executed agreement.
2. The following options, including language for the agreement, are addressed in the Attachment:
  - a. Option 1: Government performs Monitoring and Operation, Maintenance & Rehabilitation (OM&R) (page A-1).
  - b. Option 2: Additional Work (page A-4).
3. Authority to approve a CWPPRA PPA that does not deviate from the approved model, or for an amendment to this approved model for the purpose of including an approved option to the model, has been delegated to the Division Commander for Mississippi Valley Division (MVD). 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, authority to approve non-substantive deviations to the model PPA 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 MVD 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 for New Orleans District is authorized to execute the agreement after its approval.
4. 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; and delete the Attachment.
5. 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  
THE STATE OF LOUISIANA  
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 District Commander for New Orleans District (hereinafter the “District Commander”) and the State of Louisiana acting by and through the Coastal Protection and Restoration Authority Board of Louisiana (hereinafter the “Non-Federal Sponsor”), represented by its Chair.

WITNESSETH, THAT:

WHEREAS, the Coastal Wetlands Planning, Protection and Restoration Act, Title III of Public Law 101-646, as amended (16 U.S.C. 3951-3956) (hereinafter CWPPRA”), authorizes projects for the creation, restoration, protection, or enhancement of Louisiana coastal wetlands;

WHEREAS, on March 18, 1994 the Louisiana Coastal Wetlands Conservation and Restoration Task Force (hereinafter the “Task Force”), consisting of the Secretary of the Army (hereinafter the “Secretary”), who serves as the chair, the Administrator of the Environmental Protection Agency (hereinafter the “Administrator”), the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Governor of the State of Louisiana, or their respective designees, completed the Louisiana Coastal Wetlands Restoration Plan, as required by Section 303(b) of CWPPRA, to identify coastal wetlands restoration projects, in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing the long-term conservation of coastal wetlands;

WHEREAS, pursuant to the authority provided in CWPPRA, design (Phase 1) and construction, monitoring, operation, maintenance, and rehabilitation (Phase 2) of the **[Insert Full Name of the Project]** (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was approved by the Task Force on **[Month Day, Year]**;

WHEREAS Federal funding for the CWPPRA program is provided in accordance with 16 U.S.C. 777c and the Government, in accordance with Section 303(e) of CWPPRA, has allocated funds for the Project;

WHEREAS, Section 303(f) of CWPPRA specifies the cost-sharing requirements applicable to the Project;

WHEREAS, pursuant to La. R.S. 49:214.5.2(A)(1), the Non-Federal Sponsor represents the State of Louisiana’s position relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection

projects and programs and at La. R.S. 49:214.5.2(A)(7) the Non-Federal Sponsor has the power and authority to enter into any contract with any political subdivision of the state for the study, planning, engineering, design, construction, operation, maintenance, repair, rehabilitation, or replacement of any integrated coastal protection project and to this end, may contract for the acceptance of any grant of money upon the terms and conditions, including any requirement of matching the grants in whole or part, which may be necessary;

WHEREAS, pursuant to La. R.S. 49:214.6.1, the Coastal Protection and Restoration Authority (“CPRA”) is the implementation and enforcement arm of the Non-Federal Sponsor and is directed by the policy set by the Non-Federal Sponsor, and pursuant to La. R.S. 49:214.6.2 and La. R.S. 49:214.6.3, CPRA shall administer the programs of the Non-Federal Sponsor and shall implement projects relative to the protection, conservation, enhancement, and restoration of the coastal area of the State of Louisiana through oversight of integrated coastal projects and programs consistent with the legislative intent as expressed in La. R.S. 49:214.1, and, where appropriate, CPRA shall administer and implement the obligations undertaken by the Non-Federal Sponsor pursuant to this Agreement; 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 **[DESCRIBE FEATURES]**, as generally described in the **[FULL TITLE OF FACTSHEET PACKAGE]**, dated \_\_\_\_\_, \_\_\_\_\_ and approved by the Task Force on **[Month Day, Year]**. The specific details and project costs of the Project will be further defined in a decision document prepared by the Government, in consultation with the Non-Federal Sponsor, as a part of the design (Phase 1) of the Project and approved by the Task Force prior to the initiation of construction of the Project (hereinafter the “Decision Document”). In the event of a conflict between the approved Decision Document and this Agreement, this Agreement shall control.

