

SECTION 105(a) – WRDA 86, AS AMENDED

**MODEL AGREEMENT
FOR
COST SHARED FEASIBILITY STUDIES OF
PROPOSED PROJECTS THAT WILL REQUIRE SPECIFIC AUTHORIZATION
AND
COST SHARED FEASIBILITY STUDIES OF
MODIFICATIONS THAT ARE BEYOND THE SCOPE OF THE
EXISTING PROJECT AUTHORIZATION
AND
COST SHARED FEASIBILITY STUDIES OF
PROJECTS AUTHORIZED WITHOUT A FEASIBILITY STUDY**

JUNE 5, 2007

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APPLICABILITY. – The attached model agreement is one of two models for cost shared feasibility studies being undertaken in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)). The following descriptions are provided to assist in determining the correct model to be used for your cost shared feasibility study. The models discussed below should not be used for a cost shared feasibility study conducted under a feasibility cost sharing authority other than Section 105(a) (such as Section 729 of the Water Resources Development Act of 1986 – Watershed and River Basin Assessments). If there is no approved model posted in the approved model section of the PPA Web page that is applicable to your particular study, the District Project Delivery Team should consult with the appropriate HQ RIT for guidance on drafting the appropriate agreement.

FCSA – The attached model should be used only for cost shared feasibility studies of proposed projects that will require specific authorization from Congress; for cost shared feasibility studies of modifications that are beyond the scope of the existing project authorization; and for cost shared feasibility studies of projects authorized without a feasibility study performed by the U.S. Army Corps of Engineers.

CAP FCSA – Use only for cost shared feasibility studies of proposed projects under the Continuing Authorities Program and other program authorities that do not require additional authorization to implement a project - such as Section 544 of the Water Resources Development Act of 2000 – Puget Sound and Adjacent Waters Restoration.

NOTES. – The following pages (iii – xvii) contain numbered notes to assist in drafting an

agreement using this model. Throughout the model agreement, there are references to the numbered notes (example: [SEE NOTE – 7]) to direct you to the appropriate note that provides explanation and guidance on use of optional language or information required to fill in the blanks. Several of the notes are general in nature and should be reviewed and discussed with the sponsor during preparation of the draft agreement for your study.

OPTIONAL LANGUAGE. – The use of optional language allows the model to be applicable to a larger universe of studies. Many of the numbered notes (example: [SEE NOTE – 6]) require you to choose between multiple versions of language or to choose whether or not to include a paragraph, sentence, or phrase depending on the specifics of your study. In many cases optional language to address a concept, such as application of Section 1156, is required in numerous locations throughout the agreement. Each of these locations has been identified with numbered notes; however, it is important to ensure that, if the optional language addressing a certain concept is included in one location, it is also included in all other appropriate locations. Correct use of the optional language is not considered a deviation from the model.

BLANKS. – There are numerous locations where information specific to your study is required to fill in a blank. All of the blanks must be filled in, except the date in the first paragraph, prior to forwarding the agreement for review. Including the information required to fill in a blank is not considered a deviation from the model.

DEFINED TERMS SHOWN IN ITALICS. – Throughout the agreement the terms defined in Article I are shown in italics. Do not remove any of the *italics* from the agreement.

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the agreement prior to forwarding for review. **Reminder: Do not remove any of the *italics* from the agreement.**

2. MULTIPLE SPONSORS.

A. No division of responsibilities between or among multiple sponsors in agreement. - In the event there are two or more entities serving as the sponsors for the study, **and** there is no division of responsibilities between or among them, the agreement can be modified to identify all the entities collectively as the “Non-Federal Sponsors”. However, it should be explained to all entities that the term “Non-Federal Sponsors” is construed to hold multiple sponsors jointly and severally responsible for compliance with all agreement obligations. The changes outlined in paragraphs A.1., A.2., and C. of this note are required to identify all entities collectively as “Non-Federal Sponsors” and are not considered deviations from the model.

1. Modify first paragraph to include name of each entity serving as a sponsor. (Example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the “Non-Federal Sponsors”))

2. Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the agreement. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors (i.e. “its” to “their” or “assumes” to “assume”, etc.).

B. Division of responsibilities between or among multiple sponsors required in agreement. - While it is preferred to have only one sponsor or, when multiple sponsors are necessary, to designate them collectively as “Non-Federal Sponsors” (see paragraph A. of this note), we do recognize there are instances where there are two or more entities serving as the sponsors for the study and there is a need for a division of responsibilities between or among them in the body of the agreement. It is important that each obligation in the agreement is reviewed and assigned to the appropriate party and that all obligations of the agreement are addressed. We have found that modifying an agreement to address a division of responsibilities can be very cumbersome and it offers many opportunities for inadvertent omissions. Therefore, at a minimum, the division of responsibilities in the agreement drafted for your study must be coordinated with the vertical team (PDT and MSC, and, if necessary HQ) to ensure that the proposed division of obligations is acceptable and that all obligations are addressed. The changes outlined in paragraphs B.1., B.2., and C. of this note are required for multiple sponsors where such approach was approved in writing by the MSC. When so approved, such changes to address multiple sponsors are not considered deviations from the model.

1. Modify first paragraph to identify each entity separately using the identifier preferred by the sponsor (see note 4) and then collectively as the “Non-Federal Sponsors”. (Example: ... The State of California (hereinafter the “State”), represented by the President of The Reclamation Board, and the Sacramento Area Flood Control Agency (hereinafter “SAFCA”) represented by its Chair of the Board (the State and SAFCA when referred to collectively are referred to as the “Non-Federal Sponsors”))

2. Review each occurrence of “Non-Federal Sponsor” and change it to the identifier for the sponsor that will be responsible for that obligation. If all sponsors collectively will be responsible for an obligation, then change “Non-Federal Sponsor” to “Non-Federal Sponsors”. There are several paragraphs where this change will require additional grammatical changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors (i.e. “its” to “their” or “assumes” to “assume”, etc.).

C. The changes below are required for all agreements with multiple sponsors, regardless of whether you followed paragraph A. or B. above. These changes are not considered deviations from the model.

1. Modify title to include name of each entity serving as a sponsor.

2. On the signature page, a separate signature block will be required for each entity serving as a sponsor.

3. A separate Certificate of Authority will be required for each entity serving as a sponsor.

4. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

3. GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. (Example: U.S. Army Engineer, Mobile District)

4. REFERENCE TO NON-FEDERAL SPONSOR. - Use “Non-Federal Sponsor”, “Local Sponsor”, “State”, “County”, “Commonwealth”, “Territory” or other identifier as preferred by the sponsor in the parenthetical phrase and consistently throughout the agreement. This change is not considered a deviation from the model. If this change is made in one location, ensure that all other locations are similarly changed.

