

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE COASTAL PROTECTION AND RESTORATION AUTHORITY OF  
LOUISIANA  
FOR  
THE WEST BANK AND VICINITY,  
LOUISIANA PROJECT

THIS AGREEMENT is entered into this 6<sup>th</sup> day of November 2008 by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, Section 401(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended by Sections 101(a)(17) and 101(b)(11) of the Water Resources Development Act of 1996, Public Law 104-303, Section 328 of the Water Resources Development Act of 1999, Public Law 106-53, and Section 3084 of the Water Resources Development Act of 2007, Public Law 110-114, authorized the Secretary of the Army to construct the West Bank and Vicinity, Louisiana Project for hurricane storm damage reduction in Southeast Louisiana (hereinafter the "*Original Project*", as defined in Article I.A. of this Agreement);

WHEREAS, under the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3, Title I, Division B of Public Law 109-148 and under the FC&CE heading, Chapter 3, Title III of Public Law 110-252 authorized the Secretary of the Army, at full Federal expense, to accelerate completion of unconstructed portions of the *Original Project*;

WHEREAS, under the FC&CE heading, Chapter 3, Title II of Public Law 109-234 (120 Stat. 454-455) and under the FC&CE heading, Chapter 3, Title III of Public Law 110-252 (hereinafter collectively referred to as the "FC&CE Supplementals") modified the *Original Project* to authorize the Secretary of the Army, at full Federal expense, to reinforce or replace existing floodwalls, as necessary, to improve the performance of the *Original Project* and to armor critical elements (hereinafter referred as the "*Full Federal Work*", as defined in Article I.D. of this Agreement);

WHEREAS, under the Construction heading, Chapter 3, Title II of Public Law 109-234 (120 Stat. 454) (hereinafter the "4<sup>th</sup> Construction Supplemental") and under the Construction heading, Chapter 3, Title III of Public Law 110-252 (hereinafter the "6<sup>th</sup> Construction Supplemental") (hereinafter collectively referred to as the "Construction Supplementals") modified the *Original Project* to authorize the Secretary of the Army to raise levee heights where necessary and otherwise enhance the *Original Project* to

provide the level of protection necessary to achieve the certification required for participation in the National Flood Insurance Program (NFIP) (hereinafter the *Cost-Shared Work*, as defined in Article I.E. of this Agreement);

WHEREAS, under the Construction heading, Division B, Title I, Chapter 3 of Public Law 110-329 (hereinafter the “7<sup>th</sup> Construction Supplemental”), the Secretary of the Army is directed to use \$350,000,000 of the funds appropriated under that heading to fund the estimated amount of the non-Federal cash contribution that will be financed for the *Modified Project* in accordance with the provisions of Section 103(k) of the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, over a period of 30 years from the date of completion of the *Modified Project* or separable element thereof;

WHEREAS, any *Cost-Shared Work* funded under the 4<sup>th</sup> Construction Supplemental shall be subject to a 35 percent non-Federal cost share, consistent with the cost-sharing provisions under which the *Original Project* was constructed;

WHEREAS, any *Cost-Shared Work* funded under the 6<sup>th</sup> Construction Supplemental shall be subject to a 35 percent non-Federal cost share;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the “Agreement”) for the *Original Project* as modified by the FC&CE Supplementals and Construction Supplementals (hereinafter collectively referred to as the “*Modified Project*”, as defined in Article I.C. of this Agreement);

WHEREAS, the purposes of this Agreement are to set forth the obligations of the Government and the Non-Federal Sponsor regarding the construction and the operation, maintenance, repair, rehabilitation, and replacement of the *Modified Project*; to establish a cooperative relationship that promotes full and timely communication and sharing of information; to foster a harmonious relationship that promotes reaching mutually agreeable sound decisions expeditiously; to create and maintain a working environment where trust and teamwork facilitates the resolution of issues and minimizes disputes; and to achieve the shared goals of the parties to complete expeditiously a project that provides a level of protection necessary to achieve the certification required for participation in the NFIP;

WHEREAS, the Non-Federal Sponsor, or other non-Federal interest on behalf of the Non-Federal Sponsor, has performed work for the *Original Project* or may perform work for the cost-shared portion of the *Modified Project* that the Government has determined or may determine to be integral to the *Modified Project* (hereinafter referred to as “*work-in-kind*”, as defined in Article I.R. of this Agreement) for which credit has not been afforded under the *Original Project* or *Modified Project* and the value of such *work-in-kind* is eligible for credit toward the non-Federal share of the costs of the *Cost-Shared Work* in accordance with the provisions of this Agreement;



WHEREAS, non-Federal interests have provided or may provide lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, for implementation of the *Original Project* that have not been credited previously and that are eligible for credit toward the non-Federal share of the costs of the *Cost-Shared Work* in accordance with the provisions of this Agreement;

WHEREAS the Non-Federal Sponsor was established, authorized, and empowered by the State of Louisiana on May 25, 2006 to carry out all functions necessary to serve as the single state entity responsible to act as the non-Federal sponsor for construction, operation, and maintenance of all hurricane, storm damage reduction, and flood damage reduction projects in the greater New Orleans and southeast Louisiana area;

WHEREAS, the Government and the Non-Federal Sponsor intend that the provisions of this Agreement will apply to implementation of the *Modified Project* and that more specific descriptions of the construction work to be undertaken pursuant to this Agreement will be included in subsequent approved Project Description Documents;

WHEREAS, in accordance with Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), and the FC&CE Supplementals, the Secretary of the Army shall not initiate the *Full Federal Work* or the *Cost-Shared Work* until the non-Federal Sponsor has entered into a written agreement to furnish its required cooperation for such work, to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs of completed elements of the *Modified Project*, and to hold and save the United States free from damages due to the construction or operation and maintenance of the *Modified Project*, except for damages due to the fault or negligence of the United States or its contractors;

WHEREAS, the Non-Federal Sponsor has determined that the Government's established peer review process has met the requirements of La. R.S. 38:247(D) and (E) and La. R.S. 49:213.4(E) enacted by the Legislature of Louisiana; and

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

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

## ARTICLE I - DEFINITIONS

A. The term "*Original Project*" shall mean the West Bank and Vicinity, Louisiana Project including but not limited to the features to provide hurricane protection for West Bank and Vicinity implemented or to be implemented under Section 401(b) of the Water Resources Development Act of 1986, as amended by the Water Resources Development Acts of 1996, 1999 and 2007. The *Original Project* consists of numerous hurricane protection features including but not limited to approximately 66 miles of levees and floodwalls in Plaquemines, Orleans, and Jefferson Parishes, generally in the vicinity of New Orleans, on the west bank of the Mississippi River from the St. Charles/Jefferson Parish boundary just north of Lake Cataouatche along the Mississippi River to Oakville, Louisiana, in Plaquemines Parish; pumping stations and discharge channels; drainage structures; control structures; fronting protection of pump stations; floodgates; and measures to mitigate for fish and wildlife losses .