B. The term “project 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, construction, monitoring, operation, maintenance, and rehabilitation of the Project and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests and relocations and for providing in-kind contributions, if any; the costs of historic preservation activities except for data recovery for historic properties; and the costs for monitoring, operation, maintenance, and rehabilitation of the Project. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Project Coordination Team to

discuss significant issues and actions; or audits; 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 "functional portion thereof" means a portion of the Project that has been completed and that can function independently and was constructed to the design criteria for that portion of the Project, as determined in writing by the District Commander, after consultation with the Non-Federal Sponsor, although the remainder of the Project is not yet complete.

F. The term "monitoring" means those activities, including the collection and analysis of data, as generally described in the Project Monitoring Plan prepared by the Non-Federal Sponsor and approved by the Government during design of the Project. The period of time for conducting such monitoring will be specified in the Project Monitoring Plan.

G. The term "operation, maintenance, and rehabilitation (OM&R)" means those activities, as generally described in the OM&R Manual prepared by the Government, in consultation with the Non-Federal Sponsor, during construction of the Project or immediately thereafter. The period of time for conducting such OM&R will be specified in the OM&R Manual.

H. 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 Task Force. 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 and the preparation of the Project Monitoring Plan by the Non-Federal Sponsor.

I. 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.

J. The term "Maximum Cost Limit" means the limitation on the total costs of the Project, as approved by the Task Force, for design, construction, monitoring, and OM&R of the Project as identified in the Decision Document. Such limit may be increased by written approval from the Task Force.

## 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 allocated by the Task Force 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.E. 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 contribute 15 percent of project costs allocated by the Government to design and construction of the Project, as follows:

1. The Non-Federal Sponsor shall pay 5 percent of project costs allocated to design and construction.
2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for the Project.
3. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of 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.
4. After determining the amount to meet the 5 percent required by paragraph B.1., above, for the then-current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.2. and B.3., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its 15 percent cost share of project costs allocated to design and construction of the Project 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.
5. 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 of project costs allocated to design and construction of the Project. Not 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.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the reasonable 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. The Government shall consider in good faith the comments of the Non-Federal Sponsor and provide timely responses thereto using the Government's existing or comparable record keeping system for comment documentation and management. 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 project 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. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete and was constructed to the design criteria for that portion of the Project, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor shall monitor and operate, maintain, and rehabilitate (OM&R) the Project, or such functional portion thereof, as follows:

1. The Government, subject to the availability of funds as allocated by the Task Force, shall reimburse the Non-Federal Sponsor for 85 percent of project costs it incurs allocated by the Government to monitoring and OM&R of the Project that are eligible for reimbursement, less 15 percent of the project costs incurred by the Government related to such work in accordance with the following procedures, requirements, and conditions:

a. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with written requests and supporting documentation sufficient for the Government to determine the eligible amount of reimbursement to the Non-Federal Sponsor for the Government's share of the monitoring and OM&R activities. Any such reimbursements shall be subject to the same documentation and crediting procedures and limitations for in-kind contributions, including compliance with Federal Labor Laws, provided in Article V.

b. In the event the Government, in consultation with the Non-Federal Sponsor, determines, in accordance with Article III, that additional real property interests or relocations are required for monitoring and OM&R of the Project, any reimbursements provided to the Non-Federal Sponsor for such real property interests and relocations costs shall be subject to the same documentation and crediting procedures and limitations for real property interests and relocations provided in Article V.

c. The Non-Federal Sponsor shall conduct its monitoring and OM&R responsibilities in a manner compatible with the purpose of the Project as approved by the Task Force and in accordance with applicable Federal laws, and the Project Monitoring Plan and the OM&R Manual. The Government and the Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OM&R Manual. The Government may exclude or reduce the amount of Non-Federal Sponsor project costs eligible for reimbursement if the Non-Federal Sponsor fails to comply with the requirements of applicable Federal laws and regulations.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, or rehabilitation of the Project. No operation, maintenance, or rehabilitation by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the outputs produced, hinder operation and maintenance, or interfere with the proper function of the Project.

G. The Non-Federal Sponsor shall not use the Project, or real property interests required for construction, operation, and maintenance of the Project, as a wetlands bank or mitigation credit for any other project.

H. 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.

I. 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 project costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for

participation on the Project Coordination Team shall not be included in project costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

J. Upon request, each party shall provide the other with any information or documents concerning the Project as soon as possible, consistent with the laws, regulations, and guidance applicable to each party.

### 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 it provides 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. 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, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, and perform the relocations, 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.