5. NON-FEDERAL SPONSOR REPRESENTATIVE. – Insert the title of the sponsor’s representative signing the agreement. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s

representative. (Example: the Mayor)

6. AUTHORITY FOR STUDY. - The following paragraphs should be used to choose which option should be included in your agreement. Each option contains two Whereas clauses. Delete, in their entirety, the options not used.

A. Choose Option (1) of the optional Whereas clauses if the study is being undertaken as a result of a study resolution from the Committee on Transportation and Infrastructure, U.S. House of Representatives. The information to be included in the blanks:

1. First Whereas Clause – In the first blank – include the date of the resolution – use civilian format for date (Example: January 22, 2012). In the second blank - include the title of the documents that the Committee has requested to be reviewed – as stated in the resolution. In the third blank – include the text that describes what should be determined – as stated in the resolution.

2. Second Whereas Clause – In the first blank – list all the purposes (such as flood risk management, navigation, ecosystem restoration, recreation, etc.) that were considered in the reconnaissance study. In the second blank – list the purposes (such as flood risk management, navigation, ecosystem restoration, recreation, etc.) that will be carried forward and considered in the feasibility study.

B. Choose Option (2) of the optional Whereas clauses if the study is being undertaken as a result of a study resolution from the Committee on Environment and Public Works, U.S. Senate. The information to be included in the blanks:

1. First Whereas Clause – In the first blank – include the date of the resolution - use civilian format for date (Example: January 22, 2012). In the second blank - include the title of the documents that the Committee has requested to be reviewed – as stated in the resolution. In the third blank – include the text that describes what should be determined – as stated in the resolution.

2. Second Whereas Clause – In the first blank – list all the purposes (such as flood risk management, navigation, ecosystem restoration, recreation, etc.) that were considered in the reconnaissance study. In the second blank – list the purposes (such as flood risk management, navigation, ecosystem restoration, recreation, etc.) that will be carried forward and considered in the feasibility study.

C. Choose Option (3) of the optional Whereas clauses if the study is being undertaken as a result of Act language (provision contained in law) directing a study. The information to be included in the blanks: In the first blank – include the title of the official to undertake the study as shown in the Act language – such as Secretary of the Army or Chief of Engineers. In the second blank – fill in the description of the study – as stated in

the authorizing language. In the third blank – cite the reference to the authority for the study, including section number and Public Law number.

D. Choose Option (4) of the optional Whereas clauses if the study is to evaluate a modification that is beyond the scope of the existing project authorization. The information to be included in the blanks: In the first blank – include the full title of the authorized project. In the second blank – include the specific location of the authorized project, including state, Commonwealth, or Territory. In the third blank – cite the reference to the authority for the project, including section number and Public Law number.

E. Choose Option (5) of the optional Whereas clauses if the study is to evaluate a project, using current planning criteria and policies, that was authorized without a feasibility study performed by the U.S. Army Corps of Engineers. The information to be included in the blanks: In the first blank – include the full title of the authorized project. In the second blank – include the specific location of the authorized project, including state, Commonwealth, or Territory. In the third blank – cite the reference to the authority for the project, including section number and Public Law number.

7. NONPROFIT ENTITY AS A SPONSOR.

A. A nonprofit entity can be the sole sponsor for a study of single purpose ecosystem restoration projects. For a study that will evaluate anything other than a single purpose ecosystem restoration project (such as recreation, flood risk management, or a multi-purpose project, etc) a nonprofit entity can be a sponsor but only if a legally constituted public body (including a Federally recognized Indian tribe) will also act as sponsor for the study.

1. To be eligible to act as sponsor, the nonprofit entity must be an organization incorporated under the applicable laws of the State in which it operates as a nonprofit organization, exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501), and whose purposes include and are directly related to the purpose of the potential project.

2. In addition, the affected local government must consent, in writing, to the nonprofit entity acting as sponsor for the study. The written consent must be received prior to processing the FCSA for approval, with the date of the written consent(s) included in the Whereas clause. Typically, the affected local government will be the smallest unit of government that has jurisdiction over the area impacted by the potential project. For larger or more complex projects, multiple jurisdictions may be involved and written consent must be obtained from the affected local government in each jurisdiction.

B. Optional Whereas clauses.

1. If the sponsor is a nonprofit entity or if there are multiple sponsors and one of them is a nonprofit entity, the two Whereas clauses following the reference to this note should be included in the agreement.

a. In the first Whereas clause fill in the appropriate State. The phrase “State of _____” is used in the model; however, the substitution of “Commonwealth of” or “Territory of”, as appropriate, based on the location of the study is not considered a deviation from the model.

b. In the second Whereas clause, fill in the blanks as indicated. In those cases with multiple jurisdictions that requires more than one consent letter, modification of the Whereas clause to identify the additional letters is not considered a deviation from the model. The civilian format of the date should be used. (EXAMPLE: January 22, 2012)

2. If the sponsor is not a nonprofit entity, delete the two Whereas clauses following the reference to this note. Deletion of the two Whereas clauses following the reference to this note is not considered a deviation from the model.

C. For each location that requires a choice between three options - Choose Option (1) if the sponsor is not a nonprofit entity or if there are multiple sponsors, none of them are nonprofit entities; Option (2) if the sponsor is a nonprofit entity; or Option (3) if there are multiple sponsors and one of them is a nonprofit entity. Delete, in their entirety, the options not used. If Option (2) or Option (3) is selected, then all other optional language regarding a nonprofit entity must be selected for inclusion elsewhere in the agreement (see paragraph A. of this note and note 28).

8. FEDERALLY RECOGNIZED INDIAN TRIBE AS A SPONSOR.

A. To be eligible to act as a sponsor, the tribe must be a Federally recognized Indian tribe; that is, any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and listed as such in the most recent Federal Register listing of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs by the Department of Interior, Bureau of Indian Affairs.

B. If the sponsor is a Federally recognized Indian tribe, the Whereas clause following the reference to this note should be included in the agreement. If the sponsor is not a Federally recognized Indian tribe, delete the Whereas clause following the reference to this note. Deletion of the Whereas clause following the reference to this note is not considered a deviation from the model.

