

**MODEL AGREEMENT FOR DESIGN  
IN ACCORDANCE WITH SECTION 105(c) OF PUBLIC LAW 99-662**

DESIGN AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**[FULL NAME OF NON-FEDERAL SPONSOR]**  
FOR DESIGN OF THE  
**[FULL NAME OF PROJECT OR SEPARABLE ELEMENT]**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government") represented by **[TITLE OF PERSON SIGNING THIS AGREEMENT]** and **[FULL NAME OF NON-FEDERAL SPONSOR]** (hereinafter the "Non-Federal Sponsor") **[NOTE: USE "NON-FEDERAL SPONSOR", "LOCAL SPONSOR", "PORT", "PORT AUTHORITY", "STATE" OR OTHER NAME PREFERRED BY THE SPONSOR CONSISTENTLY THROUGHOUT THE AGREEMENT]** represented by **[TITLE OF PERSON SIGNING THIS AGREEMENT]**.

WITNESSETH, THAT:

**[USE THE FOLLOWING PARAGRAPH ONLY FOR AUTHORIZED PROJECTS OR A SEPARABLE ELEMENT OF AN AUTHORIZED PROJECT]**

WHEREAS, construction or implementation of the **[FULL NAME OF PROJECT OR A SEPARABLE ELEMENT OF THE PROJECT]** at **[LOCATION]** is authorized by Section \_\_\_\_\_ of the \_\_\_\_\_ Act of \_\_\_\_\_;

WHEREAS, the Energy and Water Development Appropriations Act for Fiscal Year \_\_\_\_\_, Public Law \_\_\_\_\_, included funds for the Government to initiate design (as defined in Article I.B. of this Agreement) of the **[FULL NAME OF PROJECT OR A SEPARABLE ELEMENT OF THE PROJECT]** (hereinafter the "Project" as defined in Article I.A. of this Agreement) at **[LOCATION]**;

WHEREAS, Section 105(c) of Public Law 99-662 (33 U.S.C. Section 2215) [100 Stat 4089] provides that the costs of design of a water resources project shall be cost shared in the same percentage as the purposes of the project;

WHEREAS, the Government and the Non-Federal Sponsor agree that the Non-Federal

Sponsor shall contribute 25 percent of the financial obligations for design of the Project;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in paying for design in accordance with the terms of this Agreement.

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

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean **[DESCRIBE THE PROJECT OR A SEPARABLE ELEMENT OF THE PROJECT FOR WHICH THE DESIGN WILL BE UNDERTAKEN PURSUANT TO THIS AGREEMENT. IF THE "PROJECT" IS A SEPARABLE ELEMENT OF A PROJECT, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IS ACCURATELY DESCRIBED] [USE ONE OF THE FOLLOWING IF IT IS APPLICABLE: [1] as generally described in the Report of the Chief of Engineers, dated \_\_\_\_\_, \_\_\_\_\_. [2] as generally described in the [SPECIFY FEASIBILITY REPORT WITH ENGINEERING APPENDIX, GENERAL RE-EVALUATION REPORT, OR OTHER REPORT THAT DEFINES THE SCOPE OF THE "PROJECT"]], dated \_\_\_\_\_, \_\_\_\_ and approved by [CHOOSE THE APPROPRIATE ONE: Assistant Secretary of the Army (Civil Works)/Chief of Engineers.] [3] as generally described in the [IN THE CASE OF A CONGRESSIONAL ADD WITHOUT A PRIOR CORPS REPORT, CITE THE ACT[S] AUTHORIZING THE "PROJECT" AND/OR DIRECTING THE PERFORMANCE OF DESIGN, TOGETHER WITH THE APPLICABLE HOUSE, SENATE, OR CONFERENCE REPORTS.]**

B. The term "design" shall mean all activities directly related to planning, engineering and design of the Project for which financial obligations are made during the period of design in accordance with the terms of this Agreement; the final accounting in accordance with Article IV.D. of this Agreement; any audit in accordance with Article VII of this Agreement; and the Government's activities conducted as part of negotiating this Agreement. The term shall not include any activities performed as part of reconnaissance or feasibility studies; activities conducted as part of negotiation of a project cooperation agreement for the Project or separable element thereof; or the Non-Federal Sponsor's activities conducted as part of negotiating this Agreement.

