



# LAKE CHAMPLAIN WATERSHED ENVIRONMENTAL ASSISTANCE PROGRAM

## VERMONT AND NEW YORK

### GENERAL MANAGEMENT PLAN

- DRAFT -



**U.S. ARMY CORPS OF  
ENGINEERS**

**NEW YORK DISTRICT**

**June 2007**

Lake Champlain Watershed General Management Plan – June 2007

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## **INTRODUCTION**

In June 2004, the US Army Corps of Engineers, New York District (District), prepared the first edition of the General Management Plan (GMP). With contributions from the Lake Champlain Basin Program (LCBP) which is operated by the Lake Champlain Steering Committee, the GMP has been updated to reflect the progress to date, update the screening and selection process, and to better serve the public as a guide for the Lake Champlain Watershed Environmental Assistance Program (or also referred to as the Section 542 Program). This document, which supersedes the June 2004 GMP, will serve as the framework for implementing critical restoration projects within the Lake Champlain Watershed, as authorized by Section 542 of the 2000 Water Resources Development Act (WRDA). The Lake Champlain Watershed authorized project area is shown in Figure 1.

### **Section 542 of WRDA 2000**

In December 2000, Public Law #106-541, the Water Resources Development Act of 2000 (WRDA 2000) was signed by the President. Section 542 of WRDA 2000 authorizes the Secretary of the Army to establish a program for providing environmental assistance to non-Federal interests in the Lake Champlain Watershed. It defines the Lake Champlain Watershed as the land areas within Addison, Bennington, Caledonia, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, and Washington Counties in the State of Vermont; the land areas that drain into Lake Champlain that are located within Essex, Clinton, Franklin, Warren, and Washington Counties in the State of





New York; and the near-shore areas of Lake Champlain within the counties referred to in New York.

The goal of the Lake Champlain Watershed Environmental Assistance Program is to provide assistance with planning, designing and construction of projects that contribute to protection and enhancement of the water quality, water supply, ecosystem and other water related issues within the watershed. A copy of the full project authority is provided as Appendix A.

### Geographic Area and Congressional Interests

Lake Champlain is 435 square miles in surface area. The watershed draining into the lake covers 8,234 square miles in New York, Vermont and Quebec. There are 11 major



tributaries draining into the lake, ranging from 20 miles to 102 miles in stream length (see Figure 2). There are eight sub-watersheds, as described by the LCBP: two west of the lake, Saranac-Chazy and AuSable-Boquet; four east of the lake, Missisquoi, Lamoille, Winooski and Otter-Lewis; one south, Poultney-Mettawee; and one within the Lake’s islands, Grand Isle (see Figure 3).

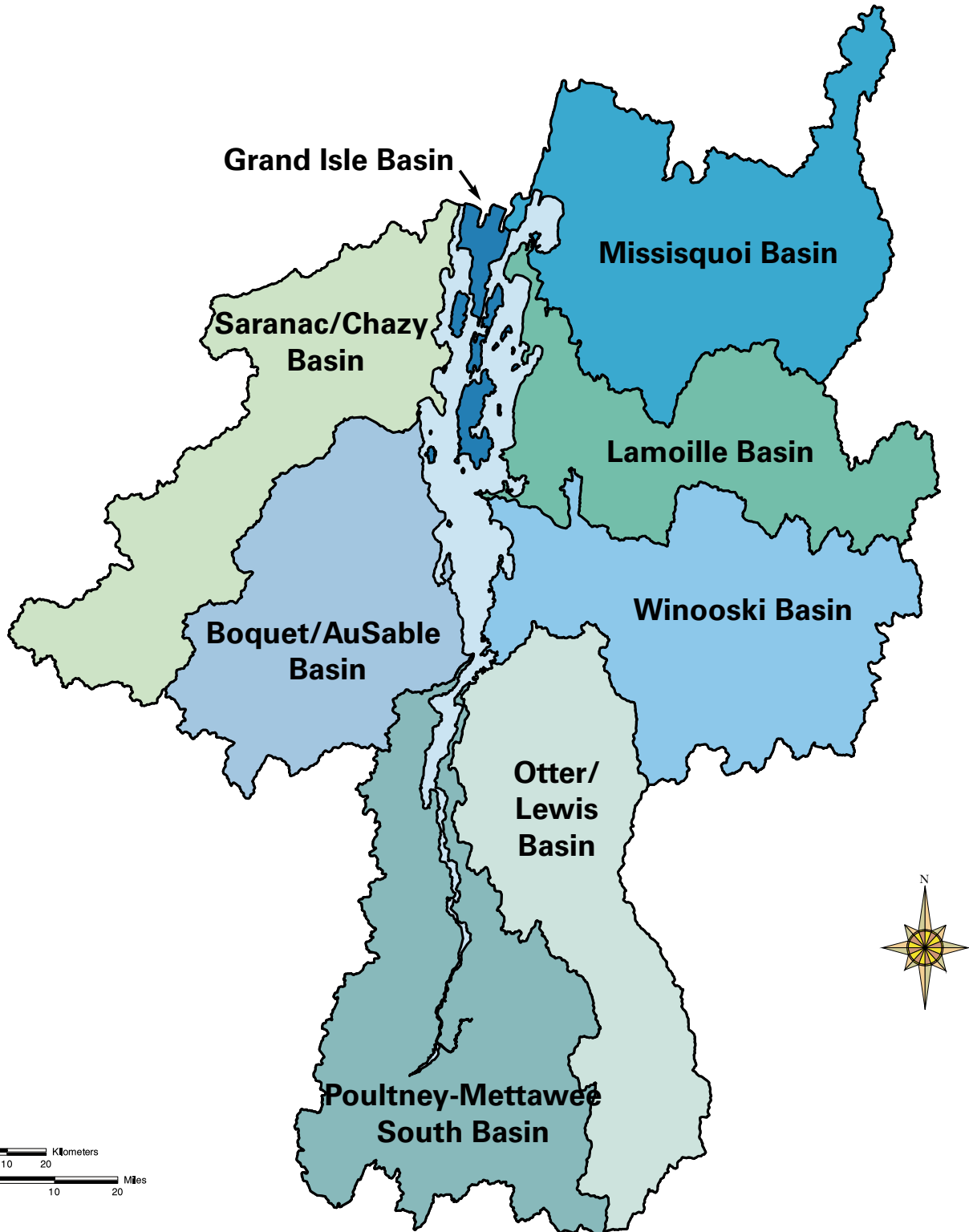
The Lake Champlain study area includes two states, 16 counties, 57 New York municipalities and 145 Vermont

**FIGURE 2**

© Lake Champlain Basin Program



# Sub-Basins of the Lake Champlain Basin





municipalities. The Lake Champlain Watershed area contains sections of New York's 20<sup>th</sup> District (Representative Kirsten Gillibrand – D), 23<sup>rd</sup> District (Representative John McHugh – R), and Vermont's At Large District (Representative Peter Welch - D). Senatorial interest lies with New York Senators Hillary Clinton (D) and Charles Schumer (D); and Vermont Senators Patrick Leahy (D) and Bernard Sanders (I).

### **EXISTING CORPS PROJECTS AND STUDIES**

Existing Corps projects and studies located within the Lake Champlain Watershed that are not part of this watershed program are described below.