C. ARTICLE XIV – TRIBAL SOVEREIGN IMMUNITY. – Optional Article XIV must be included in the FCSA if the sponsor is a Federally recognized Indian tribe. The information to be included in the first and third blanks should be the name of the instrument (resolution, ordinance, etc) where the sponsor has waived sovereign immunity. The information to be included in the second blank should be the date of the instrument named in the first blank - use civilian format for date (Example: January 22, 2012). The information to be included in the fourth blank should be the title of the sponsor’s representative (see note 5). Deletion of the Article XIV, when the sponsor is not a Federally recognized Indian tribe, is not considered a deviation from the model.

9. IN-KIND CONTRIBUTIONS.

A. The sponsor may provide up to 100 percent of its share of total study costs (equates to 50 percent of total study costs) as in-kind contributions. The sponsor for a study may provide in-kind contributions in the form of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report and receive credit for such contributions toward its required share of total study costs. A description of the in-kind contributions, and the estimated costs for those in-kind contributions, should be in the PMP for the study.

B. The in-kind contributions should consist of new data or studies performed after execution of the FCSA that are needed for the feasibility study. Preparation of a flood plain management plan by the sponsor during the feasibility study may be accepted as in-kind contributions (for more information, see note 12).

C. If during the course of a study, it is discovered that there is a potential for hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; CERCLA) to exist in, on, or under lands, easements, or rights-of-way that may be required for the proposed project, it may be appropriate to evaluate the nature and extent of the contamination as part of plan selection and formulation for the feasibility study. However, the study should not include development (including studies and investigations) of a response plan for such contamination. The costs of any studies and investigations necessary to determine an appropriate response to such contamination are a 100 percent non-Federal sponsor responsibility and cannot be accepted as in-kind contributions.

D. The in-kind contributions may be performed by the sponsor or by contract with another party. Determination of the costs and amount of credit that will be afforded for in-kind contributions will follow the procedures outlined in Articles II.E. and II.F. of the FCSA. Further, no credit will be afforded for donated work.

E. Affording credit for in-kind contributions.

1. The costs of in-kind contributions provided by the sponsor can only be credited toward the amount of funds determined in accordance with Article II.C.1.a. (sponsor's initial cash requirement for study costs to be shared during period of study) and Article II.D.1. (sponsor's cash requirement for excess study costs) of the agreement. The credit is first applied toward the amount of funds determined in accordance with Article II.C.1.a. of the agreement. If there is any credit left over, it will be applied toward the amount of funds determined in accordance with Article II.D.1. of the agreement. The maximum amount of credit that can be afforded for in-kind contributions is limited to the least of the three amounts shown: a) the amount of funds determined in accordance with Article II.C.1.a. and Article II.D.1. of the agreement; b) the costs of in-kind contributions provided by the sponsor as determined in accordance with Article II.E. of the agreement or c) 50 percent of total study costs. The sponsor is not entitled to reimbursement of any costs for in-kind contributions that exceed the least of the three amounts indicated above.

2. In the event Section 1156 is applicable (see note 10) and the sponsor will be providing in-kind contributions, the Government should first apply the reduction afforded by Section 1156 to determine the sponsor's remaining cash requirement for the study. Only after such determination of the remaining cash requirement should the Government begin affording credit, in accordance with Article II.F., against the sponsor's remaining cash requirement for the study for the value of in-kind contributions provided by the sponsor. If the procedure above is not followed, the Government could overestimate the amount of credit that can be afforded for in-kind contributions.

10. REDUCTION IN SPONSOR'S SHARE PURSUANT TO SECTION 1156. – If the project or project modification that is the subject of the study is located in America Samoa, Guam, the Commonwealth of the Northern Mariana Islands (formerly known as the Northern Mariana Islands), or the Virgin Islands, the sponsor will be afforded a \$200,000 reduction in its required share of total study costs pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2310).

A. Whereas clause - If Section 1156 is applicable, the Whereas clause following the reference to this note should be included in the agreement. If Section 1156 is not applicable, delete the Whereas clause following the reference to this note. Deletion of this Whereas clause is not considered a deviation from the model.

B. Article II.C.2. - The optional language after the colon must be included in the agreement only if Section 1156 is applicable. If this optional language is not included in Article II.C.2., then reletter the remaining items in this paragraph. Relettering the remaining items in this paragraph is not considered a deviation from the model.

C. Optional Article II.K. – If Section 1156 is applicable, optional Article II.K. should be included in the agreement. If Section 1156 is not applicable, delete optional Article II.K.

D. For each location that requires a choice between two options - Choose Option (1)

if Section 1156 is not applicable or Option (2) if Section 1156 is applicable. Delete, in its entirety, the option not used.

11. DESCRIPTION OF THE STUDY. – The input required for the description of the study is described below.

A. First Blank - List the purposes (such as flood risk management, navigation, ecosystem restoration, recreation, etc.) that describe the identified water resources problems to be studied pursuant to this agreement in detail sufficient to avoid any confusion over what is or is not included.

B. Second Blank – Include the specific location of the study, including state, Commonwealth, or Territory.

C. Third Blank – Include the title and date of the decision document that describes the study area and purposes to be studied (such as the 905(b) Report, etc.).

D. Fourth Blank - Include the title of the decision document approving official. (such as Commander, _____ Division; or Commander, _____ District)

E. Fifth Blank – Include the date of approval of the decision document – use civilian format for date. (Example: January 22, 2012)

12. FLOODPLAIN MANAGEMENT PLAN. – Include in your agreement all of the optional text after the colon only if the project or project modification that is the subject of the study is addressing flood risk management or hurricane and storm damage reduction and the sponsor requests the Government to prepare the floodplain management plan required by Section 402 of WRDA 1986, as amended, as part of the feasibility study. If the sponsor prepares this plan as part of the feasibility study, this work should be considered an in-kind contribution and the optional text after the colon should not be included. **Reminder:** If this plan is prepared during the feasibility study, the costs of preparation will be shared 50/50. If the plan is prepared after the feasibility study, the costs of preparation will be a 100% sponsor responsibility.

13. EXCESS STUDY COSTS.

A. Excess study costs represent the difference between the most recent estimate of total study costs and the amount of total study costs specified in Article IV.A.1. of the agreement – EXCEPT that any increase in total study costs that resulted from a change in Federal law or a change in the scope of the study requested by the sponsor or any increase in total study costs that otherwise was agreed upon by the parties in writing are NOT excess study costs.