C. The term "total design costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government as a consequence of financial obligations for design. The term includes but is not necessarily limited to, the Government's costs of negotiating this Agreement; applicable

planning and evaluation; applicable engineering and design; environmental assessment and documentation; the identification, survey, and evaluation of historic properties; participation in the Design Coordination Team in accordance with Article III of this Agreement; costs of the final accounting in accordance with Article IV.D. of this Agreement; and costs of audit in accordance with Article VII of this Agreement. The term does not include any costs related to betterments; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies; any costs (other than audit) resulting from financial obligations after the period of design; any costs of negotiating a project cooperation agreement for the Project or separable element thereof; or the Non-Federal Sponsor's costs of negotiating this Agreement.

D. The term "period of design" shall mean the time period commencing when **[USE [1] IF THE ALLOCATION OF CG FUNDS TRIGGERED THE REQUIREMENT FOR A DESIGN AGREEMENT, [2] IF THE ALLOCATION OF O&M FUNDS TRIGGERED THE REQUIREMENT FOR A DESIGN AGREEMENT, OTHERWISE USE OPTION[3].** [1] Federal Construction, General appropriations for construction or implementation of the Project [2] Federal Operations and Maintenance, General appropriations for construction or implementation of the Project [3] Federal General Investigations appropriations for Preconstruction Engineering and Design of the Project] are allocated to the U.S. Army Engineer District, \_\_\_\_\_, and ending when a project cooperation agreement for the Project, or a separable element thereof, is executed between the Government and a non-Federal entity or entities.

E. The term "District Engineer" shall mean the U.S. Army Engineer for the \_\_\_\_\_ District.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

G. The term "betterment" shall mean a change in the design of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element, or the addition of an element of the Project that the Government would not otherwise accomplish.

H. The term "financial obligations for design" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in total design costs.

I. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.B. of this Agreement to total financial obligations for design, as projected by the Government.

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

A. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously design the Project, applying those procedures usually applied to the engineering and design of Federal projects, pursuant to Federal laws, regulations, and policies.

1. To the maximum extent possible, the Government shall design the Project in accordance with the Project Management Plan for the Project and, if applicable, a Project Study Plan for any reevaluation during design, developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contracts modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, 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 the 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, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

**[INCLUDE PARAGRAPH II.A.3. IF THE NON-FEDERAL SPONSOR DESIRES A "VOLUNTARY COST CAP."]**

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract for design or continuation of design using the Government's own forces would result in cumulative financial obligations for design exceeding \$\_\_\_\_\_, **[NOTE: THIS AMOUNT MUST NOT BE LESS THAN ESTIMATE OF TOTAL DESIGN COSTS SHOWN IN ARTICLE IV.A.]** the Government and the Non-Federal Sponsor agree to defer award of that contract, all subsequent contracts for design, and design using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for design or the continuation of design using the Government's own forces, but in no event shall the award of contracts or design using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards or design, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts or continue with design using the Government's own forces after the Assistant Secretary of the

Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

**[INCLUDE PARAGRAPH II.A.4. FOR ANY CONGRESSIONALLY ADDED PROJECT OR SEPARABLE ELEMENT UNLESS: 1) THE PRESIDENT'S BUDGET FOR A FOLLOWING FISCAL YEAR HAS BEEN RELEASED AND IT INCLUDES FOLLOW-ON FUNDS FOR THE ADDED PROJECT; OR 2) THE ADD HAS BEEN DETERMINED, IN THE ANNUAL PROGRAMS VIDEO TELECONFERENCE, TO BE CONSISTENT WITH BUDGET PRIORITY AND NO ADDITIONAL FUNDS ARE NEEDED TO COMPLETE THE ADD.]**

