



**MODEL PROJECT PARTNERSHIP AGREEMENT  
FOR  
PROJECTS CARRIED OUT UNDER  
SECTION 1122 – BENEFICIAL USE OF DREDGED MATERIAL PILOT PROGRAM  
(WITH NON-FEDERAL NAVIGATION CHANNEL(S))  
APRIL 9, 2020**

**APPLICABILITY AND INSTRUCTIONS:**

1. The attached model agreement is for a project involving the beneficial use of dredged material **from both a Federal navigation channel and a non-Federal navigation channel (e.g., local service facilities)** undertaken pursuant to Section 1122 of the Water Resources Development Act of 2016, as amended (33 U.S.C. 2326 note). **This model should be used only if the non-Federal sponsor already owns the real property interests required for the project and will provide such real property interests and perform any required relocations at no cost to the Federal government.**

a. The incremental costs above the Federal Standard for transporting (including depositing) dredged material from the Federal navigation channel(s) for the authorized Federal navigation project will be borne by the Federal government. The dredging and transporting (including depositing) costs associated with the non-Federal navigation channel(s) remain a 100 percent non-Federal cost. For all other activities, such as wetland plantings; constructing any improvements required to enable the placement of dredged or excavated material during implementation of a project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes; additional dredging beyond what is required for the Federal navigation channel(s) for the authorized Federal navigation project; or mechanical shaping of dunes and beach berms, the costs of such activities shall be shared in accordance with the cost sharing requirements of Section 204 of the Water Resources Development Act of 1992, as amended (33 U.S.C. 2326), based on project purpose as provided in subsections (a) through (d) of Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213).

b. Implementation guidance for Section 1161 of WRDA 2016, dated October 19, 2017, addresses the cessation of O&M activities on nonstructural and nonmechanical elements of ecosystem restoration projects or features. The OMRR&R manual prepared by the Government should address this matter.

2. Authority to approve a Section 1122 PPA that does not deviate from the approved model has been delegated to the MSC Commander. Division Counsel concurrence that the PPA does not deviate from the 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 MSC Commander. Division Counsel concurrence that a deviation is non-substantive, with the recommendation to approve the deviation, is required prior to approval by the MSC Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT and the HQUSACE PPA Team, with MSC Division Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the PPA after its approval.

3. The following options, including language for the agreement, are addressed in the Attachment:

a. Option 1: Sponsor is a Non-Profit Entity (page A-1).

b. Option 2: Not An Obligation of Future Appropriations (page A-2).

c. Option 3: Multiple Sponsors (page A-3).

c. Option 4: Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (page A-4).

d. Option 5: Projects for Coastal Storm Risk Management (A-5).

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; if more than one option is used, ensure the Article and paragraph numbering and references therein are correct; 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 Agreement" website under the "Forms" tab.

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

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the 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, Section 1122 of the Water Resources Development Act of 2016, as amended (33 U.S.C. 2326 note) (hereinafter “Section 1122”), authorizes the Secretary to establish a pilot program to carry out 20 projects for the beneficial use of dredged material for certain purposes specified in Section 1122;

WHEREAS, the [INSERT FULL NAME OF THE PROJECT] (hereinafter the “Project”, as defined in Article I.A. of this Agreement) for [PROJECT PURPOSE, e.g., aquatic ecosystem restoration] at [LOCATION] for beneficial use of dredged material was selected for implementation under Section 1122 by the Assistant Secretary of the Army for Civil Works on [MONTH DAY, YEAR];

WHEREAS, the Project includes dredged material from the Federal navigation channel(s) for the [FULL NAME OF AUTHORIZED FEDERAL NAVIGATION PROJECT] (hereinafter the “Authorized Federal Navigation Project”), as well as dredged material from non-Federal navigation channel(s);

WHEREAS, costs that are in excess of the base plan costs associated with dredging of the Federal navigation channel(s) for the Authorized Federal Navigation Project are cost shared [INSERT PERCENTAGES BASED ON PROJECT PURPOSE IN ACCORDANCE WITH SECTION 103(a) to (d) of WRDA 1986, AS AMENDED] \_\_\_\_ percent Federal and \_\_\_\_ percent non-Federal, except that the additional incremental costs for transporting (including depositing) dredged material from the Federal navigation channel(s) are full Federal;

WHEREAS, costs of dredging and transporting (including depositing) dredged material from the non-Federal channel(s) remain a full non-Federal responsibility, with other costs associated with using such dredged material for the Project cost shared [INSERT PERCENTAGES BASED ON PROJECT PURPOSE IN ACCORDANCE WITH SECTION 103(a) to (d) of WRDA 1986, AS AMENDED] \_\_\_\_ percent Federal and \_\_\_\_ percent non-Federal;