Example:

The costs of the ship simulation study increased from \$600K to \$1.1M and after review of

proposed increases the sponsor agrees with only \$400K of the increase – the \$400K is not an excess study costs - the \$100K increase they do not agree with is an excess study cost.

B. If costs are determined to be excess study costs it does not relieve the sponsor of its responsibility to pay its share of excess study costs but rather changes the timing of when the sponsor pays its share of such costs. The Government pays 100% of excess study costs during the period of study and the sponsor pays its share of excess study costs later in accordance with the time frames shown in Article IV.C.3. of the agreement.

C. When to amend the agreement for increases in total study costs.

1. It is not a requirement to amend the agreement for each and every increase in total study costs throughout the life of the study. The last sentence of Article IV.A.1. states that the cost amounts are estimates subject to adjustment by the Government, after consultation with the sponsor, and are not to be construed as the total financial responsibilities of the parties. However, there are instances when it is appropriate to amend the agreement – such as when it involves a significant increase in total study costs, a change in the scope of the study is requested by the sponsor, one of several sponsors elects to terminate its involvement, or when the sponsor specifically requests an amendment. The district should use its best judgment in determining when to amend the agreement. Processing any amendment should follow the procedures for processing an amendment outlined in the implementation memo for this model.

2. Further, whether or not the agreement is amended for each and every increase in total study costs has no bearing on whether or not the increase is considered an excess study cost or not. The classification of whether the increase is an excess study cost or not will be made depending on the reason for the increase and whether the parties mutually agree to the increase. Any increase that resulted from a change in Federal law or a change in the scope of the study requested by the sponsor or any increase in total study costs that otherwise was agreed upon by the parties in writing is not an excess study cost.

14. FISCAL YEAR OF THE NON-FEDERAL SPONSOR. – If the sponsor requests that the timing of the sponsor’s payments for work to be performed using the Government’s own forces (in-house labor) be on the sponsor’s fiscal year basis, include optional Article I.L. in the agreement. Please note that any contracts awarded by the Government for feasibility studies cannot use the continuing contracts clause and must be fully funded prior to award.

A. If optional Article I.L. is included, Option (2) of Article IV.B. must be selected (see note 17) and Option (3) in Articles IV.B.1., IV.B.2., and IV.B.3. must be selected (see note 20). Fill in the blanks with the beginning and ending dates of the sponsor’s fiscal year. (Example – beginning date July 1 and ending date June 30)

B. Regardless of whose fiscal year is used for timing of the payments in the

agreement, the timing of the payments cannot be such that they, in any way, adversely effect the Government's ability to perform the work using in-house labor. Also, the payments from the sponsor and the availability of Federal funds must be managed to ensure that the proportional cash financing required by the agreement is maintained throughout the life of the agreement.

C. The term "fiscal year" occurs in numerous locations throughout the agreement. If optional Article I.L. is included in the agreement, do not execute a "change all" command to change all occurrences of the term "fiscal year" to "fiscal year of the Non-Federal Sponsor". Only those occurrences of the term "fiscal year" which are highlighted as optional text in Article IV should be changed. The other occurrences of the term "fiscal year" should not be modified since they are referring to the fiscal year of the Government.

15. INCLUSION OF CONGRESSIONAL ADD PARAGRAPH.

A. Include optional Article II.A.7. in the agreement for any study that does not comply with Army budget policy as of the date of the agreement, even if the study has received all of the Federal funds estimated to be needed to complete work on the study. Verify the need for inclusion of this language and the amount to be included in the blank(s) with your Programs Management Team.

B. The dollar amount to be included in the blank should be the total funds provided by Congress for the study in this agreement, minus any rescissions and reductions for savings and slippages, as of the effective date of the agreement.

16. ARTICLE IV.A. – BREAKDOWN OF STUDY COSTS.

A. The costs shown in Article IV.A.1. should be the current estimate of the costs at current price levels and inflated through the estimated mid-point of the study.

B. To determine the sponsor's contribution of funds required by Article II.C.1.b.: Step (1) determine the sponsor's share of total study costs; Step (2) subtract from the sponsor's share of total study costs the costs of the sponsor's participation in the Study Coordination Team (Article III) and the costs of audits performed by the sponsor (Article VI). If the result of Step 2 is greater than zero, this is the amount to be shown in the third blank in Article IV.A.1. If the result of Step 2 is equal to or less than zero, then "0" should be shown in the third blank in Article IV.A.1.; Step (3) subtract from the amount determined in Step (2) the credit the Government projects will be afforded for in-kind contributions pursuant to Article II.F. of the agreement. If the result of Step 3 is greater than zero, this amount is the sponsor's contribution of funds required by Article II.C.1.b. that should be shown in the sixth blank in Article IV.A.1. If the result of Step 3 is equal to or less than zero, then "0" should be shown in the sixth blank in Article IV.A.1.

Example:

total study costs = \$1,000,000

sponsor's costs for Articles III and VI = \$25,000
credit for in-kind contributions = \$350,000
Step 1 - (\$1,000,000 x .50) = \$500,000
Step 2 - \$500,000 - \$25,000 = \$475,000
Step 3 - \$475,000 - \$350,000 = \$125,000

C. To determine the percentage of the sponsor's proportionate share of financial obligations for study: Step (1) determine the financial obligations for study by subtracting from total study costs the costs of the sponsor's participation in the Study Coordination Team (Article III) and the costs of audits performed by the sponsor (Article VI); Step (2) divide the sponsor's contribution of funds shown in the sixth blank in Article IV.A.1. plus the credit to be afforded for in-kind contributions, if any, by the financial obligations for study. This is the percentage that should be shown in the seventh blank in Article IV.A.1. Example:

total study costs = \$1,000,000
sponsor's costs for Articles III and VI = \$25,000
sponsor's contribution of funds required by Article II.C.1.b. = \$125,000
credit for in-kind contributions = \$350,000
Step 1 - \$1,000,000 - \$25,000 = \$975,000
Step 2 - (\$125,000 + \$350,000)/\$975,000 = 35.90 percent

D. The blank in Article IV.A.2. should be filled in with the date (month day, year) of the first quarterly report of costs to be provided to the sponsor.