4. As of the effective date of this Agreement, \$\_\_\_\_\_ **[INCLUDE BOTH GI PED AND CG APPROPRIATIONS AVAILABLE FOR DESIGN UNLESS THE "PERIOD OF DESIGN" BEGINS WITH CG APPROPRIATIONS THEN INCLUDE ONLY CG APPROPRIATIONS OR THE "PERIOD OF DESIGN" BEGINS WITH O&M APPROPRIATIONS THEN INCLUDE ONLY O&M APPROPRIATIONS]** of Federal funds have been appropriated for design of the Project. **[CHOOSE (1) IF THE FUNDS APPROPRIATED ARE LESS THAN THE FEDERAL SHARE OF PROJECTED TOTAL DESIGN COSTS, (2) IF THE FUNDS APPROPRIATED ARE EQUAL TO OR GREATER THAN THE FEDERAL SHARE OF PROJECTED DESIGN COSTS: (1)**This amount is less than the Federal share of projected total design costs, and the Government makes no commitment to budget for additional funds for the Federal share of total design costs. **(2)** The Government makes no commitment to budget for additional funds for the Federal share of total design costs.] Notwithstanding any other provision of this Agreement, the Government's financial participation in design of the Project is limited to this amount together with any additional funds that the Congress may appropriate for design of the Project. In the event that the Congress does not appropriate funds sufficient to meet the Federal share of funds required to continue design in the then-current or upcoming fiscal year, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and Non-Federal funds available for the Project, shall suspend design or terminate this Agreement in accordance with Article XI.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for design and an equal percentage of the total funds contributed by the Non-Federal Sponsor pursuant to Article II.B. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

B. The Non-Federal Sponsor shall provide, during the period of design a contribution equal to 25 percent of total design costs. If the Government projects that the value of the Non-Federal Sponsor's contributions under Articles III and VII will be less than 25 percent of total design costs, the Non-Federal Sponsor shall provide a contribution, in accordance with Article IV.B. of this Agreement, in the amount necessary to meet its 25 percent share of total design costs.

C. The Government shall perform a final accounting in accordance with Article IV.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B. and E. of this Article and Articles III and VII of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B. and E. of this Article.

D. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total design costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Non-Federal Sponsor may request the Government to design betterments. Such requests shall be in writing and shall describe the betterments requested to be designed. If the Government in its sole discretion elects to design the requested betterments 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 due to the requested design of betterments and shall pay all such costs in accordance with Article IV.C. of this Agreement.

F. In accordance with Article IV.E. of this Agreement, the Government shall afford credit, toward the share of total project costs for the Project that is required of the non-Federal entity or entities executing the Project Cooperation Agreement or Agreements for the Project or separable element thereof, for the Non-Federal Sponsor's 25 percent share of total design costs required under paragraph B. of this Article.

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Cooperation Agreement.

### ARTICLE III - DESIGN COORDINATION TEAM

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

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Design Coordination Team informed of the progress of the design and of significant pending issues and actions, and shall seek the views of the Design Coordination Team on matters

that the Design Coordination Team generally oversees.

C. Until the end of the period of design, the Design Coordination Team shall generally oversee issues related to design, including scheduling of reports and work products; development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the Project; and other related matters.

D. The Design Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design, has the discretion to accept, reject, or modify the Design Coordination Team's recommendations.

E. The costs of participation in the Design Coordination Team during the period of design shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE IV - METHOD OF PAYMENT

**[FOR ARTICLE IV USE OPTION I IF DESIGN WORK WILL BE COMPLETED WITHIN ONE FISCAL YEAR OR IF THE NON-FEDERAL SPONSOR ELECTS TO PROVIDE ITS SHARE IN ONE LUMP SUM. OTHERWISE, USE OPTION II.]**

##### **OPTION I**

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of total design costs and costs due to additional work under Article II.E. of this Agreement. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total design costs, of total costs due to additional work under Article II.E. of this Agreement, of each party's share of total design costs, of the non-Federal proportionate share, and of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B. and II.E. of this Agreement. On the effective date of this Agreement, the total design costs are projected to be \$\_\_\_\_\_, and the Non-Federal Sponsor's contribution required under Article II.B. of this Agreement is projected to be \$\_\_\_\_\_. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF DESIGN.]** Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial

responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the contribution required under Article II.B. of this Agreement in accordance with the following provisions: Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected contribution under Article II.B. of this Agreement. Not later than 30 calendar days after such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT]" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for design incurred prior to such payment; and (b) the non-Federal proportionate share of financial obligations for design as they are incurred during the remainder of the period of design. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