B. The term "*New Work*" shall mean all work authorized to be implemented under the FC&CE Supplementals and Construction Supplementals consisting of raising levees where necessary, constructing floodwalls, armoring of critical elements, and providing other measures as necessary to enhance the *Original Project* to provide the levels of protection necessary to achieve the certification required for participation in the NFIP; including the *Full Federal Work* defined in paragraph D. of this Article and the *Cost-Shared Work* defined in paragraph E. of this Article, but excluding the Inner Harbor Navigation Canal Hurricane Protection Work and Storm-Proofing Work for interior drainage pump stations implemented or to be implemented under separate agreements between the Government and a non-Federal interest.

C. The term "*Modified Project*" shall mean the combination of the *Original Project* and the *New Work*.

D. The term "*Full Federal Work*" shall mean that portion of the *New Work* implemented at full Federal expense for armoring of critical elements and reinforcing or replacing floodwalls as necessary to improve performance of the *Original Project*, and providing other measures, as necessary. The specific features of this work will be further described in subsequent Project Description Documents (hereinafter "PDDs") for the *Modified Project* prepared by the U.S. Army Engineer, New Orleans District (hereinafter the "District Engineer") in consultation with the Non-Federal Sponsor and approved by the U.S. Army Engineer, Mississippi Valley Division (hereinafter the "Division Engineer") prior to implementation of the work described in such PDDs. In the event of a conflict between an approved PDD and this Agreement, this Agreement shall control.

E. The term "*Cost-Shared Work*" shall mean that portion of the *New Work* implemented under the cost sharing provisions of this Agreement for raising levee heights and otherwise enhancing the *Original Project* to provide the levels of protection necessary to achieve the certification required for participation in the NFIP. The specific



features of this work will be further described in subsequent PDDs for the *Modified Project* prepared by the District Engineer in consultation with the Non-Federal Sponsor and approved by the Division Engineer prior to implementation of the work described in such PDDs. In the event of a conflict between an approved PDD and this Agreement, this Agreement shall control.

F. The term “*total costs of the Full Federal Work*” shall mean the sum of all costs incurred by the Government in accordance with the terms of this Agreement directly related to design and construction of the *Full Federal Work*; the *pre-Agreement planning and design costs* that are allocated by the Government to the *Full Federal Work*; and the value of lands, easements, and rights-of-way that are provided by the Non-Federal Sponsor for the construction, operation, and maintenance of the *Full Federal Work* for which the Government affords credit in accordance with Article IV of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; any costs to correct deferred or deficient maintenance; any costs of *betterments* under Article II.F.2. of this Agreement; or any costs incurred by the Non-Federal Sponsor except for the value of lands, easements, and rights-of-way as provided in this paragraph.

G. The term “*total costs of the Cost-Shared Work*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Cost-Shared Work* and the *pre-Agreement planning and design costs* that are allocated by the Government to the *Cost-Shared Work*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s design costs; the Government’s engineering and design costs during construction; the Government’s costs for development of PDDs that are allocated by the Government to the *Cost-Shared Work*; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A.1. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVIII.A. and Article XVIII.B.1. of this Agreement; the Government’s actual construction costs including the costs of any supply contracts for borrow material that are allocated by the Government to the *Cost-Shared Work* and the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Coordination Team in accordance with Article V.F. of this Agreement that are allocated by the Government to the *Cost-Shared Work*; the Non-Federal Sponsor’s personnel costs for participation on the Project Delivery Team for *Cost Shared Work* in accordance with Article V.G. of this Agreement that are allocated by the Government to the *Cost-Shared Work*; the Government’s costs of contract dispute settlements or awards that are allocated by the Government to the *Cost-Shared Work*; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that are required for construction, operation, and maintenance of the *Cost-Shared Work* for which the Government affords credit in accordance with Article IV of this Agreement; the

value of the *LERRD for Original Project* for which the Government affords credit in accordance with Article IV of this Agreement; the costs of *work-in-kind* for which credit is afforded in accordance with Article II.C.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article XI.B. and Article XI.C. of this Agreement that are allocated by the Government to the *Cost-Shared Work*. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Cost-Shared Work*; any costs for services provided by an independent third party for issue resolution under Article VII of this Agreement; any costs of dispute resolution under Article VIII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVIII.B.2. and Article XVIII.B.3. of this Agreement; any costs to correct deferred or deficient maintenance; any costs of *betterments* under Article II.F.2. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

H. The term "*total costs of the New Work*" shall mean the sum of all costs for the work authorized to be implemented under the FC&CE Supplementals and Construction Supplementals consisting of raising levees where necessary, constructing floodwalls, armoring of critical elements, and providing other measures as necessary to enhance the *Original Project* to provide the levels of protection necessary to achieve the certification required for participation in the NFIP, including the *total costs of the Full Federal Work* as defined in paragraph F. of this Article and the *total costs of the Cost-Shared Work* as defined in paragraph G. of this Article, but excluding the costs of Inner Harbor Navigation Canal Hurricane Protection Work and the Storm-Proofing Work for interior drainage pump stations implemented or to be implemented under separate agreements between the Government and a non-Federal interest.

I. The term "*period of construction*" shall mean the time from the date the Government issued the solicitation for the first contract for construction or the first supply contract for borrow material, whichever is earlier, for the *New Work* to the date that construction of the *Modified Project* is complete, as determined by the District Engineer after consultation with the Non-Federal Sponsor, or the date that construction under this Agreement is terminated in accordance with Article XIV or Article XV of this Agreement, whichever is earlier.

J. The term "*functional portion of the New Work*" shall mean a portion of the *New Work* for which construction has been completed, can function independently, and meets the 100-year event design criteria as determined in writing by the District Engineer after consultation with the Non-Federal Sponsor, although the remainder of the *New Work* is not complete.

K. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.



L. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

M. The term “*pre-Agreement planning and design costs*” shall mean all costs that were incurred by the Government prior to the effective date of this Agreement for planning and design of the *New Work*.

N. The term “*financial obligations for construction*” shall mean the financial obligations of the Government, and the costs for *work-in-kind*, as determined by the Government, that result or would result in costs that are or would be included in *total costs of the Cost-Shared Work* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

O. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the Non-Federal Sponsor’s total contributions required by Article II.C.2.a. of this Agreement, as determined by the Government, to the *financial obligations for construction*, as projected by the Government.

P. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

Q. The term “*betterment*” shall mean a difference in the construction of an element of the *New Work* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for items of work not included in the *New Work* as defined in paragraph B. of this Article.