17. PAYMENT BY LUMP SUM OR PERIODIC PAYMENTS.

A. For each location that requires a choice between two options - Choose Option (1) if the sponsor elects to provide its cash share in one lump sum or Option (2) if the sponsor elects to provide its cash share in periodic payments. Delete, in its entirety, the option not used. Continuing contracts authorities are not available for use on work for feasibility studies; therefore, each contract awarded by the Government for work on studies must be fully funded prior to award. Option (2) can be selected if the project will be implemented using a combination of contracts and the Government's own forces (in-house labor). While the sponsor must provide its required cash share of each contract in full prior to the award of such contract it may provide its cash share for any work to be performed using the Government's own forces (in-house labor) in periodic payments by fiscal year, quarter, or fiscal year of the Non-Federal Sponsor (see notes 14 and 20).

B. Article IV.A.2. - The optional language after the colon must be included in the agreement only if Option (2) described in paragraph A. of this note (sponsor elects to provide its cash share in periodic payments) is selected elsewhere in the agreement.

18. PAYMENT MECHANISMS. – Both Option (1) and Option (2) of Article IV.B.1. offer the sponsor four mechanisms from which to choose in deciding how to provide its monetary

contribution required by Article II.C.1.b. to the Government. The sponsor should indicate its choice during the course of negotiating the agreement. However, the sponsor may use any of the methods or a combination of them, during the life of the agreement in accordance with guidance governing the use of electronic funds transfers, escrow agreements, and irrevocable letters of credit. Do not delete any of the four mechanisms.

19. LENGTH OF TIME TO PROVIDE ADDITIONAL FUNDS. – Insert the number of days. The period of time should not exceed the time shown unless the District Engineer approves a longer period of time after determining that the longer period of time will not result in delays to the study (including study contract modifications) or the Government using its funds to meet a shortfall in the sponsor’s funds. The district must determine the need for additional funds from the sponsor far enough ahead of time to permit the sponsor full use of the specified period of time. Neither party’s funds should be used to meet any shortfall in the other party’s funds.

20. TIMING OF SPONSOR’S PAYMENT FOR WORK TO BE PERFORMED USING THE GOVERNMENT’S OWN FORCES (IN-HOUSE LABOR). – Choose Option (1) if the timing of the payments from the sponsor for work to be performed using the Government’s own forces (in-house labor) will be on the Federal fiscal year basis; Option (2) if the timing of the payments from the sponsor for work to be performed using the Government’s own forces (in-house labor) will be on a quarterly basis; or Option (3) if the timing of the payments from the sponsor for work to be performed using the Government’s own forces (in-house labor) will be on the fiscal year of the Non-Federal Sponsor’s basis. Delete, in their entirety, the options not used. Whichever option is chosen it should be used consistently throughout the agreement. However, do not choose an option if that option would adversely effect the Government’s ability to perform the work using in-house labor. Also, the payments from the sponsor and availability of Federal funds must be managed to ensure that the proportional cash financing required by the agreement is maintained throughout the life of the agreement. Option (3), may be selected only if optional Article I.L. is included in the agreement (see note 14). Reminder: The sponsor’s payments provided pursuant to these options only cover work to be performed using the Government’s own forces (in-house labor). Each contract awarded by the Government for work on feasibility studies cannot use the continuing contracts clause and must be fully funded prior to award.

21. ARTICLE IV.C. - FINAL ACCOUNTING.

A. When a final accounting cannot be conducted in a timely manner because of outstanding claims and appeals, an interim accounting should be conducted. The district should use its best judgment in determining whether to conduct an interim accounting or wait for final resolution of outstanding claims and appeals.

B. Nothing in the agreement, prevents any interim accountings from being conducted prior to the end of the period of study.

C. Article IV.C.3. – This article addresses the timing of payments required for any excess study costs (see note 13). The amount to be required should be determined during the final accounting.

22. ARTICLE IX.D. - Delete optional Article IX.D. if there is only one sponsor for the study. Reminder: If optional Article IX.D. is not included, reletter the remaining paragraphs in Article IX and verify all previous and subsequent references to paragraphs in Article IX throughout the agreement and correct, as necessary. Relettering the remaining paragraphs in Article IX and correction of all references to paragraphs in Article IX are not considered deviations from the model.

23. ARTICLE X - NOTICES. – Insert the full address of the sponsor and Government - including titles or office title/symbol of individuals to receive the notices. Do not include the name of the individual to receive the notices as it may change throughout the life of the agreement.

24. ARTICLE XII – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES. - Article XII is optional and can be deleted if requested by the sponsor. If the article is deleted, renumber the remaining articles in the agreement and verify the references throughout the agreement to the remaining articles. Renumbering the remaining articles in the agreement and correction of all references to the remaining articles are not considered deviations from the model.

25. ARTICLE XIII – OBLIGATIONS OF FUTURE APPROPRIATIONS. - Reminder: Use of this article is limited to a sponsor that is a State agency or a political subdivision of the State. It cannot be used by a non-profit entity.

A. Include optional Article XIII in the agreement only if the sponsor requests this language and the District Counsel determines, by written legal opinion identifying the specific statutes or constitutional provisions, that the sponsor meets the Federal statutory criteria for inclusion of this paragraph. See Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b).

B. The information to be added in the first three blanks in Article XIII.A. must identify the legislative body that makes the appropriations. If the name of the legislative body that makes the appropriations is difficult to determine, then this article is probably not applicable for the agreement. (Example: Legislature of the State of Ohio or City Council of the City of Cleveland)

C. The information to be included in the fourth - sixth blanks of Article XIII.A. must identify the specific citation to the constitutional or statutory limitation on committing future appropriations. (Example: Article 16 Section 12 of the Constitution of the State of Arkansas)

26. SPONSOR’S BUDGET CYCLE. - Choose Option (1) if the sponsor has a 1 year budget cycle or Option (2) if the sponsor has a 2 year budget cycle. Delete, in its entirety, the option not used.

27. TITLE OF GOVERNMENT REPRESENTATIVE. – Insert the title of the Government representative signing the agreement. Do not include the name, only the title. If the signature authority is delegated to the district, the phrase “District Engineer” should be used in this location. If the signature authority is not delegated, the title shown should match the title of the Government representative shown in the first paragraph (see note 3).

28. CERTIFICATE OF AUTHORITY.

A. If applicable, choose Option (1) if the sponsor is not a non-profit entity or Option (2) if the sponsor is a non-profit entity. Delete, in its entirety, the option not used. If Option (2) is selected, then all other optional language regarding a non-profit entity must be selected for inclusion elsewhere in the agreement (see note 7). Further, if Option (2) is selected, fill in the appropriate State. The phrase “State of _____” is used in the model; however, the substitution of “Commonwealth of” or “Territory of”, as appropriate, based on the location of the project is not considered a deviation from the model.