#### **Continuing Authorities Program (CAP)**

*Richford, VT (14)* - The New York District completed construction, which was authorized by Section 14 of the Continuing Authorities Program. The project protects the primary water supply line for the community of Richford, Vermont. Construction began 1 November 2004. Installation of the new water-main is complete and the Town of Richford is currently receiving water through the new pipeline. Landscaping and final construction activities were completed in the Spring of 2005. Project Turnover to the Town is underway.

*Mad River, VT (206)* - The New York District completed a preliminary restoration plan (PRP) which determined that there was Federal interest in continuing into the Planning, Design and Analysis (PDA) phase of this study. By a letter dated January 3, 2003, the Town of Warren, Vermont indicated a willingness to act as a non-Federal sponsor. The PDA phase was completed in May 2004. The Town has chosen to suspend the study due to controversy over dam removal . The study may be re-opened for construction if this issue is resolved.

*Lake Champlain Sea Lamprey Barriers, VT (1135)* – In cooperation with the U.S. Fish and Wildlife Service and the Lake Champlain Basin Program, New York, the New York District conducted a site visit on Aug. 31, 2004. Corps representatives visited potential lamprey barrier sites around the watershed (NY). NY District representatives met with the New York State Department of Environmental

Conservation and the US Fish and Wildlife Association in June 2005 at the Frog Farm Dam on the Great Chazy River in the Village of Champlain, NY. The Frog Farm Dam has been identified as a priority site for lamprey barrier work. The NYSDEC, which has showed its intent to serve as the non-federal sponsor, has requested that the Corps of Engineers do a study to determine the cause of this breaching and make suggestions for modifications which improve the effectiveness of the barrier. A Preliminary Restoration Plan and Project Management Plan were completed in FY2006. A feasibility study has been initiated to analyze potential restoration alternatives focused on sea lamprey barriers

*West Branch, Stowe, VT (206)* – A Section 206 (Aquatic Ecosystem Restoration) Preliminary Restoration Plan (PRP) was completed in March 2003, which determined that there is Federal interest in continuing into the feasibility phase of study. In a letter dated February 18, 2002, the Vermont Agency of Natural Resources (VTANR) indicated its willingness to act as the non-Federal sponsor. Subject to the availability of Federal funds, a feasibility study will be initiated. If desired by the sponsor, the project may be considered in this watershed program.

*Potash Brook, South Burlington, VT (206)* – A Section 206 (Aquatic Ecosystem Restoration) study was conducted and a PRP was completed in March 2004, recommending the initiation of a feasibility study. In a letter dated February 23, 2004, the City of South Burlington agreed to act as the non-Federal sponsor for the feasibility phase of this project. The study was delayed due to lack of Federal funds but was restarted in the Spring of 2006.

*Wild Branch, VT (206)* - A Section 206 (Aquatic Ecosystem Restoration) study was conducted and a PRP was completed in March 2003, recommending Federal participation in a feasibility study. In a letter dated February 18, 2002, the Vermont Agency of Natural Resources (VTANR) indicated its willingness to act as the non-Federal sponsor. Subject to the availability of Federal funds, a feasibility study will be initiated. If desired by the sponsor, the project may be considered in this watershed program.

*Winooski River, VT (206)* - A Section 206 (Aquatic Ecosystem Restoration) study was conducted and a PRP was completed in March 2003, recommending Federal participation in a feasibility study. In a letter dated Mach 2002, the Vermont Agency of Natural Resources (VTANR) indicated its willingness to act as the non-Federal sponsor. Subject to the availability of Federal funds, a feasibility study will be initiated. If desired by the sponsor, the project may be considered in this watershed program.

*Lake Champlain, VT (206)* – A Section 206 (Aquatic Ecosystem Restoration) study conducted and a PRP was completed in April 2002. The PRP was comprehensive in nature and recommended several sites be evaluated for specific restoration efforts. The PRP referenced the 120 streams classified as “impaired” by Vermont’s Agency of Natural Resources. The leading factor contributing to the water quality problems on 27 of those streams is channel instability. This watershed program would be appropriate for screening those sites and recommending riparian restoration by way of bioengineering.

*Hardwick Lake, VT (205/206)* - The State of Vermont (Agency of Natural Resources) has requested the District investigate whether flood damage reduction (Section 205) and/or aquatic ecosystem restoration (Section 206) opportunities exist on the Lamoille River at Hardwick Lake in Hardwick. The New York District completed an Initial Appraisal Report (IAR), which found that Federal interest does exist for dam removal and channel restoration. However, there is no local support for this potential project; the Town of Hardwick held a public meeting during which the residents voted to not remove the dam.

*New Haven River, Bristol, VT (206)* - The District completed a preliminary restoration plan (PRP), which determined that there is Federal interest in continuing into the feasibility phase of this study. The PRP was completed in January 2004. A separate funding request will be submitted to initiate the Feasibility Phase of the study based upon the priority of the State of Vermont and the availability of funds. In a letter dated February 18, 2002, the Vermont Agency of Natural Resources (VTANR) indicated its willingness to act as the non-Federal sponsor. If desired by the sponsor, the project may be considered in this watershed program.

### **General Investigations**

*AuSable River, NY; Boquet River, NY* – In 1998, the District completed reconnaissance studies for both the AuSable and Boquet Rivers. The studies recommended the initiation of feasibility studies to address ice jam flooding. The District and the New York State Department of Environmental Conservation have not been able to successfully negotiate the Project Management Plan (PMP) and execute an agreement to cost-share the studies. Although these studies address flooding, restoration efforts in the AuSable and Boquet River Basins may be appropriate for consideration in this watershed program.

## **Operations & Maintenance**

*Narrows of Lake Champlain, NY & VT* – Adopted 1917, this project provided for a channel, 12 feet deep, and generally 200 feet wide, from Whitehall, NY to Benson Landing. It also included the installation of fender booms at Putts Rock, Putts Leap, Narrows near Dresden, Pulpit Point, and Cedar Mountain. The total length is about 13.5 miles. The existing project is about 77% complete, with a channel 12 feet deep and a width of 110 to 150 feet. Hired labor work (snagging and fenderboom repairs) last performed during FY2005. Funds were not provided in FY2006.

*Burlington Harbor* – The harbor is about 100 acres in extent, is in a half-moon-shaped indentation in eastern shore of Lake Champlain, 70 miles north of southern end of lake and 20 miles southeast of harbor at Plattsburg, N.Y. The Corps of Engineers maintains this harbor.

At the request of the City of Burlington, the Corps completed the Interim Report on the Phase I Archeological Survey of Burlington Harbor in December 2005. The assessment included a preliminary assessment of eight oil bollards (dolphins) in Burlington Harbor. This work may provide important data and assist in securing Section 106 clearances for the reconfiguration of future project implemented by the Section 542 Program.

## **Flood Plain Management Studies (FPMS) – Special Studies**

*Dam Breach Analysis, Lake Champlain Drainage Area, VT* - The New York District in conjunction with the state of Vermont, has utilized the Flood Plain Management Services Program (FPMS) to conduct dam breach analyses throughout the Lake Champlain drainage area. Over the past decade, the District has prepared 28 such studies. Funding shortfalls in the last two years have generated a backlog of projects.