R. The term “*work-in-kind*” shall mean design work, including plans and specifications, and engineering and design during construction for the Cousins Pump Station Complex by the West Jefferson Levee District in Jefferson Parish, Louisiana at an estimated cost of \$5,350,000; and other non-Federal work to be performed for *Cost-Shared Work* after execution of this Agreement that is further described in a subsequent approved PDD as being integral to the *Modified Project* and eligible for credit, consistent with the terms of this Agreement. The term includes the planning, engineering, design, supervision and administration, and other activities associated with such work, but does not include the construction of *betterments* or the provision of lands, easements, and rights-of-way, the performance of *relocations*, or the construction of improvements required on lands,

easements, and rights-of-way to enable the disposal of dredged or excavated material associated with the *work-in-kind*.

S. The term “*LERRD for Original Project*” shall mean lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been or will be provided for implementation of the *Original Project* by a non-Federal interest and for which credit was not previously afforded under the *Original Project* or another Federal project, as determined by the Government.

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

A. The Government, subject to the availability of funds appropriated by the Congress of the United States (hereinafter the “Congress”), shall design and construct the *Full Federal Work* (including the performance of necessary *relocations*) at 100 percent Federal expense, applying those procedures usually applied to Federal projects, in accordance with this Agreement and applicable Federal laws, regulations, and policies. The Government, subject to the availability of funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall design and construct the *Cost-Shared Work*, except for the *work-in-kind*, applying those procedures usually applied to Federal projects, in accordance with this Agreement and applicable Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on all 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 but the contents of solicitations, award of contracts or commencement of construction using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *New Work* shall be exclusively within the control of the Government, except for the *work-in-kind*.



2. The Government shall require in any contract concerning the *New Work* that the contractor shall comply with all approved designs in constructing any element thereof. The Government shall not release any contractor for the *New Work* or issue any notification in accordance with paragraph E. of this Article, until the construction complies fully with all Government approved designs, as determined by the Government. For any component of the *New Work* covered by a warranty, in the event of failure or deficiency of such component, the Non-Federal Sponsor may request the Government to demand the contractor to correct the failure or deficiency. Upon receiving such a request and if the Government agrees that there is a failure or deficiency under the warranty clause, the Government shall make such demand and exercise all authority possessed by the Government to ensure that the contractor corrects any such failure or deficiency. The Government shall consider in good faith the comments and requests of the Non-Federal Sponsor regarding any failure or deficiency under the warranty clause, but the determination of whether a failure or deficiency exists shall be exclusively the Government's.

3. Prior to the determination by the District Engineer that the *New Work* or functional portion thereof is complete, the Government and Non-Federal Sponsor shall conduct a joint walk-through inspection and each may note any additional items as a punch-list.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *New Work*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. In accordance with the provisions of Article III of this Agreement, the Non-Federal Sponsor shall provide the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Full Federal Work* that are owned, claimed, or controlled by the Non-Federal Sponsor and such lands, easements, and rights-of-way that are owned by any other non-Federal governmental entity. All other lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Full Federal Work* shall be provided by the Non-Federal Sponsor or the Government in accordance with the provisions of Article III of this Agreement.

C. The Non-Federal Sponsor shall contribute 35 percent of that portion of the *total costs of the Cost-Shared Work* funded under the 4<sup>th</sup> Construction Supplemental and 35 percent of that portion of the *total costs of the Cost-Shared Work* funded under the 6<sup>th</sup> Construction Supplemental, as determined by the Government, in accordance with the provisions of this paragraph. As of the effective date of this Agreement, such contributions are projected to be \$40,500,000 and \$495,300,000, respectively.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for

*relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Cost-Shared Work*.

2. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than the Non-Federal Sponsor's required share of *total costs of the Cost-Shared Work*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share without considering the credit the Government projects will be afforded for the *work-in-kind* pursuant to paragraph C.3. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Non-Federal Sponsor's required share of *total costs of the Cost-Shared Work* the collective value of the following: (1) the value of the lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material (hereinafter "LERRD") required for construction, operation, and maintenance of the *Cost-Shared Work* for which the Government affords credit in accordance with Article IV of this Agreement; (2) the value of the *LERRD for Original Project* for which the Government affords credit in accordance with Article IV of this Agreement; (3) the value of lands, easements, rights-of-way that are provided by the Non-Federal Sponsor for the construction, operation, and maintenance of the *Full Federal Work* for which the Government affords credit in accordance with Article IV of this Agreement; and (4) the value of the Non-Federal Sponsor's contribution under Article V, Article XI, and Article XV.A.1. of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article VI.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph C.2.a. of this Article by the amount of credit the Government projects will be afforded for the *work-in-kind* pursuant to paragraph C.3. of this Article.

3. The Government shall include in *total costs of the Cost-Shared Work* and afford credit toward the Non-Federal Sponsor's share of *total costs of the Cost-Shared Work* for the costs of *work-in-kind*, subject to the conditions and limitations of this paragraph.

a. The Government shall not include in *total costs of the Cost-Shared Work* nor afford credit for that portion of the *work-in-kind* attributable to the *Original Project* until the Non-Federal Sponsor provides the Government with written



consent from the non-Federal interest that provided such *work-in-kind* for the *Original Project* that the Government may afford credit for the value of such *work-in-kind* toward the Non-Federal Sponsor's share of costs for the *Cost-Shared Work* in accordance with the provisions of this Agreement.

b. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the District Engineer to determine the amount of costs for *work-in-kind* to be included in *total costs of the Cost-Shared Work*.

c. The Non-Federal Sponsor shall provide the Government with the as-built drawings for the completed *work-in-kind*, or portion thereof, and such *work-in-kind* shall be subject to an on-site inspection and determination by the District Engineer that the work was completed in accordance with Corps of Engineers standards and procedures, was accomplished in a satisfactory manner, is suitable for inclusion in the *Modified Project*, and that credit for such *work-in-kind* was not previously afforded against the *Original Project* or *Modified Project*.

d. Costs for *work-in-kind* that may be eligible for inclusion in *total costs of the Cost-Shared Work* and for which credit may be afforded pursuant to the provisions of Article II.C.2.b. of this Agreement shall be subject to an audit in accordance with Article XI.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

e. Costs for *work-in-kind* that may be eligible for inclusion in *total costs of the Cost-Shared Work* and for which credit may be afforded pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *work-in-kind* was completed and the time the costs are included in *total costs of the Cost-Shared Work*.

f. The Non-Federal Sponsor must comply 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Non-Federal Sponsor acknowledges that the Government may, as appropriate, adjust or withhold credit for such *work-in-kind* to reflect any payment that should have been made by the Non-Federal Sponsor or any of its agents or contractors pursuant to these laws.

g. The Government shall not include in *total costs of the Cost-Shared Work* nor afford credit for any costs for *work-in-kind* that exceed the least of the following amounts as determined by the Government: (a) the Government's estimate of the costs of the *work-in-kind* if the work had been accomplished by the Government; (b)

the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share as determined in accordance with paragraph C.2.a. of this Article; or (c) the actual costs of the *work-in-kind* subject to the conditions and limitations of paragraphs C.3.a. through C.3.f. of this Article.

4. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for *work-in-kind* that exceed the amount of costs included in *total costs of the Cost-Shared Work* for which credit is afforded for the *work-in-kind* as determined in accordance with paragraph C.3.g. of this Article.

5. Upon the conclusion of the *period of construction* and in accordance with provisions of Article VI.C. of this Agreement, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for the value of LERRD, or provide a refund to the Non-Federal Sponsor for any excess contribution of funds, if the collective value of the following contributions are determined by the Government to exceed the non-Federal share of the *Cost-Shared Work*: (a) the value of the Non-Federal Sponsor's contributions under paragraph C.1. of this Article, as determined in accordance with Article IV of this Agreement; (b) the value of the *LERRD for Original Project* as determined in accordance with Article IV of this Agreement; (c) the value of lands, easements, rights-of-way that are provided by the Non-Federal Sponsor for the construction, operation, and maintenance of the *Full Federal Work* as determined in accordance with Article IV of this Agreement; (d) the Non-Federal Sponsor's contribution of funds provided under paragraph C.2.b. of this Article; and (f) the value of the Non-Federal Sponsor's contributions under Article V, Article XI, and Article XV.A.1. of this Agreement.

D. When the District Engineer determines that the *New Work*, or a *functional portion of the New Work*, is complete and meets the 100-year event design criteria, after following the procedures of Article II.A.3. of this Agreement, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *New Work* or such functional portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *New Work* or such functional portion if such drawings are available. Not later than 60 calendar days after such notification by the Government that the entire *New Work* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *New Work*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *New Work* cannot be completed within the 60 calendar days, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of construction for the *New Work*, copies of all of the Government's Written Notices of Acceptance of Completed



Work for construction items that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, after following the procedures in Article II.A.3. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *New Work*, or the *functional portion of the New Work* as the case may be, in accordance with Article IX of this Agreement. Nothing in this Agreement is intended to require the Non-Federal Sponsor to perform future measures to restore the *New Work* to the authorized level of protection to account for subsidence or sea level rise as a part of its OMRR&R responsibilities.

F. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Cost-Shared Work*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XV of this Agreement.

2. Inclusion of *betterments* in the construction of the *New Work*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *New Work* construction items that include *betterments* between *total costs of the New Work* and the costs of the *betterments*.

G. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *Modified Project*.

H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Modified Project*. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and coastal storm damage protection provided by the *Modified Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Modified Project*.

K. The Non-Federal Sponsor, by prescribing and enforcing regulations or other means, shall prevent obstructions, encroachments, new developments, or the addition of facilities on the *Modified Project*, or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation and maintenance of such work, that could reduce the level of protection for the *Modified Project* or hinder operation and maintenance of the *Modified Project*, or interfere with the *Modified Project's* proper function.

L. The Government shall conduct independent peer review of the *New Work* in accordance with existing Federal law, regulations and policies.

M. Upon request, each party shall provide the other with any information or documents concerning the *Modified Project* as soon as possible, consistent with applicable State or Federal laws, regulations, and guidance.

N. The Non-Federal Sponsor shall not use *Federal Program funds* to meet any of its obligations under this Agreement unless the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the *Modified Project*. Furthermore, unless such determination is made no amount shall be included in *total costs of the Cost-Shared Work* or *total costs of the Full Federal Work*, as applicable, no credit shall be afforded, and no reimbursement shall be provided, as applicable, for the cost or value of any of the following contributions that were provided, acquired, or performed using such funds: (1) lands, easements, or rights-of-way; (2) *relocations* (3) improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; or (4) *work-in-kind*.



### ARTICLE III - LANDS, EASEMENTS, AND RIGHTS-OF-WAY, RELOCATIONS AND DISPOSAL AREA IMPROVEMENTS

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *New Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall determine the schedule for acquisition and provision thereof. As soon as practicable, the Government shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, of such required lands, easements, and rights-of-way, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this Article. The maps provided by the Government shall depict the boundaries of such required lands, easements, and rights-of-way if boundary information is reasonably available to the Government. After the Government provides the Non-Federal Sponsor such written descriptions and maps, such lands, easements, and rights-of-way shall be obtained, acquired, and provided in accordance with the provisions of this Article.

1. Except as provided in paragraph A.2. of this Article, prior to the Government's scheduled date for the issuance of a notice to proceed with construction under a design-build contract for the *New Work*, prior to the issuance of the solicitation for any other Government contract for construction of the *New Work*, or prior to the Government initiating construction of a portion of the *New Work* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *New Work*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto.

2. Private Lands Exception to General Acquisition Responsibility for *Full Federal Work*. Not later than 30 calendar days after the Government provides to the Non-Federal Sponsor the written descriptions and maps of the lands, easements, and rights-of-way determined by the Government to be required solely for the construction, operation, and maintenance of the *Full Federal Work*, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such lands, easements, and rights-of-way that are owned by private interests. Upon such request, the Government shall acquire such lands, easements, and rights-of-way applying Federal laws, policies, and procedures.

3. For all lands, easements and rights-of-way required for the construction, operation, and maintenance of the *Full Federal Work* that are acquired by the Government in accordance with the provisions of this Agreement, the Government shall acquire such lands, easements, and rights-of-way 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.

4. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way acquired by the Non-Federal Sponsor or the Government for the *New Work* as well as those lands, easements and rights-of-way that the Non-Federal Sponsor provided through an authorization for entry are retained in public ownership for uses compatible with the authorized purposes of the *Modified Project* for the duration of the required interest as determined by the Government in accordance with Article III of this Agreement.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Cost-Shared Work*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material, and shall determine the schedule for performance thereof. As soon as practicable, the Government shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the Government's scheduled date for the issuance of a notice to proceed with construction under a design-build contract for the *Cost-Shared Work*, prior to the issuance of the solicitation for any other Government contract for construction of the *Cost-Shared Work*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Cost-Shared Work* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Cost-Shared Work*, and shall determine the schedule for performance thereof. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. As soon as practicable, the Government shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the Government's scheduled date for the issuance of a notice to proceed with construction under a design-build contract for the *Cost-Shared Work*, prior to the issuance of the solicitation for any other Government



contract for construction of the *Cost-Shared Work*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Cost-Shared Work* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide or ensure such improvements are provided in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall provide or ensure all improvements set forth in such descriptions are provided.