**[IF ADDITIONAL FUNDS ARE REQUIRED FROM THE NON-FEDERAL SPONSOR, THEY SHOULD BE REQUESTED IMMEDIATELY SO THAT THE NON-FEDERAL SPONSOR WILL MAINTAIN ITS PROPORTIONATE SHARE OF FINANCIAL OBLIGATIONS. NEITHER PARTY'S FUNDS SHOULD BE USED TO MEET ANY SHORTFALL IN THE OTHER PARTY'S FUNDS.]**

## **OPTION II**

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties and current projections of total design costs and costs due to additional work under Article II.E. of this Agreement. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total design costs, of total costs due to additional work under Article II.E. of this Agreement, of each party's share of total design costs, of the non-Federal proportionate share, of the Non-Federal Sponsor's total contributions required in accordance with Articles II.B. and II.E. of this Agreement, and of the funds the Government projects to be required from the Non-Federal Sponsor in accordance with Articles II.B. and II.E. of this Agreement for the upcoming fiscal year. On the effective date of this Agreement, total design costs are projected to be \$\_\_\_\_\_, and the Non-Federal Sponsor's contribution required under Article II.B. of this Agreement is projected to be \$\_\_\_\_\_. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF DESIGN.]** Such amounts are estimates

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

B. The Non-Federal Sponsor shall provide the contribution required under Article II.B. of this Agreement in accordance with the provisions of this paragraph.

**[ARTICLE IV.B.1. OFFERS THE NON-FEDERAL SPONSOR FOUR MECHANISMS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE ITS REQUIRED MONETARY CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE NON-FEDERAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE COURSE OF NEGOTIATING THE AGREEMENT. SUBJECT TO THE APPROVAL OF THE DISTRICT ENGINEER, AND IN ACCORDANCE WITH GUIDANCE GOVERNING THE USE OF ELECTRONIC FUNDS TRANSFERS, ESCROW AGREEMENTS, AND IRREVOCABLE LETTERS OF CREDIT, THE NON-FEDERAL SPONSOR MAY USE ANY METHOD INDICATED BELOW, OR A COMBINATION OF THEM, DURING THE LIFE OF THE AGREEMENT.]**

1. Not later than 30 calendar days after execution of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design through the first fiscal year of design, including the non-Federal proportionate share of financial obligations for design incurred prior to such payment. Not later than 30 calendar days after such notice the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of design, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for design for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for design incurred prior to the payment made under paragraph B.1 of this Article; and (b) the non-Federal proportionate share of financial obligations for design as they are

incurred during the remainder of the period of design.

4. If at any time during the period of design the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for design for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required together with an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanisms specified in paragraph B.1. of this Article.

**[IF ADDITIONAL FUNDS ARE REQUIRED FROM THE NON-FEDERAL SPONSOR, THEY SHOULD BE REQUESTED IMMEDIATELY SO THAT THE NON-FEDERAL SPONSOR WILL MAINTAIN ITS PROPORTIONATE SHARE OF FINANCIAL OBLIGATIONS. NEITHER PARTY'S FUNDS SHOULD BE USED TO MEET ANY SHORTFALL IN THE OTHER PARTY'S FUNDS.]**

**[INCLUDE PARAGRAPHS C., D., AND E. FOR BOTH OPTIONS I AND II IN ARTICLE IV.]**

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT]" to the District Engineer, or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or present the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or provide an Electronic Funds Transfer in accordance with procedures established by the Government. 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. In the event 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. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through the funding mechanisms specified above.