*Black Creek, VT* – The District completed a flood plain management studies for approximately 7 miles of Black Creek in Fairfield, Vermont in 2004. This project limits begin at the water falls in the Village of Sheldon, Vermont and end at the confluence with the Fairfield River in Fairfield, Vermont. The study was provided to the State of Vermont to assist in evaluating alternatives that could protect the farming community's highly productive agricultural valley from frequent flooding.



## **Other**

*Aquatic Plant Control, VT* – Section 104 of the River and Harbor Act of 1958 authorizes the Corps of Engineers to cooperate with other Federal and non-Federal agencies in comprehensive programs for the control of invasive aquatic plants, which have adverse effects on navigation and the ecosystem. The Aquatic Plant Control program for the State of Vermont is in the Lake Champlain Basin. Approximately 1,615 acres of the aquatic plants, water chestnut, and Eurasian water-milfoil infest the Lake Champlain Basin. An opportunity to enhance removal of invasive species may be appropriate in this watershed program.

*Waterbury Dam, VT* – The Waterbury Dam, built by the Civilian Conservation Corps during the 1930s under U.S. Army Corps of Engineers supervision, was constructed on and over a natural gorge of the Little River about two miles from its confluence with the Winooski River. The New England District is assisting the New York District in studying seepage problems at Waterbury Dam. The seepage control modifications that were developed include the construction of a dewatering system and a portion of the concrete secant pile cutoff wall. The secant pile cutoff wall and dewatering system are scheduled to be completed in 2007.

## **PROGRAM ADMINISTRATORS AND THEIR ROLES**

The New York District is the lead Corps District in administering the program. The District will provide planning, design and construction assistance within the Lake Champlain Watershed at the request of an eligible non-Federal sponsor. The Corps is authorized to provide planning, design and construction assistance for eligible projects that are certified by the New York State Department of Environmental Conservation (NYS DEC) or State of Vermont Agency of Natural Resources (VT ANR).

The LCBP is the lead regional non-federal organization coordinating with the Corps on this program. The LCBP was created by the United States Congress through the Lake Champlain Special Designation Act of 1990 (Public Law 101-596). The LCBP is a partnership among the States of New York and Vermont, the Province of Québec, the

USEPA, other federal and local government agencies, and many local groups, both public and private, working cooperatively to protect and enhance the environmental integrity and the social and economic benefits of the Lake Champlain Basin.

The LCBP, in coordination with the Corps, has developed Section 542 program goals and priorities, and project eligibility criteria. The LCBP's governing body, the Lake Champlain Steering Committee, will oversee the solicitation of project proposals and will coordinate with the LCBP Technical Advisory Committee (TAC) for technical evaluations, ranking and recommendation of projects. Details on the project identification and the evaluation and ranking process are provided in this GMP. The Corps is responsible for the overall management of the program.

The Operating Structure (see Figure 4) outlines the overall effort to be undertaken by the entire multi-agency Steering Committee, to which the Corps was formally invited to become a member in October 2004. In addition to the Section 542 program, the LCBP currently supports other Federally and non-Federally funded efforts, including the Education & Outreach Advisory Committee, Cultural Heritage & Recreation Advisory Committee, Citizen's Advisory Committee and the Research Consortium. All of these efforts, including the Section 542 program, are to be fully coordinated with the Steering Committee, so there is a consistency of assumptions and no duplication of efforts.

All interested parties will continue to be informed of the progress of the study through periodic news releases and newsletters including the LCBP's "Casin' the Basin", which is published two times each year. The LCBP website is also utilized as a repository

# LAKE CHAMPLAIN BASIN PROGRAM OPERATING STRUCTURE

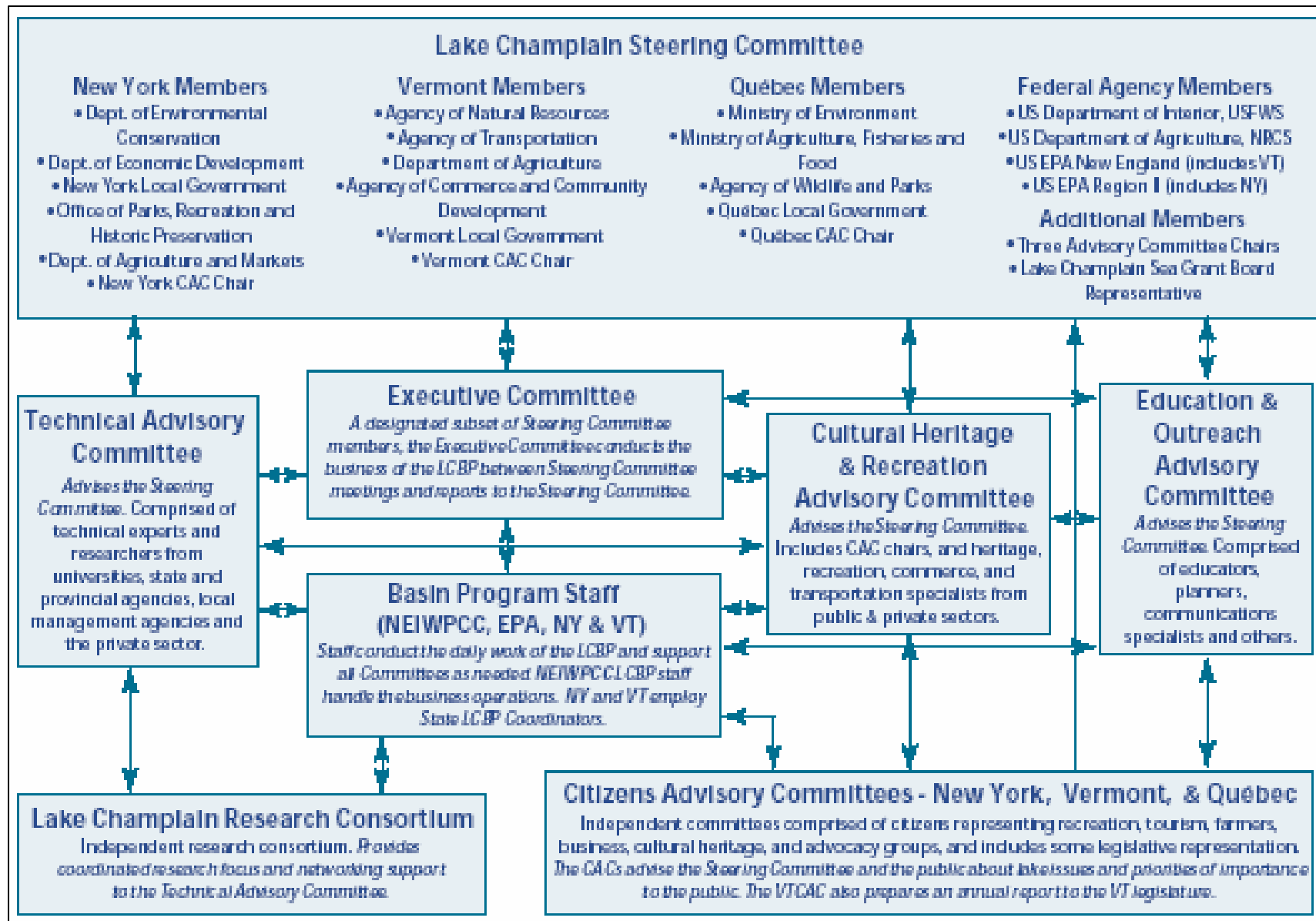


FIGURE 4

for electronic copies of documents, newsletters, and links to related websites and homepages associated with the Section 542 program.