D. Acquisition of lands, easements, and rights-of-way required for construction, operation, and maintenance of the *New Work*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, shall be in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, and the party acquiring the real estate interest shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total costs of the Cost-Shared Work* and afford credit toward the Non-Federal Sponsor's share of *total costs of the Cost-Shared Work* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement that are required for construction, operation, and maintenance of the *Cost-Shared Work*; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement that are necessary for construction, operation, and maintenance of the *Cost-Shared Work*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement that are required for construction, operation, and maintenance of the *Cost-Shared Work*. In addition, the Government shall include in *total costs of the Cost-Shared Work* and afford credit toward the Non-Federal Sponsor's share of *total costs of the Cost-Shared Work* for the value of the *LERRD for Original Project*. Furthermore, the Government shall include in *total costs of the Full Federal Work* and afford credit toward the Non-Federal Sponsor's share of *total costs of the Cost-Shared Work* for the value of the lands, easements, and rights-of-way provided by the Non-Federal Sponsor that are required for construction, operation, and maintenance of the *Full Federal Work* provided by the Non-Federal Sponsor in accordance with Article III of this Agreement. The inclusion of the above value amounts in the *total costs of the Cost-Shared Work* or *total costs of the Full Federal Work*, as

applicable, and affording of credit therefor are subject to the conditions and limitations of this Article and Article II.N. of this Agreement including:

1. No amount shall be included in *total costs of the Cost-Shared Work* or in *total costs of the Full Federal Work*, as applicable, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, or rights-of-way that have been provided previously as an item of cooperation for another Federal project.

2. The Government shall not include in *total costs of the Cost-Shared Work* nor afford credit for *LERRD for Original Project* until the Non-Federal Sponsor provides the Government with written consent from the non-Federal interest that provided such *LERRD for the Original Project* that it may be credited in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement, the *LERRD for Original Project*. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total costs of the Cost-Shared Work* or the *total costs of the Full Federal Work*, as applicable, and for determining the amount of credit to be afforded in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total costs of the Cost-Shared Work* or the *total costs of the Full Federal Work*, as applicable, and the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including the *LERRD for Original Project*, shall be the fair market value of the real property interests, plus incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation.

a. *New Work.* The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way 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.

b. *Work-in-Kind.* The fair market value of lands, easements, or rights-of-way required for the *work-in-kind* shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor, or others on behalf of the Non-



Federal Sponsor, awarded the first construction contract for the *work-in-kind*, or, if the Non-Federal Sponsor, or others on behalf of the Non-Federal Sponsor, performed the construction with its own forces, the date that the Non-Federal Sponsor, or others on behalf of the Non-Federal Sponsor, began construction of the *work-in-kind*.

c. LERRD for Original Project. Except as provided in paragraph C.1.b. of this Article, the fair market value of the *LERRD for Original Project* that were owned by the non-Federal interest on the effective date of the agreement under which such lands, easements, or rights-of-way were required to be provided by the non-Federal interest shall be the fair market value of such real property interests as of the date that the non-Federal interest provided such real property interests to the Government for construction under such agreement. Except as provided in paragraph C.1.b. of this Article, the fair market value of the *LERRD for Original Project* that were acquired by the non-Federal interest after the effective date of the agreement under which such lands, easements, or rights-of-way was required to be provided by the non-Federal interest shall be the fair market value of such real property interests at the time the interests were acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. For lands, easements, or rights-of-way provided by the Non-Federal Sponsor for the *New Work*, the Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. For all other lands, easements, and rights-of-way provided by the Non-Federal Sponsor for which credit may be afforded in accordance with this Agreement, the Non-Federal Sponsor shall provide the Government with the appraisal, and its written request for credit, no later than 6 months prior to date scheduled by the Government for initiation of the final or interim accounting in accordance with Article VI.C. of this Agreement. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the

Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor or others on behalf of the Non-Federal Sponsor, for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining the value for crediting purposes under this Agreement and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the value for crediting purposes under this Agreement shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, or others on behalf of the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and its appraisal, or two appraisals when required, of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal(s) within which to review the appraisal(s), if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal, or the higher amount set forth in such appraisals, as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal(s) as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.



c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *New Work*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way required for the *New Work* that were acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. For the *LERRD for Original Project* that were acquired by a non-Federal interest within a five year period preceding the effective date of the agreement under which such lands, easements, or rights-of-way were required to be provided by the non-Federal interest, or at any time after the effective date of such agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allowability, and allocability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, abstracting costs, costs of negotiations, relocation assistance services, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, 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 in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement, or the value of the *LERRD for Original Project* that were provided by a non-Federal interest in accordance with the provisions of the agreement under which such lands, easements, or rights-of-way was required to be provided, shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for incidental costs that are determined to be reasonable, allocable, and allowable.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. 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 consistent with applicable principles of just compensation, and by the salvage value of any removed items.

2. For a *relocation* of a highway, 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.

3. *Relocation* costs shall include, but not necessarily be limited to, 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 shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.



F. Any credit afforded under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Modified Project* boundaries 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Non-Federal Sponsor acknowledges that the Government may, as appropriate, adjust or withhold credit for such *relocations* or improvements to reflect any payment that should have been made by the Non-Federal Sponsor or any of its agents or contractors pursuant to these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.F.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total costs of the Cost-Shared Work* and the amount of credit to be afforded pursuant to the provisions of Article II.C.2.a. of this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total costs of the Cost-Shared Work* and the amount of such credit to be afforded pursuant to the provisions of Article II.C.2.a. of this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.F.1. of this Agreement subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

## ARTICLE V - COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall each appoint three named senior representatives to a Coordination Team. Thereafter, the Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterparts shall keep the Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Coordination Team on matters that the Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Coordination Team shall generally oversee the *New Work*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material including schedules for provision and performance by the Non-Federal Sponsor; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and the construction portion of the *work-in-kind*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; historic preservation activities in accordance with Article XVIII of this Agreement; the Government's cost projections; the costs included in *total costs of the Cost-Shared Work* for the *work-in-kind* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article II.C.3. of this Agreement; final inspection of the entire *New Work* or *functional portions of the New Work*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Modified Project* including issuance of permits; and other matters related to the *New Work*. This oversight of the *New Work* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Coordination Team may make recommendations to the District Engineer on matters related to the *New Work* that the Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Coordination Team. The Government, having the legal authority and responsibility for construction of the *New Work*, except for the *work-in-kind*, has the discretion to accept or reject, in whole or in part, the Coordination Team's recommendations.

E. All comments submitted to the Coordination Team by the Non-Federal Sponsor's representatives, the resolution of such comments by the Coordination Team, or when applicable, the Coordination Team's recommendation on such comments and the District Engineer's decision related thereto shall be entered into the Government's existing or comparable record keeping system for comment documentation and management. For any comment submitted by the Non-Federal Sponsor that was not resolved by the Coordination Team, the Government shall consult with the Non-Federal Sponsor prior to the District Engineer's decision regarding the Coordination Team's recommendation.