D. 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.

E. The Government shall make available by lease to the Non-Federal Sponsor those lands owned or controlled by the United States and administered by the Government, if any, which the Government determines to be required for construction, operation, and maintenance of the Project. No provision of this Agreement shall merge into any lease executed pursuant to this paragraph.

#### 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 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. Further, the Government shall perform, or ensure performance of, such investigations on lands that are owned by the United States and administered by the Government.

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, for real property interests to be provided by the Non-Federal Sponsor, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, 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 the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, and rehabilitate the Project 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 shall include in project costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

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 project 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. 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.

(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, monitoring, or OM&R 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 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 project costs and credit towards the Non-Federal Sponsor's share of such costs, 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.D., 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 project 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 the Project.

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 Louisiana 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 costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

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

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, but shall not include any costs associated with betterments, as determined by the Government. 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 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 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.

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 real property interests that were previously provided as an item of local cooperation for another Federal project.

#### ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, project costs allocated to design 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 the 5 percent contribution of funds for design projected to be \$ \_\_\_\_\_, creditable in-kind contributions projected to be \$ \_\_\_\_\_, and the additional amount of funds required to meet the minimum 15 percent cost share for design projected to be \$ \_\_\_\_\_. Project costs allocated to construction 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 the 5 percent contribution of funds for construction projected to be \$ \_\_\_\_\_, creditable real property interests and relocations projected to be \$ \_\_\_\_\_, creditable in-kind contributions projected to be \$ \_\_\_\_\_, and the additional amount of funds required to meet its 15 percent cost share for construction projected to be \$ \_\_\_\_\_. Project costs allocated to monitoring 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 \$ \_\_\_\_\_. Project costs allocated to OM&R 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 \$ \_\_\_\_\_. 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. The Maximum Cost Limit for the Project, as currently established by the Task Force, is \$ \_\_\_\_\_.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated project costs allocated to design and construction 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; the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year; and the current Maximum Cost Limit for the Project.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of project costs allocated to design and construction by delivering a check payable to “FAO, USAED, 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 project costs allocated to design and construction 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 project 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 construction and 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. The Government shall conduct another final accounting after completion of monitoring and OM&R and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting for completion of construction 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. A final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of project costs, including contract claims or any other liability that may become known after the final accounting. If a final accounting determines that the Non-Federal Sponsor exceeded its share of project costs allocated to such work, the Government shall reimburse such excess amount, subject to the availability of funds as allocated by the Task Force.

F. If the Government agrees to acquire or provide, as applicable, real property interests or relocations, on behalf of the Non-Federal Sponsor, 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, 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 of 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 allocated by the Task Force and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government shall suspend construction or direct the Non-Federal Sponsor to suspend monitoring and OM&R of the Project if the Maximum Cost Limit is exceeded.

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 design and construction or monitoring and OM&R 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, monitoring, operation, maintenance, and rehabilitation 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 project costs, but shall be included in calculating the Maximum Cost 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:

Chair  
Coastal Protection and Restoration Authority Board of Louisiana  
Capitol Annex – State of Louisiana  
1501 N. 3<sup>rd</sup> Street  
Baton Rouge, LA 70802

If to the Government:  
District Commander  
New Orleans District  
U. S. Army Corps of Engineers  
7400 Leake Avenue  
New Orleans, LA 70118

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.

#### 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 Legislature of the State of Louisiana, where creating such an obligation would be inconsistent with **[Insert the specific citation to the constitutional or statutory limitation on committing future appropriations, e.g., Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana, as applicable]**. 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.

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

COASTAL PROTECTION AND RESTORATION  
AUTHORITY BOARD OF LOUISIANA

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

BY: \_\_\_\_\_  
[INSERT TYPED NAME]  
[Insert Full Title]

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Attachment

**Option 1: Government performs Monitoring and Operation, Maintenance & Rehabilitation (OM&R).** There are limited circumstances (e.g., large scale diversions projects) in which it would be appropriate for the Government to perform the monitoring and OM&R for a CWPPRA project. In such instances, make the following changes to the PPA:

1. Replace Article I.F. in its entirety with the following:

“F. The term “monitoring” means those activities, including the collection and analysis of data, as generally described in the Project Monitoring Plan prepared by the Government, in consultation with the Non-Federal Sponsor, during design of the Project. The period of time for conducting such monitoring will be specified in the Project Monitoring Plan.”