## **THE LAKE CHAMPLAIN WATERSHED**

In an effort to facilitate implementation of priority actions, an overview of water quality problems and needs in the Lake Champlain Watershed was prepared by the LCBP through its management plan: *Opportunities for Action – An Evolving Plan for the Future of the Lake Champlain Basin (2003)*. This plan was signed by the Governors of New York and Vermont and the Regional Administrators of the USEPA in April of 2003.

Descriptions of the watershed system, water quality, and environmental problems are summarized in the following two sections. More detailed information can be found in Appendix B – Opportunities for Action.

### **Overview of the Lake Champlain Watershed System**

The following quantitative facts about the Lake Champlain Basin were taken from the Lake Champlain Basin Atlas, online version (LCBP, 2002):

- The Lake Champlain Basin covers 21,325 km (8,234 square miles). About 56% of the Basin lies in the State of Vermont, 37% in the State of New York, and 7% in the Province of Québec.
- Lake Champlain is 193 km (120 miles) long, flowing north from Whitehall, NY to the Richelieu River in Québec, with 945 km (587 mi) of shoreline.
- The Lake consists of five distinct segments, each with its own physical and chemical characteristics:
  - **The South Lake:** The South Lake is narrow and shallow, much like a river.
  - **The Main Lake:** The Main (or Broad) Lake holds most of the Lake's water and its deepest and widest points.



- **Mallets Bay:** Mallets Bay is largely restricted hydrologically due to railroad causeways.
  - **The Inland Sea:** The Inland Sea (or Northeast Arm) is a lake segment lying east of the Champlain Islands.
  - **Missisquoi Bay:** Missisquoi Bay is a shallow bay at the northernmost part of the Lake whose waters flow south to the Inland Sea.
- 
- The Lake is 19 km (12 miles) at widest point, covering a surface area of 1127 km (435 square miles). There are over 70 islands in the lake.
  - At its deepest point, the Lake is over 120 m (400 ft) deep, but its average depth is 19.5 m (64 ft). The maximum depth of some of the Lake's bays is less than 4.5 m (15 ft).
  - The volume of the lake averages 25.8 million cubic meters (6.8 trillion gallons).
  - Precipitation averages 76 cm (30 in) annually in the Lake Champlain valley, and 127 cm (50 in) in the mountains. Rivers and streams contribute more than 90% of the water which enters Lake Champlain.
  - The surface of the lake has an average elevation of 29 m (95.5 ft) above mean sea level.
  - The Basin includes the highest elevations in both New York - Mt. Marcy at 1629 m (5344 ft) – and Vermont - Mt. Mansfield at 1339 m (4393 ft). The growing season averages from 150 days on the shoreline to 105 days in the higher altitudes.

## **Water Quality and Environmental Problems**

Although Lake Champlain remains a vital and attractive lake with many assets, there are several serious water quality and environmental problems that demand action. *Opportunities for Action* identifies four Highest Priority Goals, and details specific actions needed to achieve those goals. Other High Priority Goals and related actions also are described in the LCBP Management Plan *Opportunities for Action*. The four Highest Priority Goals are summarized below.

**Goal: Reduce phosphorus inputs to Lake Champlain to promote a healthy and diverse ecosystem and provide for sustainable human use and enjoyment of the Lake.**

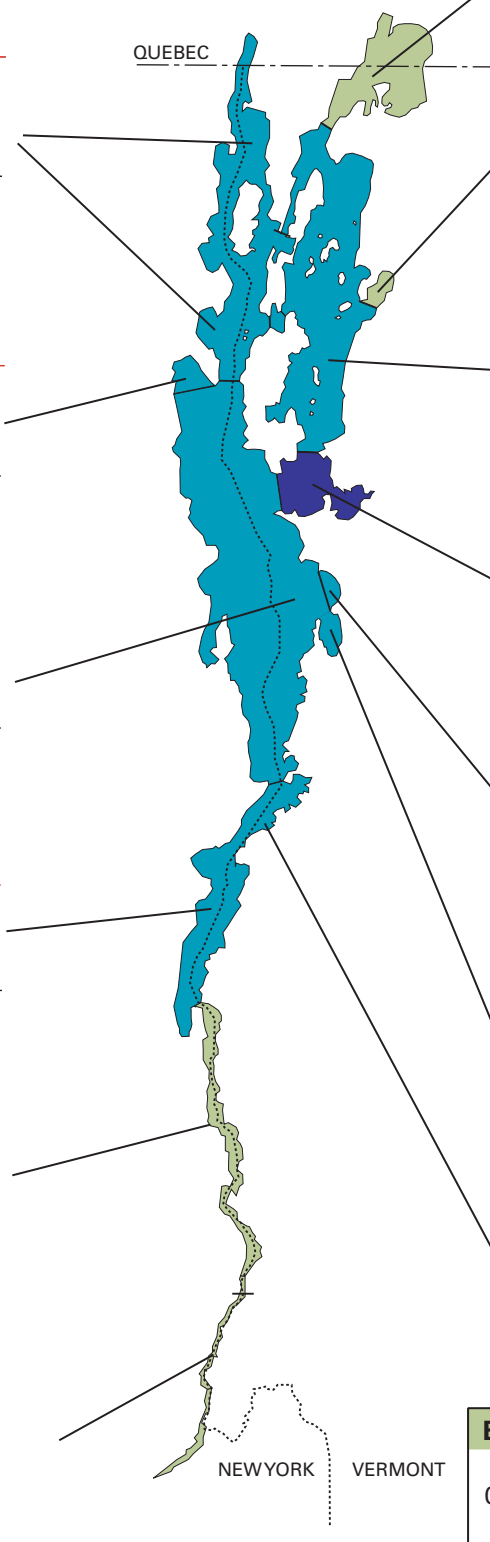
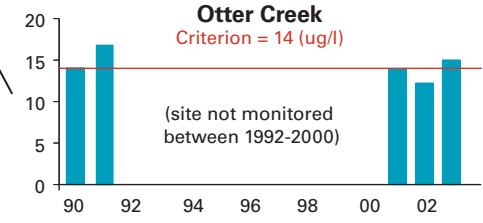
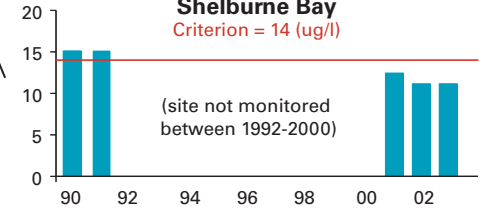
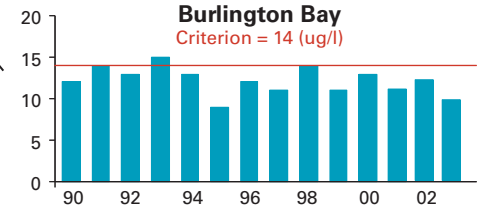
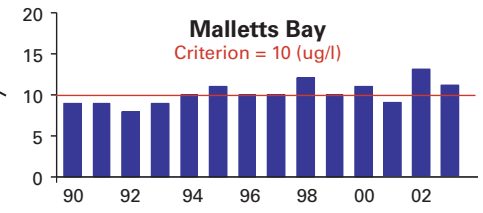
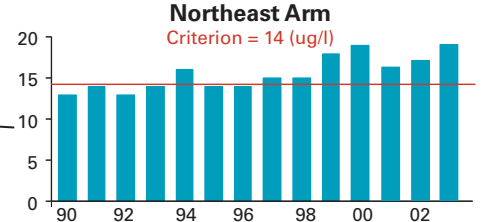
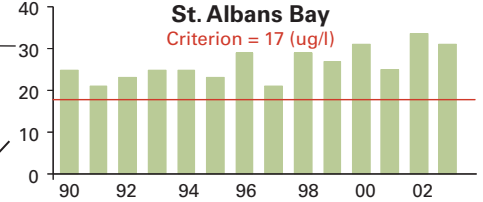
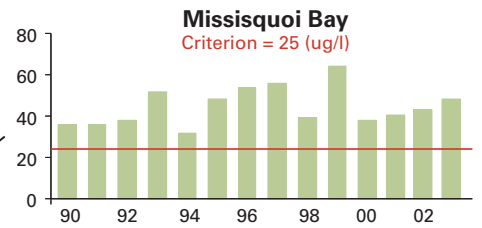
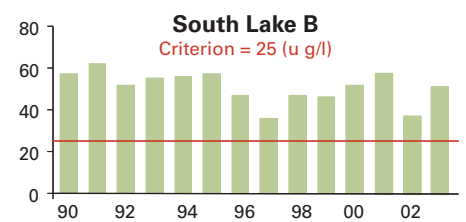
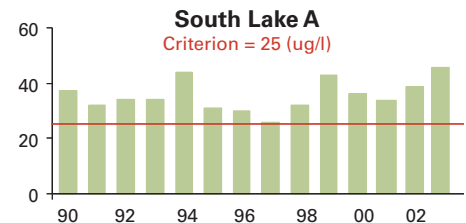
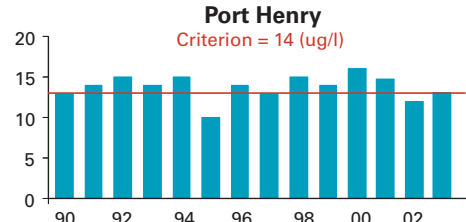
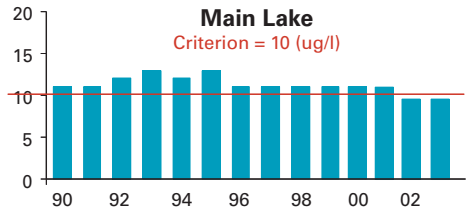
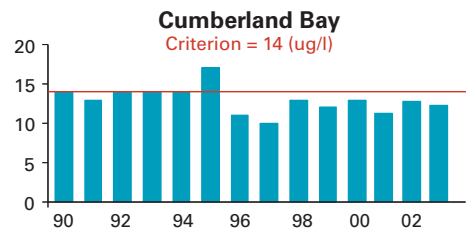
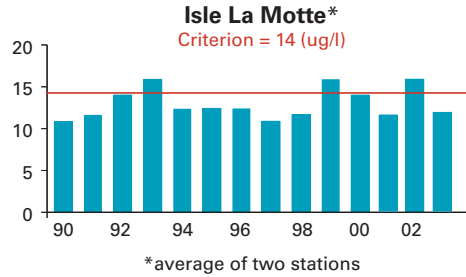
Concentrations of phosphorus in parts of Lake Champlain are high enough to cause excessive growth of algae and other aquatic plants. This growth results in reduced water transparency and oxygen levels, odors, and poor aesthetics, thereby posing the single greatest threat to water quality, living organisms, and human use and enjoyment of Lake Champlain.