B. The attorney signing the Certificate of Authority cannot be the signatory to the agreement. The attorney signing the Certificate of Authority is certifying that the signatory to the agreement has the authority to obligate the sponsor. Do not forget to fill in the name in the first line prior to execution of the agreement.

29. PREPARING AGREEMENT FOR SIGNATURE.

A. When printing the agreement for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the agreement; 2) ensure that the appropriate information has been included in all blanks in the agreement and the Certificate of Authority; 3) ensure that titles of articles are not the last thing at the bottom of the page; and 4) ensure that there are no page breaks which allow half empty pages. **Reminder:** Do not remove any of the *italics* from the agreement.

B. If the signature authority has been delegated to the District Engineer: 1) the title of the Government representative in the first paragraph (see note 3) should be “U.S. Army Engineer, _____ District”; 2) the title of the Government representative in the last paragraph (see note 27) should be “District Engineer”; and 3) since this is a civilian document use the civilian version of the District Engineer’s signature block.

C. If the signature authority is not delegated, the title in the first paragraph (see note 3) and last paragraph should match the title of the Government representative shown in the signature block.

D. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the agreement, not the sponsor.

E. The Government should retain two copies of the fully executed agreement. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed agreement should be provided to the MSC and to the appropriate HQ RIT within 14 days after execution of the agreement.

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

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the [SEE NOTE - 3] and [FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 4] (hereinafter the “Non-Federal Sponsor”), represented by [SEE NOTE - 5].

WITNESSETH, THAT:

[SEE NOTE - 6]

OPTION 1 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, by resolution dated _____, the Committee on Transportation and Infrastructure, U.S. House of Representatives has requested a review of the _____ to determine whether _____;

WHEREAS, the U.S. Army Corps of Engineers conducted a reconnaissance study of _____ pursuant to such request and determined that further planning in the nature of a feasibility study for _____ should proceed;

OPTION 2 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, by resolution dated _____, the Committee on Environment and Public Works, U.S. Senate has requested a review of the _____ with a view to determining _____;

WHEREAS, the U.S. Army Corps of Engineers conducted a reconnaissance study of _____ pursuant to such request and determined that further planning in the nature of a feasibility study for _____ should proceed;

OPTION 3 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, _____ is authorized to conduct a feasibility study of _____ pursuant to _____;

WHEREAS, prior to proceeding with such feasibility study, the U.S. Army Corps of Engineers conducted a reconnaissance study and determined that further planning in the nature of

a feasibility study should proceed;

OPTION 4 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, construction of the _____ at _____ was authorized by _____;

WHEREAS, due to changed conditions or assumptions, the U.S. Army Corps of Engineers has determined that a feasibility study should be undertaken to reevaluate the authorized project, using current planning criteria and policies, to determine if the plan for the authorized project should be modified;

OPTION 5 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, construction of the _____ at _____ was authorized by _____ without a feasibility study performed by the U.S. Army Corps of Engineers;

WHEREAS, the U.S. Army Corps of Engineers has determined that a feasibility study should be undertaken to evaluate the authorized project, using current planning criteria and policies;

[SEE NOTE – 7 – FOLLOWING TWO WHEREAS CLAUSES]

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

WHEREAS, by letter dated _____, the **[FULL NAME OF AFFECTED LOCAL GOVERNMENT]**, the affected local government has consented to the **[FULL NAME OF NON-FEDERAL SPONSOR]**, serving as a non-Federal sponsor for the feasibility study;

[SEE NOTE – 8 - FOLLOWING ONE WHEREAS CLAUSE]

WHEREAS, the **[FULL NAME OF TRIBE]**, is a Federally recognized Indian tribe and listed in the most recent Federal Register listing of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs by the Department of Interior, Bureau of Indian Affairs;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) to conduct such feasibility study (hereinafter the “Study” as defined in Article I.A. of this Agreement);

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public

Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the *Study*;

[SEE NOTE – 9 – FOLLOWING TWO WHEREAS CLAUSES]

WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the “*in-kind contributions*” as defined in Article I.K. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the *Study*;

WHEREAS, the Non-Federal Sponsor may provide up to 100 percent of its required contribution for the *Study* as *in-kind contributions*;

[SEE NOTE - 10]

WHEREAS, the Non-Federal Sponsor qualifies for a reduction of the non-Federal cost-sharing requirements for studies and projects located in America Samoa, Guam, the Commonwealth of the Northern Mariana Islands (formerly known as the Northern Mariana Islands), and the Virgin Islands pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2310);

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Study* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful *Study*.

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

ARTICLE I – DEFINITIONS

[SEE NOTE - 11]

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for _____ at _____, as generally described in _____, approved by _____ on _____. The term includes *in-kind contributions* described in paragraph K. of this Article.

B. The term “*total study costs*” 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 performance of the *Study*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the costs of *in-kind contributions* determined in accordance with Article II.E. of this Agreement; the Government’s costs of Agency Technical Review and other review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; [SEE NOTE - 12: the Government’s costs of preparation of a floodplain management plan;] the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies; any costs incurred as part of feasibility studies under any other agreement; the Non-Federal Sponsor’s costs of negotiating this Agreement; any costs of a contract for an Independent External Peer Review panel; or any costs of negotiating a design agreement for a project or separable element thereof.

C. The term “*study costs to be shared during the period of study*” shall mean the difference between *total study costs* and *excess study costs*.

[SEE NOTE - 13]

D. The term “*excess study costs*” shall mean the difference between the most recent estimate of *total study costs* and the amount of *total study costs* specified in Article IV.A.1. of this Agreement, excluding any increase in *total study costs* that resulted from a change in Federal law or a change in the scope of the *Study* requested by the Non-Federal Sponsor or any increase in *total study costs* that otherwise was agreed upon in writing by the parties.

E. The term “*period of study*” shall mean the time from the effective date of this Agreement to the date that:

1. the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with policies and programs of the Administration, if the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan; or

2. the decision document for the study is duly approved by the Government, if the project or project modification that is the subject of this *Study* will not require further

Congressional authorization to implement the recommended plan; or

3. the date that this Agreement is terminated in accordance with Article IX of this Agreement.

F. The term “*financial obligations to be shared during the period of study*” shall mean the financial obligations of the Government and the costs for *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *study costs to be shared during the period of study*.

G. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *study costs to be shared during the period of study for in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor’s total contribution of funds required by Article II.C.1.b. of this Agreement to *financial obligations to be shared during the period of study*, as projected by the Government.