D. Upon completion of design or termination of this Agreement, and upon resolution of all relevant proceedings, claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total design costs, each party's contribution provided thereto, and each parties required share thereof. The final accounting also shall determine total costs due to additional work under Article II.E. of this Agreement and the Non-Federal Sponsor's contribution provided

pursuant to Article II.E. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement is less than its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor under Articles II.B., II.E., III and VII of this Agreement exceeds its required 25 percent share of total design costs plus costs due to additional work under Article II.E. of this Agreement, the Government shall afford credit to the Non-Federal Sponsor during the construction or implementation of the Project (other than the 5 percent cash share for structural flood control), or the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Government shall afford credit for the Non-Federal Sponsor's 25 percent share of total design costs required under Article II.B. of this Agreement, in accordance with this paragraph. The Government shall afford such credit only after any payment to the Government or refund to the Non-Federal Sponsor required by paragraph D. of this Article has been made. To afford such credit, the Government shall apply the amount credited toward the share that non-Federal entities are required to provide toward total project costs for the Project. **[THE FOLLOWING SENTENCE SHOULD BE INCLUDED ONLY FOR PROJECTS, OR SEPARABLE ELEMENTS THEREOF, THAT HAVE COSTS ASSIGNED TO STRUCTURAL FLOOD CONTROL:** However, any amount credited for the value of the Non-Federal Sponsor's contributions toward total Design costs provided in accordance with Articles III and VII of this Agreement shall not be applied toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended.] Nothing in this Agreement shall be construed to obligate the Government to repay the Non-Federal Sponsor, in whole or in part, for its 25 percent share of total design costs.

1. If Federal funds are appropriated for construction or implementation of the Project, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of the entire Project, then the Government shall afford credit for the entire 25 percent share.

2. If Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, and if the Government and a non-Federal entity enter into a Project Cooperation Agreement for construction or implementation of such separable element, then the Government shall afford credit for such portion of the 25 percent share as is allocable to such

separable element.

3. If no Federal funds are appropriated for construction or implementation of the Project or a separable element thereof, or if the Government and a non-Federal entity do not enter into a Project Cooperation Agreement for construction or implementation of the Project or a separable element, then the Government shall not afford any credit for such 25 percent share.

#### ARTICLE V - 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. The parties shall each pay 50 percent 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 VI - HOLD AND SAVE

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

#### ARTICLE VII - 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, documents, records, or other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for

complying with the Single Audit Act of 1984, 31 U.S.C. Sections 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 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. 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 before the Government furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in total design costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but 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, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"**[INCLUDE THE FOLLOWING IF THE PURPOSE OF THE "PROJECT" IN THIS AGREEMENT IS FLOOD CONTROL OR HURRICANE OR STORM DAMAGE REDUCTION:**, and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans].

## ARTICLE IX - 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 such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

## ARTICLE X - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.E. or IV of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on design of the Project 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 Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for design for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to design of the Project and proceed to a final accounting in accordance with Article IV.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment from 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 XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

**[FULL ADDRESS]**

If to the Government:

**[FULL ADDRESS]**

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 XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

**[INCLUDE ARTICLE XIV ONLY IF THE NON-FEDERAL SPONSOR IS A STATE AGENCY OR DERIVES ITS FUNDS DIRECTLY FROM STATE LEGISLATIVE APPROPRIATIONS AND THE STATE IS LIMITED BY ITS CONSTITUTION OR BY STATE STATUTES FROM COMMITTING FUTURE STATE LEGISLATIVE APPROPRIATIONS.]**

ARTICLE XIV - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the [LEGISLATURE] of the State of [\_\_\_\_\_].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by [TITLE OF DEPARTMENT OF THE ARMY REPRESENTATIVE SIGNING THIS AGREEMENT].

THE DEPARTMENT OF THE ARMY

THE [FULL NAME OF NON-FEDERAL SPONSOR]

BY: \_\_\_\_\_  
[SIGNATURE]  
[TYPED NAME]  
[TITLE IN FULL]

BY: \_\_\_\_\_  
[SIGNATURE]  
[TYPED NAME]  
[TITLE IN FULL]

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

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

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with design of the **[FULL NAME OF "PROJECT"]**, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
**[SIGNATURE]**  
**[TYPED NAME]**  
**[TITLE IN FULL]**

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 Section 1352, Title 31, U.S. Code. 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.

**[SIGNATURE OF NON-FEDERAL SPONSOR SIGNING AGREEMENT]**  
**[TYPED NAME]**  
**[TITLE IN FULL]**

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