Wastewater treatment and industrial discharges are the main point sources of phosphorus, contributing about 10% of the total phosphorus entering Lake Champlain. Nonpoint sources, which account for about 90% of the phosphorus load, include lawn and garden fertilizers, dairy manure and other agricultural wastes, pet wastes, and areas of exposed or disturbed soil, such as construction areas and eroding streambanks (LCBP, 2003). Agricultural activities contribute approximately 55% of the annual nonpoint phosphorus load to the Lake. Forests cover a majority of the Basin's surface area but contribute only an estimated 8% of the average annual nonpoint source phosphorus load. Urban land covers only a small portion of the Basin, yet it produces approximately 37% of the average annual nonpoint source phosphorus load to the Lake—much more phosphorus per unit area than either agricultural or forested land.

The average phosphorus concentrations for each segment of the Lake are presented in Figure 5. Many decades of high phosphorus inputs to the Lake have also resulted in the

## Phosphorus Levels in Lake Champlain 1990-2003 Compared with Water Quality Criteria (red lines)

Note: ug/l = micrograms/liter



### Eutrophic State (mg/l)

0-10	<span style="display:inline-block; width:15px; height:15px; background-color:blue;"></span> <b>Oligotrophic</b> low algae growth & high water clarity
11-20	<span style="display:inline-block; width:15px; height:15px; background-color:lightblue;"></span> <b>Mesotrophic</b> moderate algae growth & water clarity
21 +	<span style="display:inline-block; width:15px; height:15px; background-color:lightgreen;"></span> <b>Eutrophic</b> excessive algae growth & low water clarity

accumulation of a large amount of phosphorus in lake-bottom sediments which contribute to water quality problems through internal loading.

Since the 1970s, phosphorus loads have been dramatically reduced through actions such as banning phosphate detergents, regulating wastewater treatment plants and industrial discharges, and pollution control efforts on farms. In 1993, after completion of an extensive diagnostic feasibility study of the Lake and its tributaries, New York, Vermont, and Québec signed a Water Quality Agreement establishing in-lake phosphorus concentration criteria (goals) for thirteen lake segments.

The tributary loading and in-lake concentration targets agreed to by the two states have become the basis of a federally mandated phosphorus Total Maximum Daily Load (TMDL) plan for Lake Champlain, prepared jointly by Vermont and New York in 2002, and approved by both states and the USEPA. The development and implementation of the TMDL are consistent with the priority actions detailed in *Opportunities for Action*.

In 2000, the LCBP released a *Preliminary Evaluation of Progress Toward Lake Champlain Phosphorus Reduction Goals* (LCBP, 2000). The report estimated that Vermont, New York, and Québec reduced the phosphorus inputs to Lake Champlain by about 38.8 metric tons per year (mt/yr) by 2001, far exceeding the first five-year interim reduction goal of 15.8 mt/yr. The report also concluded, however, that not all lake segments can be brought to the loading targets needed to meet the in-lake phosphorus criteria by relying solely on existing reduction programs. The report indicated that, because developed land generates significantly more phosphorus per unit area than other land uses,



conversion of land use from agricultural to urban uses is offsetting some of the gains achieved to date by point and nonpoint source reduction efforts. Potential options for achieving the additional phosphorus reductions necessary to account for these increases include both additional point and nonpoint source treatments.

**Goal: Reduce toxic contamination to protect public health and the Lake Champlain ecosystem.**

While levels of toxic pollution in Lake Champlain are lower than in more industrialized areas, the presence of polychlorinated biphenyls (PCBs) and mercury, has caused New York and Vermont to issue health advisories recommending limited consumption or total avoidance of certain fish species. A survey of lake-bottom sediments funded by the Lake Champlain Basin Program identified three areas in Lake Champlain (Cumberland Bay, Inner Burlington Harbor, and Outer Mallets Bay) where lake-bottom sediments are contaminated with toxic substances at levels harmful to aquatic biota or human health. Cumberland Bay was extensively remediated through sediment dredging in 2002. A list of Toxic Substances of Concern has also been prepared to help direct management actions (LCBP, 2003). Additional research and monitoring efforts are needed to better understand the sources and effects of toxic pollutants in the Basin. Efforts to promote pollution prevention, from household hazardous waste collections to reducing pesticide use, must be continued and increased.