H. 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.

I. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

J. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

[SEE NOTE - 9]

K. The term “*in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsor after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

[SEE NOTE - 14]

L. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on _____ and ending on _____.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide *in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. To the extent possible, the Government and the Non-Federal Sponsor shall conduct the *Study* in accordance with the *PMP*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all *Study* products shall be exclusively within the control of the Government.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government 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 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 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 or commencement of work on the *Study* using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for *in-kind contributions*, shall be exclusively within the control of the Government.

4. At the time the U.S. Army Engineer, _____ District (hereinafter 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 *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

5. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsor’s issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal

Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

6. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

[SEE NOTE - 15]

7. As of the effective date of this Agreement, \$_____ of Federal funds is currently projected to be available for the *Study*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Study*. Further, the Government's financial participation in the *Study* is limited to the Federal funds that the Government makes available to the *Study*.

B. The Government shall allocate *total study costs* between *study costs to be shared during the period of study* and *excess study costs*.

C. The Non-Federal Sponsor shall contribute 50 percent of *study costs to be shared during the period of study* in accordance with the provisions of this paragraph.

1. 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 under Article III and Article VI of this Agreement will be less than the Non-Federal Sponsor's required share of 50 percent of *study costs to be shared during the period of study*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of **[SEE NOTE - 10 - CHOOSE: (1)** the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article **(2)** the amount that will be waived by the Government pursuant to paragraph K. of this Article and the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article].

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall **[SEE NOTE - 10 - CHOOSE: (1)** reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount of credit the Government projects will be afforded for *in-kind*

contributions pursuant to paragraph F. of this Article (2) reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount that will be waived by the Government pursuant to paragraph K. of this Article and the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article].

2. The Government, subject to the availability of funds and as limited by paragraph G. of this Article, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *study costs to be shared during the period of study* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *study costs to be shared during the period of study*: (a) the Non-Federal Sponsor's contribution of funds required by paragraph C.1.b. of this Article; (b) the amount of credit to be afforded for *in-kind contributions* pursuant to paragraph F. of this Article; [SEE NOTE - 10: (c) the amount that will be waived by the Government pursuant to paragraph K. of this Article;] and (d) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

D. The Non-Federal Sponsor shall contribute 50 percent of *excess study costs* in accordance with the provisions of this paragraph.

1. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of [SEE NOTE - 10 - CHOOSE: (1) the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article (2) the amount that will be waived by the Government pursuant to paragraph K. of this Article and the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article].

2. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.C.3. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall [SEE NOTE - 10 - CHOOSE: (1) reduce the amount determined in accordance with paragraph D.1. of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article (2) reduce the amount determined in accordance with paragraph D.1. of this Article by the amount that will be waived by the Government pursuant to paragraph K. of this Article and the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph F. of this Article].

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *in-kind contributions*, subject to the conditions and limitations of this paragraph. 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 amount of costs to be included in *total study costs* for *in-kind contributions*.

1. Acceptance by the Government of *in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and

environmental analyses or other items performed or provided as *in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *in-kind contributions* are necessary for the *Study*.

2. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

3. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* 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 *in-kind contributions* are provided and the time the costs are included in *total study costs*.

4. The Government shall not include in *total study costs* any costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

5. The Government shall not include in *total study costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government.

F. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article for the costs of *in-kind contributions* determined in accordance with paragraph E. of this Article. The credit for *in-kind contributions* first shall be afforded toward the amount of funds determined in accordance with paragraph C.1.a. of this Article. If the amount of credit afforded exceeds the amount of funds determined in accordance with paragraph C.1.a. of this Article, the remaining portion of credit to be afforded shall be afforded toward the amount of funds determined in accordance with paragraph D.1. of this Article. However, the maximum amount of credit that can be afforded for *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article; the costs of *in-kind contributions* determined in accordance with paragraph E. of this Article; or 50 percent of *total study costs*.

G. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *in-kind contributions* determined in accordance with paragraph E. of this Article and included in *total study costs* that exceed the amount of credit afforded for *in-kind contributions* determined in accordance with paragraph F. of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

H. Upon conclusion of the *period of study*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

J. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government supports a project authorization, if authorization is required, and budgets for implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

[SEE NOTE – 10]

K. Pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2310), the Government shall waive the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article, up to a cumulative amount of \$200,000.

ARTICLE III - STUDY 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 appoint named senior representatives to a Study Coordination Team. Thereafter, the Study Coordination Team shall meet regularly until the end of the *period of study*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Study Coordination Team.

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

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; external peer review, if required; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the

Government's cost projections; the performance of, scheduling, and determining the value of *in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

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

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IV.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

[SEE NOTE - 16]

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, the contributions provided by the parties, the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement, and the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$_____ ; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be _____ ; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$_____ ; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$_____ ; the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$_____ ; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$_____ ; and the *non-Federal proportionate share* is projected to be _____ percent. These amounts and percentage 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 _____ and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, 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 study costs*; *study costs to be shared during the period of study*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement; **[SEE NOTE - 17: the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming fiscal year;]** and the *non-Federal proportionate share*.

[SEE NOTE – 17]

OPTION 1 – (PARAGRAPHS B. AND B.1. - B.2.)

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.C.1.b. of this Agreement in accordance with the provisions of this paragraph.

[SEE NOTE – 18]

1. Not less than 7 calendar days after the effective date 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 share under Article II.C.1.b. of this Agreement. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to “FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**” 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. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary **[SEE NOTE - 10 - CHOOSE: (1) ,** when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement, **(2) ,** when considered with any amount that will be waived by the Government pursuant to Article II.K. of this Agreement and any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.F. of

this Agreement,] to cover: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations to be shared during the period of study as financial obligations to be shared during the period of study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, 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 **[SEE NOTE - 19 - NOT TO EXCEED 60]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

OPTION 2 – (PARAGRAPHS B. AND B.1. – B.3.)

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.C.1.b. of this Agreement in accordance with the provisions of this paragraph.