WHEREAS, the Non-Federal Sponsor already owns the real property interests required for implementation, operation, and maintenance of the Project and will provide such real property interests and perform any required relocations for the Project at no cost to the Government;

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

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

#### ARTICLE I - DEFINITIONS

A. The term "Project" means the beneficial use of dredged material from the Federal navigation channel(s) and the non-Federal navigation channel(s), which includes the Cost Shared Work defined in paragraph B., the Full Federal Work defined in paragraph C., and the Full Non-Federal Work defined in paragraph D., as generally described in the **[FULL TITLE OF DECISION DOCUMENT]**, dated \_\_\_\_\_, \_\_\_\_ and approved by the **[TITLE OF APPROVING OFFICIAL, e.g. Division Commander for Mississippi Valley Division]** on **[MONTH DAY, YEAR]** (hereinafter the "Decision Document").

B. The term "Cost Shared Work" means that portion of the Project implemented on a cost shared basis consisting of **[DESCRIBE THE COST SHARED WORK, e.g., constructing any improvements required to enable the placement of dredged or excavated material during implementation of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes; additional dredging beyond what is required for the Federal navigation channel(s); mechanical shaping of dunes, beach berms, etc.; wetland plantings, etc.]**, as generally described in the Decision Document.

C. The term "Full Federal Work" means that portion of the Project implemented at full Federal expense consisting of transporting (including depositing) of **[Insert estimated volume or other descriptive terminology to describe the Full Federal Work, e.g., approximately \_\_\_\_\_ cubic yards]** of dredged material from the Federal navigation channel(s), as generally described in the Decision Document.

D. The term "Full Non-Federal Work" means that portion of the Project implemented at full non-Federal expense consisting of dredging and transporting (including depositing) of **[Insert estimated volume or other descriptive terminology to describe the Full Non-Federal**

**Work, e.g., approximately \_\_\_\_\_cubic yards]** of dredged material from the non-Federal navigation channel(s), as generally described in the Decision Document.

E. The term “costs of the Cost Shared Work” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to implementation of the Project. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction; the costs of historic preservation activities except for data recovery for historic properties; the Government’s supervision and administration costs; and the Non-Federal Sponsor’s creditable costs for providing in-kind contributions. The term does not include any base plan costs; or any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; additional work; the Government’s costs for the Full Federal Work; the Non-Federal Sponsor’s costs for the Full Non-Federal Work; or the Non-Federal Sponsor’s costs of negotiating this Agreement, and providing real property interests or relocations.

F. The term “base plan costs” means the costs, as determined by the Government, to carry out the dredging and placement of material for the construction or operation and maintenance of the Federal navigation channel(s) for the Authorized Federal Navigation Project in the most cost effective way, consistent with economic, engineering, and environmental criteria, for the quantity of dredged material that will be used to construct the Project.

G. 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.

H. 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.

I. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander, although the remainder of the Project is not yet complete.

J. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander. To be integral, the material or service must be part of the work that the Government would otherwise have undertaken for implementation of the Cost Shared 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 the Cost Shared Work.

K. The term “additional work” means items of work related to 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.

L. 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 undertake the Project using funds appropriated by the Congress and, as applicable, 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 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 requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsor, at no cost to the Government, is responsible for providing all real property interests and performing all relocations that the Government determines are required for implementation of the Project. The Non-Federal Sponsor shall provide the Government with authorization for entry to such real property interests in accordance with the Government’s schedule for Project implementation. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

C. The Non-Federal Sponsor shall contribute \_\_\_ percent **[PERCENTAGE BASED ON PROJECT PURPOSE IN ACCORDANCE WITH SECTION 103(a) to (d) of WRDA 1986, AS AMENDED]** of the costs of the Cost Shared Work as determined by the Government; and 100 percent of the costs allocated by the Government to the Full Non-Federal Work, as follows:

1. In providing in-kind contributions for the Cost Shared Work, 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. The Government shall include in costs of the Cost Shared Work and credit towards the Non-Federal Sponsor’s share of such costs, and determine the value of in-kind contributions, as follows:

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 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. Any credit afforded under the terms of this Agreement for in-kind contributions 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). Notwithstanding any other provision of this Agreement, 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.

2. After considering the estimated amount of credit the Government expects that will be afforded to the Non-Federal Sponsor pursuant to paragraph C.1., above, the Government shall determine the estimated funds required from the Non-Federal Sponsor to meet its cost share for the Cost Shared Work for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article IV. For costs allocated to the Full Non-Federal Work, the Non-Federal Sponsor, in accordance with Article IV.F., shall provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

3. 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 amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. 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 IV.