**Goal: Minimize the risks to human health from water-related health hazards in the Lake Champlain Basin**

Potential health threats associated with poor water quality in the Lake Champlain Basin, including drinking water, eating fish and wildlife, and swimming in the Lake. Water-related pathogens causing gastrointestinal illnesses are a special concern for swimmers and those drinking water from the Lake. The presence of pathogens causes occasional beach closings in several areas. Sources of pathogens include agricultural wastes, failed septic tanks, combined sewer overflows and sanitary sewer overflows, and urban stormwater runoff.

Blue-green algae (cyanobacteria), while normally harmless and widely scattered through the surface waters of Lake Champlain, have in recent years developed thick algae blooms that have produced toxins that can damage the nervous system or liver. Late in the summers of 2002 and 2003, significant areas in Missisquoi Bay were contaminated by toxins associated with large blooms of blue-green algae, resulting in public health advisories.

Mercury and PCBs (polychlorinated biphenyls) in Lake Champlain are a human health concern because they accumulate to high levels in some fish species. State Health Departments have issued health advisories for several species of fish caught in Lake Champlain due to mercury contamination.

**Goal: Control the introduction, spread, and impact of nonnative aquatic nuisance species in order to preserve the integrity of the Lake Champlain ecosystem.**

The fish, wildlife, and other living resources of the Lake Champlain Basin have been negatively impacted by the introduction of nonnative aquatic nuisance species,

including sea lamprey, water chestnut, Eurasian watermilfoil, zebra mussels and, recently, alewives. At least 43 nonnative aquatic nuisance species, known to live in the waters of the Lake Champlain Basin, notoriously interfere with the recreational use and ecological processes of the Lake.

Eurasian watermilfoil, first discovered in the Basin in 1962, now occupies an extensive range throughout the Lake and at least 40 other waterbodies in the Basin. Because Eurasian watermilfoil is spread by plant fragments transported by waves, wind, currents, people, and to some extent, animals, its spread is not easily controlled. Control techniques using chemical and biological agents such as aquatic moths and weevils are being investigated in the Basin.

Like Eurasian watermilfoil, water chestnut displaces other aquatic plant species, is of little food value to wildlife, and forms dense vegetative mats that change habitat and interfere with recreational activities. The most extensive infestations are limited to southern Lake Champlain. Water chestnut has also been found in Québec near Missisquoi Bay. In recent years, with extensive support from the USACE, the USEPA, NY and VT, the lakewide spread prevention and control program of surveying, mechanical harvesting, and handpulling of water chestnut has successfully pushed the northern extent of the South Lake infestation back nearly 40 miles.

The Lake Champlain Aquatic Nuisance Species Management Plan was approved by New York and Vermont in 1999, accepted by the National Aquatic Nuisance Species Task Force in 2000, and updated in 2005. This bi-state plan, developed in conjunction with

*Opportunities for Action*, is a comprehensive strategy to protect ecologically valuable habitats, to control the spread of nuisance species, and to prevent additional introductions of nonnative species.

### **Current Monitoring Programs**

Monitoring water quality and biological conditions in the Lake and major tributaries is an essential component of both adaptive management and measuring the success of lake and watershed management efforts. The long term monitoring program typically requires up to \$500,000, or approximately 25% of the annual EPA funds available to the LCBP. Additional funds are also directed to monitor the effectiveness of agricultural and urban best management practices. The US Geological Survey regularly funds stream gauging stations in the Basin that provide critically important tributary discharge data. Monitoring data provide information on natural processes occurring in the Lake, basic characteristics of the ecosystem, long-term water quality trends, and the effectiveness of selected management actions.

Monitoring projects in the Basin have been designed for a variety of purposes and cover a wide range of topics from forest health and biodiversity to atmospheric and surface water quality.

Ongoing monitoring projects include the Lake Champlain Long-Term Water Quality and Biological Monitoring Program, which entails extensive sampling at 14 lake sites and 18 tributary sites 10 to 20 times each year, the Lake Champlain Zebra Mussel Monitoring Program, and the Vermont Lay Monitoring Program.



## **Public Involvement**

Public involvement plays an important role in the implementation of the Section 542 Program. The goals of public involvement in relation to the Section 542 Program are to: 1) promote understanding of the Corps process and the planning, design and construction processes in terms of potential projects; 2) obtain public input regarding problems, opportunities, constraints, alternatives, outputs, impacts, and costs of potential projects; 3) identification of new sites; and 4) coordinate the ecosystem restoration efforts with the efforts of other Federal, state, and local agencies.

## **PROJECTS IMPLEMENTED UNDER SECTION 542**

### **Existing Section 542 Projects**

The Lake George Village Project, selected as a “pilot project” in 2004, was constructed in October of 2006 as the first successful Section 542 project. The project reduces stormwater runoff from a large parking lot at Beach Road in Lake George Village. The project includes the construction of a ‘stormwater median’ and infiltration chamber to intercept surface flow and reduce pollution loading to Lake George, a smaller lake which is part of the Lake Champlain system.

Four additional projects were selected in April 2005 for implementation under Section 542:

- Potash Brook: South Burlington, VT – Design/construction of urban watershed restoration measures in a crucial reach of Tributary 3 of Potash Brook. The goal is to improve the stream health, aquatic ecosystem function, and water quality prior to discharge into the main stem of Potash Brook and Lake Champlain.

- Water Pollution Control Plant: Plattsburgh, NY – Address phosphorus removal by generating a planning study which will make recommendations for more efficient phosphorus removal at the City Water Pollution Control Plant (WPCP).
- Stevens Brook: City of St. Albans, VT – Planning study will identify and prioritize storm drain retrofitting opportunities within the Stevens Brook watershed. Final phase will include the design of one project within the watershed.
- East Branch of the Ausable River: Keene, NY – Complete preliminary designs and construct river stabilization and habitat improvement measures along 2000 ft. reach of the East Branch of the Ausable River in Keene, NY.

An additional project was selected in September 2006:

- College Street Drainage Area : Burlington, VT – Design and construction of a storm drain system upgrade. The project will result in significant improvements to the ecological health of Burlington Harbor. The College Street drainage area 75% impervious and is the largest (23 acres) in Vermont’s most urbanized city.

Contingent upon federal funding and eligible applications, projects will continue to be implemented each year through this Program. Updated GMPs will provide regular updates on the projects implemented under this authority.