2. At the end of Article I.H. delete the phrase “and the preparation of the Project Monitoring Plan by the Non-Federal Sponsor”.

3. Replace Article II.E. in its entirety with the following:

“E. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing and the Government, subject to the availability of funds as allocated by the Task Force, shall monitor, operate, maintain, and rehabilitate the Project in accordance with the Project Monitoring Plan and the OM&R Manual. However, in the event the Government permits to Non-Federal Sponsor to perform a portion of the monitoring or OM&R, the Non-Federal Sponsor shall perform such work in accordance with applicable Federal laws, and the Project Monitoring Plan and OM&R Manual, and any subsequent updates or amendments thereto. The Non-Federal Sponsor shall contribute 15 percent of project costs allocated by the Government to monitoring and OM&R of the Project, as follows:

1. The Non-Federal Sponsor shall pay 5 percent of project costs allocated to monitoring and OM&R.

2. In the event the Government, in consultation with the Non-Federal Sponsor, determines, in accordance with Article III, that additional real property interests or relocations are required for monitoring or OM&R, any credit provided to the Non-Federal Sponsor for such real property interests and relocations costs shall be subject to same documentation and crediting procedures and limitations for real property interests and relocations provided in Article V.

3. In providing some portion of the monitoring or OM&R, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Any credit for monitoring or OM&R shall be subject the same documentation and valuation procedures and limitations for in-kind contributions provided in Article V.

Attachment

4. After determining the amount to meet the 5 percent required by paragraph E.1., above, for the then-current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs E.2. and E.3., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its 15 percent cost share of project costs allocated to monitoring and OM&R of the Project 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.

5. 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 of project costs allocated to monitoring and OM&R of the Project. Not 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.”

4. Replace Article IV.E. in its entirety with the following:

“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.”

5. Replace the 3<sup>rd</sup> and 4<sup>th</sup> sentences in Article VI.A. with the following:

“Project costs allocated to monitoring 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 the 5 percent contribution of funds for monitoring projected to be \$ \_\_\_\_\_, creditable monitoring work, if any, projected to be \$ \_\_\_\_\_, and the additional amount of funds required to meet its 15 percent cost share for monitoring projected to be \$ \_\_\_\_\_. Project costs allocated to OM&R 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 the 5 percent contribution of funds for OM&R projected to be \$ \_\_\_\_\_, creditable OM&R work, if any, projected to be \$ \_\_\_\_\_, and the additional amount of funds required to meet its 15 percent cost share for OM&R projected to be \$ \_\_\_\_\_.”

6. Replace Article VI.B. in its entirety with the following:

“B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated project costs allocated to design and construction, monitoring, and OM&R, 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

## Attachment

contributions; the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year; and the current Maximum Cost Limit for the Project.”

7. Replace Article VI.C. in its entirety with the following:

“C. The Non-Federal Sponsor shall provide the funds required to meet its share of project costs allocated to design and construction, monitoring, and OM&R by delivering a check payable to “FAO, USAED, 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.”

8. Replace the first sentence in Article VI.D. with the following:

“The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of project costs allocated to design and construction, monitoring, and OM&R as those costs are incurred.”

9. Replace Article VII.B. in its entirety with the following:

“B. If the Government determines at any time that the Federal funds made available for construction or monitoring and OM&R of 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 or monitoring and OM&R until there are sufficient funds allocated by the Task Force and funds provided by the Non-Federal Sponsor to allow construction or monitoring and OM&R to resume. In addition, the Government shall suspend construction or monitoring and OM&R if the Maximum Cost Limit is exceeded.”

## Attachment

**Option 2: Additional Work.** If additional work for the Project is requested by the Non-Federal Sponsor and approved by the Task Force, make the following changes:

1. Delete the “and” at the end of the sixth WHEREAS clause and insert the following WHEREAS clause after the sixth WHEREAS clause in the PPA:

“WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor’s full expense, additional work while the Government is carrying out the Project; and”

2. Replace the last sentence in Article I.B. with the following:

“The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; or additional work; or the Non-Federal Sponsor’s cost of negotiating this Agreement.”

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

“K. The term “additional work” means items of work related to, but not cost shared as a 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.”

4. Add a new paragraph K. to Article II as follows:

“K. 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 Task Force. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.”

5. Replace the first sentence in Article VI.F. with the following:

“If the Government agrees to acquire or provide, as applicable, real property interests, relocations, or additional work on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs.”