F. The Government's costs of participation in the Coordination Team shall be allocated between the *total costs of the Full Federal Work* and *total costs of the Cost-*



*Shared Work*, as determined by the Government, and shared in accordance with the provisions of this Agreement. The Non-Federal Sponsor's costs of participation in the Coordination Team shall be allocated between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work*, as determined by the Government. The Non-Federal Sponsor shall pay for its own costs of Coordination Team participation allocated to *Full Federal Work*. The Non-Federal Sponsor's costs for Coordination Team participation allocated to the *Cost-Shared Work* shall be included in the *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

G. The Government and the Non-Federal Sponsor acknowledge that in certain instances it may be beneficial to designate certain Non-Federal Sponsor personnel to the Project Delivery Team, previously established by the Government, in order to obtain Non-Federal Sponsor input on select issues. To the extent that both parties agree that certain Non-Federal Sponsor personnel should participate on the Project Delivery Team, the Non-Federal Sponsor's personnel costs for such participation shall be allocated between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work*, as determined by the Government. The Non-Federal Sponsor shall pay for its own costs of Project Delivery Team participation allocated to *Full Federal Work*. The Non-Federal Sponsor's personnel costs for Project Delivery Team participation allocated to the *Cost-Shared Work* shall be included in the *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

## ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs; financial obligations; contributions provided by the parties; the value included in *total costs of the Cost-Shared Work* for the LERRD for the *Cost-Shared Work*; the value of the *LERRD for Original Project* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article IV of this Agreement; the costs included in *total costs of the Cost-Shared Work* for the *work-in-kind* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article II.C.3. of this Agreement; the value of the lands, easements and rights-of-way for the *Full Federal Work* included in the *total costs of the Full Federal Work* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total costs of the New Work* are currently estimated to be \$2,161,400,000; *total costs of the Full Federal Work* are currently estimated to be \$630,300,000; *total costs of the Cost-Shared Work* are currently estimated to be \$1,531,100,000; the value of the LERRD required for construction, operation, and maintenance of the *Cost-Shared Work* for which the Government affords credit in accordance with Article IV of this Agreement is currently estimated to be \$205,000,000; the value of the *LERRD for Original Project* for which the Government affords credit in accordance with Article IV of this Agreement is currently estimated to be \$1,150,000; the value of lands, easements, rights-of-way that are provided by the Non-Federal Sponsor for the construction, operation, and maintenance of the *Full Federal Work* for which the Government affords credit in accordance with Article IV of this Agreement is currently estimated to be \$0; the amount of funds determined in accordance with Article II.C.2.a. of this Agreement is currently estimated to be \$329,590,000; the Non-Federal Sponsor's total contribution of funds required by Article II.C.2.b. of this Agreement is currently estimated to be \$324,240,000 exclusive of any interest amount pursuant to paragraph B.4. of this Article; the costs included in *total costs of the Cost-Shared Work* for the *work-in-kind* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article II.C.3. of this Agreement is currently estimated to be \$5,350,000; the Non-Federal Sponsor's contribution of funds required by Article XVIII.B.3. of this Agreement is currently estimated to be \$0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.F. of this Agreement is currently estimated to be \$0. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By January 15, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total costs of the New Work*; *total costs of the Full Federal Work*; *total costs of the Cost-Shared Work*; the value of the LERRD required for construction, operation, and maintenance of the *Cost-Shared Work* for which the Government affords credit in accordance with Article IV of this Agreement; the value of the *LERRD for Original Project* for which the Government affords credit in accordance with Article IV of this Agreement; the value of lands, easements, rights-of-way that are provided by the Non-Federal Sponsor for the construction, operation, and maintenance of the *Full Federal Work* for which the Government affords credit in accordance with Article IV of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.C.2.b. of this Agreement; the costs included in *total costs of the Cost-Shared Work* for the *work-in-kind* for which the Non-Federal Sponsor will be afforded credit as determined in accordance with Article II.C.3. of this Agreement; the Non-Federal Sponsor's total contribution of



funds required by Article XVIII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming quarter; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.F. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.C.2. and Article XVIII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction or the first supply contract for borrow material, whichever is earlier, of the *Cost-Shared Work* or commencement of construction of the *Cost-Shared Work* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred in the first quarter less any projected *work-in-kind* credit afforded in accordance with Article II.C.2.b. of this Agreement that has not been previously afforded; and (c) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.B.3. of this Agreement to be incurred in the first quarter. Except as provided in Article VI.B.4. of this Agreement, not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of the *Cost-Shared Work* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. For each contract for the *Cost-Shared Work* where the Government projects it will make *financial obligations for construction* or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance

of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract less any projected *work-in-kind* credit afforded in accordance with Article II.C.2.b. of this Agreement that has not been previously afforded and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.B.3. of this Agreement to be incurred for such contract. Except as provided in Article VI.B.4. of this Agreement, no later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. Where the Government projects that it will make *financial obligations for construction* of the *Cost-Shared Work* using the Government's own forces or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.B.3. of this Agreement using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* using the Government's own forces for that quarter less any projected *work-in-kind* credit afforded in accordance with Article II.C.2.b. of this Agreement that has not been previously afforded and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVIII.B.3. of this Agreement using the Government's own forces for that quarter. Except as provided in Article VI.B.4. of this Agreement, no later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsor shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. If the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of *financial obligations for construction* in the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Except as provided in Article VI.B.4., the Non-Federal Sponsor shall provide, within 30 calendar days from receipt of such notice, the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

4. Notwithstanding any provision in paragraph B. of this Article to the contrary, the Government shall use up to \$350,000,000 of the funds appropriated in the 7<sup>th</sup> Construction Supplemental to fund the cash contributions that the Non-Federal Sponsor, under the terms of this Agreement, otherwise would be required to pay to the



Government provided that the Non-Federal Sponsor executes a payment agreement with the Government prior to award of the first Federal construction contract pursuant to this Agreement (currently scheduled for March 2009) or prior to 180 calendar days after the effective date of this Agreement, whichever occurs first, to pay such contributions, with interest, in annual installments over a period of not more than thirty years from the date of completion of the *Modified Project* or separable element thereof. To the extent that the Government determines at any time that it does not have sufficient funds to allow the Non-Federal Sponsor to defer its contributions of funds pursuant to the provisions of this paragraph, the Non-Federal Sponsor shall provide such contributions to the Government during the *period of construction* in accordance with the provisions of this Article. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Congress. Further, nothing in this provision shall commit the Government to obligate funds beyond the amount of available appropriations.