## **Implementing New Projects**

### ***Identifying Potential Restoration Sites***

Local governments within the Lake Champlain Watershed communities, through the LCBP have expressed their concerns about specific problems, such as those outlined in *Opportunities for Action*. Those problems that fulfill the intent of Section 542 of WRDA 2000 (i.e. contribute to protecting water quality in the watershed while preserving the social

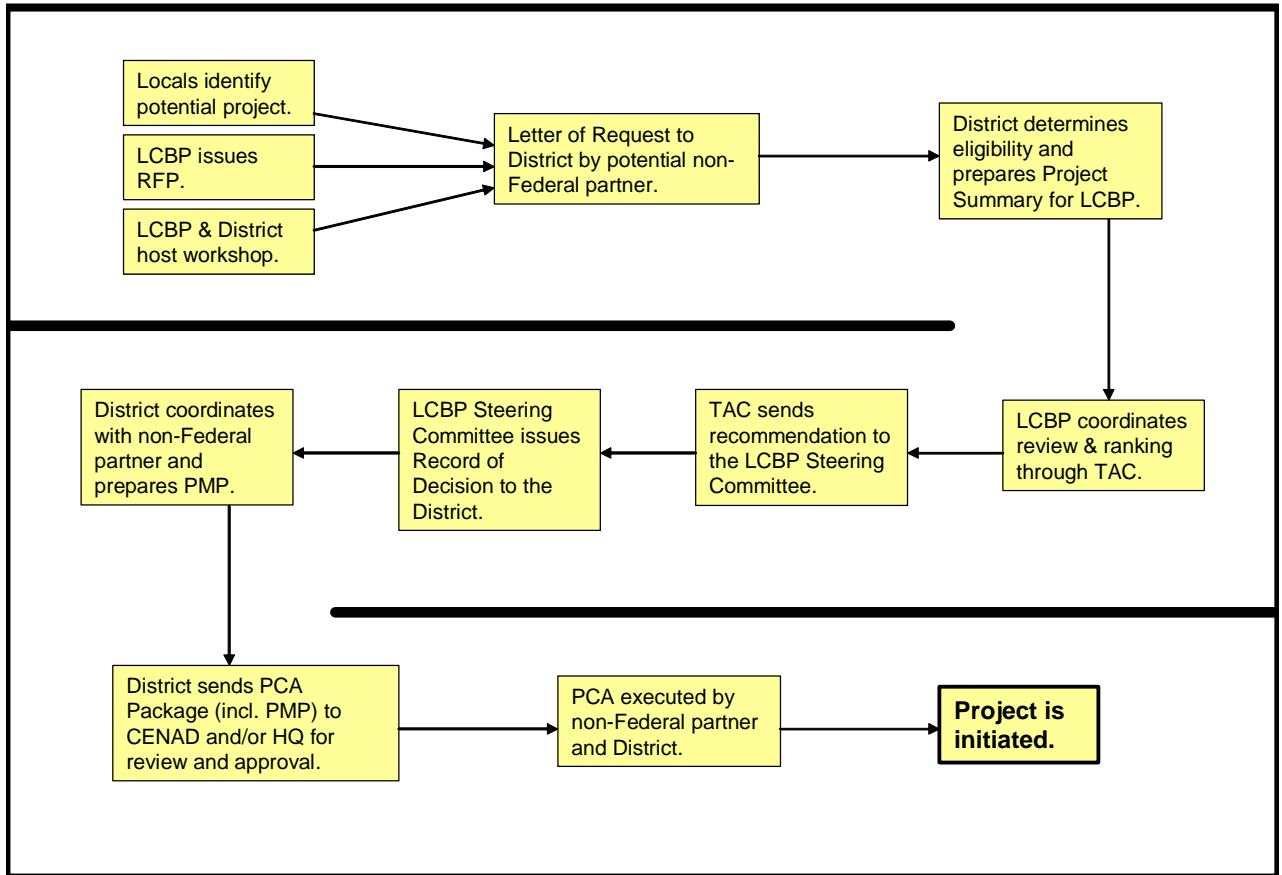
and economic character of the watershed communities) were identified in the Program's projects selected to date.

### ***Choosing New Projects***

New projects will be considered for initiation when a letter of request is sent to the Corps by a potential local sponsor (See Appendix C - Sample Letter of Request). Requests may be submitted to the District for consideration at anytime. If found to be eligible, the project summary will be submitted to the LCBP, who will coordinate with the Technical Advisory Committee (TAC) for an independent technical review team and ranking, according to potential successful and ability to address the priority areas of concern identified in *Opportunities for Action* and the GMP. The TAC will send a recommendation to the LCBP Steering Committee, who will make a recommendation to the District in the for of Record of Decision.

Proposals for projects not selected for assistance under this program may be maintained and periodically screened and prioritized for a period not to exceed three years. Upon approval and subject to the availability of Federal funds, the District may proceed with Project Management Plan and Project Cooperation Agreement negotiations for the highest ranking projects. The Corps will select projects based on the LCBP Steering Committee's recommendation, Federal funds available, non-Federal funds available and other factors, as appropriate.

**Implementing New Projects – Flowchart – Figure 5**



Workshops

In partnership with the Corps, the LCBP hosts periodic workshops for potential partners and local sponsors. The goal of the workshop is to share information on priority areas of concerns (*Opportunities of Action*) for the Lake Champlain watershed; and further explain the Section 542 authority, sponsor requirements, eligible activities, and the project selection process.

The workshop announcement is issued and distributed throughout the Lake Champlain region by the LCBP. The workshops began in 2005 and will be held twice per year as long as federal funding is available for the Program.

### Project Summary

Once the Corps receives a letter of request from a potential sponsor, site visits and meetings may be necessary before the Corps submits a project summary to the LCBP. The project summaries will include the following information:

- Project objectives and general scope of work including estimated project budget;
- How the project will address at least one of the LCBP's *Opportunities for Action*;
- Potential sponsors ability to meet eligibility requirements of a non-federal sponsor;
- Potential sponsors ability to provide required 35% match to project costs.

### Ranking Criteria

Prior projects have been reviewed and ranked according to the following specific criteria. Ranking criteria may be modified by the District and LCBP Steering Committee, as priorities and goals in the basin shift. It is anticipated that future projects will be judged according to how well they address the following:

- Demonstration of Effectiveness - Project objectives should effectively address one or more of the priorities in *Opportunities for Action*. The project summary should indicate the extent to which the project will result in tangible benefits or improvements that can be measured.
- Demonstration of Efficiency - The merit and feasibility of the proposed methods for carrying out the project in a cost-effective way will be evaluated.

- Demonstration of Acceptability - A project should be acceptable to any applicable local, State and or Federal resource agency and the applicant should be able to obtain any required permits, titles or easements. Evidence of public support for the plan is encouraged.
- Demonstration of Completeness - A project must provide and account for all necessary investments or other actions needed to ensure the realization of the planned restoration outputs. This may require relating the plan to other types of public or private plans if these plans are crucial to the outcome of the restoration objective.
- Extent to which the proposed project leverages additional resources by developing partnerships with other programs or projects. Projects that leverage additional resources by developing partnerships with related water quality and natural resources management initiatives, including sharing project sites, sampling crews, etc., will be evaluated more favorably.
- Demonstration of ability of the local entity to provide the required 35% nonfederal match.

#### Sponsor Eligibility

Any municipal entity within the Lake Champlain Watershed is eligible to submit proposals and apply to the LCBP or the District for project implementation under this program. Municipal entities are defined as any county, city, town, village, or an entity designated to act on their behalf such as a county Soil and Water Conservation District. In addition, NYS DEC and VT ANR working in cooperation with any municipal entity are also eligible to apply for project implementation. Those entities designated by a municipality must provide proof of designation. Proof of designation must consist of a letter signed by the municipal entity's chief elected official.