[SEE NOTE – 18]

1. Not less than 7 calendar days after the effective date 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: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces through the first **[SEE NOTE – 20 - CHOOSE: (1) fiscal year. (2) quarter. (3) fiscal year of the Non-Federal Sponsor.]** Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" 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 work on the *Study* 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. 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 each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* to be incurred for such contract. 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. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each [SEE NOTE - 20 - CHOOSE: (1) *fiscal year* (2) *quarter* (3) *fiscal year of the Non-Federal Sponsor*] in which the Government projects that it will make *financial obligations to be shared during the period of study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations to be shared during the period of study* using the Government's own forces for that [SEE NOTE - 20 - CHOOSE: (1) *fiscal year*. (2) *quarter*. (3) *fiscal year of the Non-Federal Sponsor*.] No later than 30 calendar days prior to the beginning of that [SEE NOTE - 20 - CHOOSE: (1) *fiscal year*, (2) *quarter*, (3) *fiscal year of the Non-Federal Sponsor*,] the Non-Federal Sponsor shall make the full amount of such required funds for that [SEE NOTE - 20 - CHOOSE: (1) *fiscal year* (2) *quarter* (3) *fiscal year of the Non-Federal Sponsor*] available to the Government through any of the payment 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 [SEE NOTE - 10 - CHOOSE: (1) , when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement, (2) , when considered with any amount that will be waived by the Government pursuant to Article II.K. of this Agreement and any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.F. of this Agreement,] to cover: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations to be shared during the period of study* as *financial obligations to be shared during the period of study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current [SEE NOTE - 20 - CHOOSE: (1) *fiscal year*, (2) *quarter*, (3) *fiscal year of the Non-Federal Sponsor*,] 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 [SEE NOTE - 19 - NOT TO EXCEED 60] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

[SEE NOTE - 21]

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals 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 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 study costs*, *study costs to be shared during the period of study*, and *excess study costs*. In addition, 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. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *study costs to be shared during the period of study* exceeds 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, [**APPROPRIATE USACE DISTRICT & EROC**]" 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 contributions provided by the Non-Federal Sponsor for *study costs to be shared during the period of study* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.G. 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.

[SEE NOTE - 13]

3. Should the final accounting show that the Non-Federal Sponsor's total required share of *excess study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto the Non-Federal Sponsor, within the applicable time frame described below, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [**APPROPRIATE USACE DISTRICT & EROC**]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the

Government.

a. If the project or project modification that is the subject of this *Study* will require further Congressional authorization to implement the recommended plan and:

i. the project or project modification is authorized for construction – then the payment shall be made no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. the project or project modification is not authorized for construction within 5 years after the date of the final Report of the Chief of Engineers concerning the project or project modification – then the payment shall be made no later than 5 years after the date of the final Report of the Chief of Engineers; or

iii. the *Study* is terminated and the project or project modification is not authorized for construction - then the payment shall be made no later than 2 years after such termination date.

b. If the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan, then the payment shall be made:

i. no later than the date on which a Project Partnership Agreement is entered into for the project or project modification; or

ii. no later than 5 years after the date the decision document is duly approved by the Government; or

iii. no later than 2 years after the date of the termination of the *Study*, whichever is earliest.

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. 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 VI - 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 [**SEE NOTE - 7 - CHOOSE: (1)** to State and Local Governments at 32 C.F.R. Section 33.20 **(2)** with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, OMB Circular A-110 **(3)** to State and Local Governments at 32 C.F.R. Section 33.20 and the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, OMB Circular A-110]. 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 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 [**SEE NOTE - 7 - CHOOSE: (1)** A-87 and A-133, **(2)** A-122 and A-133, **(3)** A-87, A-122, and A-133,] and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

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 [**SEE NOTE - 7 - CHOOSE: (1)** OMB Circular A-87 **(2)** OMB Circular A-122 **(3)** OMB Circulars A-87 and A-122] and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - 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, 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 and Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”.

ARTICLE VIII - 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 IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, 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 either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. 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 this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of performance of the *Study* 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 *Study*.

C. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, 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 that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the

Study, 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 meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

[SEE NOTE - 22]

D. In the event that one or more of the Non-Federal Sponsors elects to terminate its responsibilities under this Agreement, and the remaining Non-Federal Sponsor(s) elects to continue to participate in the *Study*, the Government shall negotiate in good faith with the remaining Non-Federal Sponsor(s) to effect a timely and productive conclusion to that portion of the *Study* pertaining to the area of statutory authority applicable for the remaining Non-Federal Sponsor(s). The Government shall prepare a revised *PMP* and revised estimate of *total study costs* to complete that portion of the *Study* of interest to the remaining Non-Federal Sponsor(s). If the remaining Non-Federal Sponsor(s) elects to complete the *Study*, this Agreement shall be amended to reflect the negotiated revisions to the scope of the *Study* defined in Article I.A. of this Agreement and the estimate of *total study costs* in Article IV.A.1. of this Agreement. Amendments to this Agreement made pursuant to this paragraph shall reflect credits for the contribution of funds and *in-kind contributions* provided previously by all of the *Study* sponsors and shall reflect task reductions made as a result of withdrawal of any *Study* sponsor.

E. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.C.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

F. 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 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 X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given

under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE NOTE - 23]

If to the Non-Federal Sponsor:

If to the Government:

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 XI - CONFIDENTIALITY

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

[SEE NOTE – 24]

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

[SEE NOTE - 25]

ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____, where creating such an obligation would be inconsistent with _____ of the _____ of _____.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that **[SEE NOTE - 26 - CHOOSE: (1) year, (2) biennium,]** and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these

obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[SEE NOTE - 8]

ARTICLE XIV – TRIBAL SOVEREIGN IMMUNITY

By _____ dated _____, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such _____ authorized **[SEE NOTE - 5]** _____ to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; and (2) recover damages for any breach of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the **[SEE NOTE - 27]**.

DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL SPONSOR]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

DATE: _____

DATE: _____

[SEE NOTE - 28]

CERTIFICATE OF AUTHORITY

OPTION 1

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 the feasibility study for the [FULL NAME OF "STUDY"], and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement 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 _____ 20__.

OPTION 2

I, _____, do hereby certify that I am the [FULL TITLE OF ATTORNEY SIGNING CERTIFICATE OF AUTHORITY] of the [FULL NAME OF NON-FEDERAL SPONSOR]; that the [FULL NAME OF NON-FEDERAL SPONSOR] is a legally constituted non-profit entity incorporated under the applicable laws of the State of _____ as a non-profit organization, exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501); that the [FULL NAME OF NON-FEDERAL SPONSOR] has the 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 the feasibility study for the [FULL NAME OF "STUDY"], and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement; and that the persons who have executed this Agreement on behalf of the [FULL NAME OF NON-FEDERAL SPONSOR] have acted within their corporate authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20_ .

[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 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.

[SIGNATURE OF FCSA SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____