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for *Cost-Shared Work* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total costs of the Cost-Shared Work* and the costs of any data recovery activities associated with historic preservation for the *Cost-Shared Work*. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Except as provided in Article VI.B.4. of this Agreement, should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total costs of the Cost-Shared Work* and the costs of any data recovery activities associated with historic preservation for the *Cost-Shared Work* exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for the *Cost-Shared Work* and the costs of any data recovery activities associated with historic preservation

for the *Cost-Shared Work* exceed the Non-Federal Sponsor's total contribution of funds pursuant to Article II.C.2. of this Agreement, the Government, subject to the availability of funds and as limited by Article IV.A. and Article II.C.4. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.F. of this Agreement for additional work in accordance with the provisions of this paragraph. The provisions of Article VI.B.4. of this Agreement are not applicable to the contribution of such funds.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim



accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor are due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

## ARTICLE VII – ISSUE RESOLUTION AND DISPUTE AVOIDANCE

A. The parties recognize that full communication and sharing of information to the extent practicable, consistent with applicable Federal or State law, regulations, and guidance, together with ongoing coordination and consultation, are key to expeditious and sound decision-making. The parties further recognize that decisions are made on a daily basis and issues should be resolved at the lowest organizational level to the extent possible. Similarly, the parties recognize that issue resolution under this Article may be a costly and time consuming process and should be utilized only for resolving significant issues.

B. In the event that the parties are unable to resolve an issue at a lower organizational level, at the request of the Chairman of the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Chairman"), the Division Engineer shall submit the matter to a mutually acceptable, qualified, independent third party for non-binding review and written comment within 14 calendar days. Each party shall pay an equal share of the costs for the services provided by the independent third party. Upon receipt of comments from the independent third party, the Division Engineer and Chairman shall carefully consider those comments with a view to resolving the issue.

C. In the event that the Division Engineer and the Chairman are unable to resolve the issue within 7 calendar days following receipt of written comments from the independent third party, either the Division Engineer or the Chairman may elect to submit the issue for resolution to the Director of Civil Works of the U.S. Army Corps of Engineers (hereinafter the "Director"). The submission of an issue for resolution to the Director shall include a joint memorandum from the Division Engineer and Chairman explaining the issue and why the parties were unable to reach resolution. The Director shall carefully consider all information provided by the Division Engineer and Chairman as well as the comments from the independent third party. Within 14 calendar days of the receipt of the joint memorandum from the Division Engineer and Chairman, the Director shall render a written decision with a full explanation of the reasons for the decision.

D. Nothing in this Article alters or amends any applicable Federal or State law, regulation, or guidance, nor shall it negate the responsibility of each party to comply with any applicable Federal or State law, regulation, or guidance. Nothing in this Article excuses either party from performance pursuant to this Agreement.

#### ARTICLE VIII - 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 both 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 IX - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. As the single state entity responsible to act as the non-Federal sponsor for construction, operation, and maintenance of all hurricane, storm damage reduction, and flood damage reduction projects in the greater New Orleans and southeast Louisiana area, the Non-Federal Sponsor, at no cost to the Government and for so long as the *Modified Project* remains authorized, shall operate, maintain, repair, rehabilitate, and replace all portions of the *Modified Project*, that the District Engineer determines or determined to be complete in accordance with the provisions of the agreement with a non-Federal interest under which such work was constructed. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Modified Project's* authorized purposes and in accordance



with applicable Federal and State laws as provided in such agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto. Nothing in this paragraph is intended to affect eligibility under Public Law 84-99 (33 U.S.C. 701n).

B. In the case of *New Work* being implemented pursuant to this Agreement, upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and after following the procedures of Article II.A.3. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *New Work* or *functional portion of the New Work*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Modified Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XII of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto. The Government shall allocate its costs for preparation of the OMRR&R Manual between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work* and the costs of the latter shall be shared in accordance with the provisions of this Agreement.

C. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Modified Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Modified Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Modified Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE X – HOLD AND SAVE

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

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

## ARTICLE XI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs shall be allocated between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work*, as determined by the Government. The Non-Federal Sponsor shall be solely responsible for its costs for audits that are allocated to *Full Federal Work*. The Non-Federal Sponsor's costs for audits allocated to the *Cost-Shared Work* shall be included in the *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be allocated between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work*,



as determined by the Government. The Government's costs for audits allocated to the *Cost-Shared Work* shall be included in the *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement.

## ARTICLE XII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, which may include, but are not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) and, as it relates to the Non-Federal Sponsor, the Louisiana Public Bid Law (La. R.S. 38:2211 *et seq.*).

## ARTICLE XIII - RELATIONSHIP OF PARTIES

A. 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.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

## ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate construction under this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *New Work* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *New Work*.

B. In the event the Government projects that the amount of Federal funds available for the *New Work* through the then-current *fiscal year*, or the upcoming *fiscal year*, is not sufficient, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds available for the *New Work* will be exhausted. Upon the exhaustion of the amount of Federal funds available for the *New Work*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to continue construction of the *New Work*, or the Government elects to terminate further construction under this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XV of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate construction under this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XV of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate construction under this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge responsibilities under Article XV of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate construction under this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharge its responsibilities under Article XV of this Agreement; 3) the Government continues work on the *New Work*; or 4) the Government terminates construction under this Agreement in accordance with the provisions of Article XV of this Agreement.

D. In the event that construction under this Agreement is terminated pursuant to this Article or Article XV of this Agreement, the parties shall conclude their activities relating to further construction of the *New Work*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *New Work* and an appropriate percentage, as determined by the Government, of total funds contributed by the Non-Federal Sponsor for the *Cost-Shared Work* as a contingency to pay costs of termination, including any costs of resolution of real estate acquisition, resolution of contract claims and resolution of contract modifications.

E. Any termination of construction under this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor 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 XV - HAZARDOUS SUBSTANCES

### A. Investigations.

1. *Cost-Shared Work.* After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary 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 lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Cost-Shared Work*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer 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.

a. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article XI.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government, pursuant to Article II.C.2.a. of this Agreement, shall afford credit for such costs that are determined to be reasonable, allocable, and allowable.

b. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement.

2. *Full Federal Work.* The Government shall be responsible for all general investigations and costs 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 lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Full Federal Work* and such costs shall be included in *total costs of the Full Federal Work*.

B. Discovery of Hazardous Substances Prior to Land Acquisition. In the event it is discovered through any investigation for hazardous substances or other means that

hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *New Work*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and shall not proceed with the acquisition of the real property interests until the parties agree that acquisition should proceed.

1. *Cost-Shared Work*. If, pursuant to agreement by the Non-Federal Sponsor and the Government under this paragraph, the Non-Federal Sponsor acquires lands, easements, or rights-of-way that are required for the construction, operation, and maintenance of the *Cost Shared-Work*, 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, on such lands, easements, or rights-of-way. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Cost-Shared Work*.

2. *Full Federal Work*.

a. If, pursuant to agreement by the Non-Federal Sponsor and the Government under this paragraph, the Non-Federal Sponsor acquires lands, easements, or rights-of-way that are required for the construction, operation, and maintenance of the *Full Federal Work*, 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, on such lands, easements, or rights-of-way. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the New Work*.

b. If the Non-Federal Sponsor does not agree to acquire such lands, easements, or rights-of-way but requests the Government to perform the acquisition pursuant to Article III.A.2. of this Agreement, the Government, in its sole discretion, may proceed with acquisition of such lands, easements, or rights-of-way or may either terminate construction of the *Full Federal Work* under this Agreement for the convenience of the Government, or suspend future performance under this Agreement.