D. 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.

E. 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 total costs of the Project and shared in accordance with the provisions of this Agreement. If historic properties are discovered and the effect(s) of Project implementation 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.

F. When the District Commander determines that implementation 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 Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government in the OMRR&R Manual. The Government and Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor 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, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement 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.

G. 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 by the Project, hinder operation and maintenance of the Project, or interfere with the proper function of the Project.

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

I. 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.

J. 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 Non-Federal Sponsor's costs for participation on the Project Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

K. Except as provided in paragraph C.1., above, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

L. The Non-Federal Sponsor may request in writing that the Government perform additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander for the **[INSERT NAME OF USACE DIVISION, e.g. Mississippi Valley Division]**. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article IV.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

### ARTICLE III - 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 implementation, 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.

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 proceed with the Project, or if already underway, whether to continue, suspend, or terminate the Project.

1. Should the parties initiate or continue the Project, 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 the Project, 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, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE IV - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total costs for the Project 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 \$\_\_\_\_\_. Costs of the Cost Shared Work are projected to be \$\_\_\_\_\_, with the Government's share of such costs projected to be \$\_\_\_\_\_ and the Non-Federal Sponsor's share of such costs projected to be \$\_\_\_\_\_, which includes creditable in-kind contributions projected to be \$\_\_\_\_\_, and the amount of funds required to meet its cost share projected to be \$\_\_\_\_\_. Costs allocated to the Full Federal Work are projected to be \$\_\_\_\_\_. Costs allocated to the Full Non-Federal Work are projected to be \$\_\_\_\_\_. These amounts are estimates only that are subject to adjustment by the

Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated costs of the Cost Shared Work and the Full Non-Federal Work, 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, for the Cost Shared Work; costs incurred by the Government, using Non-Federal Sponsor funds, to date, for the Full Non-Federal Work; the amount of funds provided by the Non-Federal Sponsor to date for both the Cost Shared Work and the Full Non-Federal Work; the estimated amount of any creditable in-kind contributions for the Cost Shared Work; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year for the Cost Shared Work.

C. The Non-Federal Sponsor shall provide required funds by delivering a check payable to "FAO, USAED, [INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such 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 costs of the Cost Shared Work as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon completion of Project implementation 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. Should the 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 costs of the Cost Shared Work and costs of the Full Non-Federal Work, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of costs of the Cost Shared Work and costs of the Full Non-Federal Work, the Government shall refund such excess amount, subject to the availability of funds for the refund.

F. For the Full Non-Federal Work, or if the Government agrees to undertake 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. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full

amount of such required funds available to the Government by delivering a check payable to “FAO, USAED, [INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover any such costs, as applicable, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

#### ARTICLE V - 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 implementation 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 implementation 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 implementation until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow implementation to resume.

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

D. In the event of termination, the parties shall conclude their activities relating to implementation 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 VI - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from implementation (including design), operation, maintenance, repair, rehabilitation,

and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 VIII - 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.

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 IX - 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 X - 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 XI - 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 XII - 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

[FULL NAME OF NON-FEDERAL SPONSOR]

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

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

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

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

Attachment

**Option 1: Sponsor is a Non-Profit Entity that has the consent of the Local Government.** In accordance with ASA(CW) Memorandum, dated April 5, 2012, Subject: Implementation Guidance for Section 2003(b) of the Water Resources Development Act of 2007 – Definition of Non-Federal Interest, confirm eligibility of the non-profit entity to serve as the Non-Federal Sponsor and whether a legally constituted public body must also be a Non-Federal Sponsor on the Agreement. This memorandum can be found on the Corps’ “Project Partnership Agreements” website under the “Guidance” tab.

Use the Certificate of Authority for a Non-Profit Entity as provided on Corps’ PPA website under the “Forms” tab.

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

“WHEREAS, the **[FULL NAME OF NON-PROFIT ENTITY]** is an organization that is incorporated under the applicable laws of the **[Insert State of [Name of State] or Commonwealth of [Name of Commonwealth]]** as a non-profit organization, exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501);

WHEREAS, by letter dated **[Month Day, Year]**, the **[FULL NAME OF AFFECTED LOCAL GOVERNMENT]**, the affected local government has consented to the **[FULL NAME OF NON-PROFIT ENTITY]**, serving as a Non-Federal Sponsor for the Project; and”

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**Option 2: Not An Obligation of Future Appropriations.** Section 221(a) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that an agreement may reflect that it does not obligate future appropriations when doing so is inconsistent with constitutional or statutory limitations of a State or political subdivision thereof. However, section 221(a) does NOT provide that the Non-Federal Sponsor's performance and payments are subject to appropriations of funds. The Government retains the right to exercise any legal rights it has to protect the Government's interests. If applicable and requested by the Non-Federal Sponsor, insert into the agreement as the last Article the following:

### “ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

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

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**Option 3: Multiple Non-Federal Sponsors.** It is strongly preferred that there is one party only as the Non-Federal Sponsor for the PPA. Nonetheless, it is permissible to have more than one Non-Federal Sponsor if the Non-Federal Sponsors are jointly and severally responsible for all non-Federal obligations and responsibilities under the PPA. **The PPA should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural.** In addition, insert into the PPA as the last Article the following:

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

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

**Option 4: Projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304).** In accordance with Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2310), up to \$484,000 in non-Federal cost-sharing is waived. The following changes to the PPA should be made:

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

“C. The Non-Federal Sponsor shall contribute \_\_\_ percent [**PERCENTAGE BASED ON PROJECT PURPOSE IN ACCORDANCE WITH SECTION 103(a) to (d) of WRDA 1986, AS AMENDED**] of costs of the Cost Shared Work as determined by the Government, subject to a reduction of up to \$484,000; and 100 percent of the costs allocated by the Government to the Full Non-Federal Work, as follows:”

2. Replace Article II.C.2. in its entirety with the following:

“2. After considering the estimated amount of credit the Government expects that will be afforded to the Non-Federal Sponsor pursuant to paragraph C.1., above, the Government shall determine the estimated funds required from the Non-Federal Sponsor to meet its cost share for the then-current fiscal year. In accordance with Section 1156 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2310), the Government shall reduce the amount of funds required from the Non-Federal Sponsor by up to \$484,000 and notify the Non-Federal Sponsor of funds required for the Cost Shared Work 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 IV. For costs allocated to the Full Non-Federal Work, the Non-Federal Sponsor, in accordance with Article IV.F., shall provide funds sufficient to cover the costs of such work in advance of the Government performing the work.”

**Option 5: Projects for Coastal Storm Risk Management.** For a coastal storm risk management project (formerly referred to as a hurricane and storm damage reduction, shore protection, or shoreline erosion project), make the following changes.

1. Replace Article II.C. in its entirety with the following:

“C. The Non-Federal Sponsor shall contribute 35 percent of the costs of the Cost Shared Work allocated by the Government to coastal storm risk management; 100 percent of the costs allocated by the Government to the Full Non-Federal Work; 100 percent of costs that are allocated by the Government to beach improvements with exclusively private benefits; and 100 percent of costs allocated by the Government to improvements and other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation, as follows:

1. In providing in-kind contributions for the Cost Shared Work, 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. The Government shall include in costs of the Cost Shared Work and credit towards the Non-Federal Sponsor’s share of such costs, and determine the value of in-kind contributions, as follows:

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 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. Any credit afforded under the terms of this Agreement for in-kind contributions 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). Notwithstanding any other provision of this Agreement, 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.

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2. After considering the estimated amount of credit the Government expects that will be afforded to the Non-Federal Sponsor pursuant to paragraph C.1., above, the Government shall determine the estimated funds required from the Non-Federal Sponsor to meet its cost share for the Cost Shared Work for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article IV. For costs allocated to the Full Non-Federal Work, to beach improvements with exclusively private benefits, and to improvements and other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation, the Non-Federal Sponsor, in accordance with Article IV.F., shall provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

3. 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 amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. 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 IV.”

2. Add to Article II the following new paragraphs:

“M. At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

N. For shores, other than Federal shores, protected or enhanced pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

O. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.”

3. Replace Article IV.A. in its entirety with the following:

“A. As of the effective date of this Agreement, total costs of the Project 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 \$\_\_\_\_\_. Costs of the Cost Shared Work and allocated to coastal storm risk management are projected to be \$\_\_\_\_\_, with the Government’s share of such costs projected to be \$\_\_\_\_\_ and the Non-Federal Sponsor’s share of such costs projected to be \$\_\_\_\_\_, which includes creditable in-kind contributions projected to be \$\_\_\_\_\_, and the amount of funds required to meet its cost share projected to be \$\_\_\_\_\_. Costs allocated to the Full Federal Work are projected to be \$\_\_\_\_\_. Costs allocated to the Full Non-Federal Work are projected to be \$\_\_\_\_\_. Costs allocated to beach improvements with exclusively private benefits are projected to be \$\_\_\_\_\_. Costs allocated to improvements or other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation are projected to be \$\_\_\_\_\_. These amounts are estimates only

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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.”

4. Replace the first sentence in Article IV.F. with the following:

“For the Full Non-Federal Work, or if there are beach improvements with exclusively private benefits improvements or other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation, or the Government agrees to undertake 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.”