C. *Discovery of Hazardous Materials After Land Acquisition*. In the event it is discovered after acquisition of lands, easements, or rights-of-way required for the construction, operation, and maintenance of the *New Work* that hazardous substances regulated under CERCLA exist therein, thereon, or thereunder, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and shall not initiate construction of the



*New Work*, or, if already in construction, shall not continue with construction of the *New Work*, until the parties agree that construction should be initiated or continued.

1. *Cost-Shared Work*. If hazardous substances regulated under CERCLA are discovered to exist in, on, or under lands, easements, or rights-of-way required for the *Cost Shared-Work* after they have been acquired by the Non-Federal Sponsor, the Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Cost-Shared Work*, or, if already in construction, whether to continue with construction of the *Cost-Shared Work*, suspend future performance under this Agreement, or terminate construction under this Agreement for the convenience of the Government. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Cost-Shared Work* after considering any liability that may arise under CERCLA, 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, on all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Cost-Shared Work*. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Cost-Shared Work*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate construction under this paragraph, or 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 paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate construction under this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue with construction of the *Cost-Shared Work*.

2. *Full Federal Work*.

a. *Lands Acquired or Provided by the Non-Federal Sponsor*. If hazardous substances regulated under CERCLA are discovered to exist in, on, or under lands, easements, or rights-of-way required for the *Full Federal Work* after they have been acquired by the Non-Federal Sponsor, the Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Full Federal Work*, or, if already in construction, whether to continue with construction of the *Full Federal Work*, suspend future performance under this Agreement, or terminate construction under this Agreement for the convenience of the Government. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Full Federal Work* after considering any liability that may arise under CERCLA, 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, on all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Full Federal Work* that were

acquired or provided by the Non-Federal Sponsor. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the New Work*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate construction under this paragraph, or 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 paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate construction under this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue with construction of the *Full Federal Work*.

b. Private Lands Provided by the Government. In any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any privately owned lands, easements, or rights-of-way that are required for construction, operation, and maintenance of the *Full Federal Work* and that were acquired by the Government after request by the Non-Federal Sponsor in accordance with Article III.A.2. of this Agreement, the Government, in its sole discretion, may either terminate construction of the *Full Federal Work* under this Agreement for the convenience of the Government, suspend future performance on the *Full Federal Work* under this Agreement, or continue with construction of the *Full Federal Work*.

D. Consultation Regarding Responsible Parties. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph D. of this Article shall not relieve any third party from any liability that may arise under CERCLA. Except as between the Government and the Non-Federal Sponsor, nothing herein shall constitute, nor be deemed to constitute, a waiver by either party of any defense, immunity, entitlement to contribution, or exception to any environmental law, regulation, or liability.

E. Operator Status. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Modified Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Modified Project* in a manner that will not cause liability to arise under CERCLA. Upon the District Engineer's notification in accordance with Article II.D. of this Agreement that the *New Work*, or a *functional portion of the New Work*, is complete and meets the 100-year event design criteria, if hazardous substances regulated under CERCLA thereafter are found to exist in, on, or under any lands, easements, or rights of way required for OMRR&R of the *New Work*, or such functional portion, 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.



## ARTICLE XVI - 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 sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chairman  
Coastal Protection and Restoration Authority of Louisiana  
1501 North 3<sup>rd</sup> Street  
Capitol Annex Building  
Baton Rouge, LA 70802

If to the Government:

District Engineer  
U.S. Army Corps of Engineers  
New Orleans District  
P.O. Box 60267  
New Orleans, LA 70160-0267

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

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVII- 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 XVIII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *New Work*, shall perform any identification, survey, or evaluation of historic properties and, as determined by the Government, allocate the costs of such work between the *total costs of the Full Federal Work* and *total costs of the Cost-Shared Work*. Any costs incurred by the Government

that are allocated to the *Cost-Shared Work* shall be included in *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *New Work*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government related to the *Cost-Shared Work* for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total costs of the Cost-Shared Work* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation on the *New Work* shall be borne entirely by the Government and shall not be included in *total costs of the New Work*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *New Work*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit, as allocated by the Government to the *Cost-Shared Work*, shall not be included in *total costs of the Cost-Shared Work* but shall be shared between the Non-Federal Sponsor and the Government as follows: 30 percent will be borne by the Non-Federal Sponsor and 70 percent will be borne by the Government for any *Cost-Shared Work* funded under the 4<sup>th</sup> Construction Supplemental and 35 percent will be borne by the Non-Federal Sponsor and 65 percent borne by the Government for any *Cost-Shared Work* funded under the 6<sup>th</sup> Construction Supplemental.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement for the *Cost-Shared Work*, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.



## ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

## ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

## ARTICLE XXI - 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 Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective on the date of the last signature to this Agreement.

DEPARTMENT OF THE ARMY

BY: John Paul Woodley, Jr.  
JOHN P. WOODLEY, JR.  
Assistant Secretary of the Army  
(Civil Works)

COASTAL PROTECTION AND  
RESTORATION AUTHORITY OF  
LOUISIANA

BY: [Signature]  
GARRET GRAVES  
Chairman

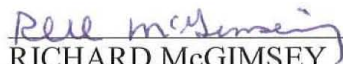
DATE: 31 October 2008

DATE: November 6, 2008

## CERTIFICATE OF AUTHORITY

I, James D. "Buddy" Caldwell, do hereby certify that I am the principal legal officer of the Coastal Protection and Restoration Authority of Louisiana and that the Coastal Protection and Restoration Authority of Louisiana is a legally constituted public body with full authority under La. R.S. 49:213.4 to enter into the Project Partnership Agreement between the Department of the Army and the Coastal Protection and Restoration Authority of Louisiana in connection with the West Bank and Vicinity, Louisiana Project, as modified. I hereby further certify that the Executive Assistant for Coastal Activities, who is statutorily designated as the Chairman of the Coastal Protection and Restoration Authority, has the authority under La. R.S. 49:213.3 and 49:213.4 to coordinate the powers, duties, and functions of state agencies relative to coastal protection and restoration and to use the contracting authority of any agency to implement plans relating to infrastructure, coastal protection, including hurricane protection, and coastal wetlands conservation and restoration, and that the person who has executed this Project Partnership Agreement on behalf of the Coastal Protection and Restoration Authority of Louisiana has acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
6<sup>th</sup> day of November 2006.

  
RICHARD MCGIMSEY  
Director of Civil Division

FOR

JAMES D. "BUDDY" CALDWELL  
Attorney General  
State of Louisiana



## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
GARRET GRAVES

Chairman

Coastal Protection and Restoration Authority of Louisiana

DATE: November 6, 2008