### Projects Chosen for Implementation

After the project has been through the aforementioned process and officially selected, a Project Management Plan (PMP) and a Project Cooperation Agreement (PCA) will be negotiated with the non-federal sponsor(s). The commitment of Federal support for a specific project once a Project Cooperation Agreement has been executed.

Non-federal sponsors of project that are chosen for implementation should be prepared to comply with the following requirements:

- Provide without cost to the United States all lands, easements, and rights-of-way including suitable borrow areas, necessary for construction, operation and maintenance of the project and all necessary relocations;
- Hold and save the United States free from damages arising from construction, operation, and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;
- Operate, maintain, repair, replace, and rehabilitate the completed project in accordance with regulations or directions prescribed by the Federal Government;
- Comply with the cost-sharing provisions of Section 542 of WRDA 2000;
- Comply with the provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended;
- Comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.II issued pursuant thereto (published as Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled, “Non-discrimination of the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”).



## **CORPS PROCESS FOR SECTION 542 PROJECT IMPLEMENTATION**

Following notification that a project has been approved for implementation, the District will hold site visit(s) with the sponsor(s) of the chosen projects. The Corps will work with the Sponsor on their existing Scope of Work to create a Project Management Plan (PMP). The PMP will then be submitted to the Corps of Engineers North Atlantic Division Regional Business Center (CENAD) in a *Project Cooperation Agreement Approval Request Package*. Once all documents are reviewed and approved by CENAD and Corps Headquarters (HQUSACE), a Project Cooperation Agreement (PCA) will be executed by the non-federal Sponsor and the New York District Corps of Engineers. Following PCA execution the project tasks will begin.

### **Project Management Plans**

A Project Management Plan (PMP) is the first document to be completed after project initiation. The PMP defines the planning approach, tasks to be accomplished, schedule, and associated costs that the Federal Government and the non-federal Sponsor(s) will be supporting financially. The PMP is a subject to change as the project progresses. Because many assumptions must be made, more or less costs and time may be required to accomplish the tasks identified. With clear descriptions of the scopes and assumptions outlined in the PMP deviations are easier to identify. The final PMP will be signed by the full Project Delivery Team.

## **Project Cooperation Agreements**

A Project Cooperation Agreement (PCA) is a written legal agreement between the non-federal sponsor and the Department of the Army that describes both parties financial and other responsibilities for construction, operation and maintenance of the project. Based upon the agreed upon project budget and the scope of work, a draft Project Cooperation Agreement will be drawn up.

Federal involvement requires that a PCA be negotiated by the District and the appropriate non-federal sponsor, approved by the non-federal sponsor, approved by the Corps of Engineers and signed by the District and the non-federal sponsor. Two different types of PCA's may be executed, depending upon the scope of work to be performed:

- **Design PCA** for planning-level or design of projects that are not for construction by the Corps.
- **Design/Construction PCA** for projects that have planning or design-level work to accomplish, but are also going to be constructed by the Corps.

Copies of previously approved interim model agreements used for the Village of Lake George, New York (Design/Construction PCA) and City of Plattsburgh, New York (Design PCA) projects are provided in Appendix D. Model PCAs for the Section 542 Lake Champlain Watershed Environmental Assistance Program are currently being developed in HQUSACE. Until model PCAs are developed, negotiated PCAs will be reviewed by the non-federal sponsor, the New York District, and then approved by Corps of Engineer's Headquarters (HQUSACE) for execution. If PCA approval has been delegated to the North

Atlantic Division, CENAD will review and approve the PCA after reviewing and approving the Project Fact Sheet.

***Project Cooperation Agreement Approval***

HQUSACE may delegate the approval for projects and PCA's to the District or CENAD. Regardless of which office has Project Cooperation Agreement approval authority, a *Project Cooperation Agreement Approval Request Package* must be submitted to that office and include the following supporting documentation:

- Name of sponsor
- Non-Federal Sponsor Support Letter
- Project Management Plan (PMP)
- Real Estate Requirements - May be non-applicable if the Real Estate Plan is to be done during the design phase of the project, after the PCA execution.
- Project Cooperation Agreement Checklist
- Non-Federal Sponsor's Financial Capability Assessment and Financing Plan
- Assessment of the Non-Federal Sponsor's Real Estate Capability
- Schedule of Project Costs Table
- Draft Project Cooperation Agreement
- Environmental Compliance Documentation - May be non-applicable if the NEPA activities are to be done during the design phase of the project, after the PCA execution.
- State Certification Letter
- General Management Plan

- Non-Federal Sponsor Certification of PCA
- Assistant Secretary of the Army – Civil Works: Pre-Agreement Credit Approval (if pre-agreement credit is requested)
- CENAN Certification of Legal Review

Any deviations to previously approved agreements or model agreements must be submitted to HQUSACE for review and approval prior to execution. The Lake George Design-Construction PCA was approved as an interim model by the Assistant Secretary of the Army for Civil Works [ASA(CW)] in February, 2006 and the Plattsburgh Design PCA was approved as an interim model by ASA(CW) in July, 2006.

The *Project Cooperation Agreement Approval Request Package* will be submitted to the North Atlantic Division for approval. Upon approval, the North Atlantic Division will transmit the PCA Package to Headquarters for approval, unless PCA approval has been delegated to CENAD.

Federal funds for an approved project may be expended only after the non-Federal sponsor and the Federal Government have executed a negotiated PCA.

## **FUNDING AND COST SHARING**

### **Project Funding**

In general, total project costs under Section 542 of WRDA 2000 will be cost-shared at 65% Federal and 35% non-Federal. The non-Federal share may be composed of cash or

a combination of cash, in-kind services, and land, easement, right-of-way, dredged material disposal area, or relocation credits (LERRDs).

Federal funds to implement an approved project will be assigned to a project within the overall program only after a PCA has been executed. The form of disbursement of project funds depends on the project budget and the defined terms of the PCA.

### ***Cash Contributions***

Cash should come from non-Federal sources, unless the Federal Agency providing the funds provides a letter of consent. As stated in the Project Cooperation Agreement, the non-federal sponsor shall provide their cash contribution to the New York District following PCA execution.

### ***In-Kind Credit***

The term “in-kind” is defined as those tasks completed by the non-federal sponsor in substitution of a cash contribution. Defining what activities can be done by the non-federal sponsor as creditable work, should be done in the Project Management Plan. Appropriate District study team members will negotiate with the non-federal sponsor on the amount of credit for in-kind services. The non-Federal interest may provide up to 50 percent of its non-Federal share in the form of these in-kind credits.

In-kind credit may be creditable work performed pre-PCA execution or post-PCA execution.

*Post-PCA Credit*

If in-kind creditable work is to be done after PCA execution, it should be clearly described as such in the Project Management Plan and in the Project Budget. The non-federal sponsor may contribute up to 50% of their non-federal share in the form of District-approved creditable work.

Should the sponsor and LCBP choose to work together on a project, costs accrued by LCBP staff for project coordination may be included as a project task and met through the cash component of the non-federal match.

*Pre-PCA Credit*

Section 542 of WRDA 2000 allows the non-Federal sponsor to receive credit for reasonable costs of design work carried out by the non-Federal interest before the date of execution of a PCA for the critical restoration project, if the Secretary finds that the design work is integral to the project.

The Project Management Plan should clearly identify what work will be done as Pre-PCA Credit. Once defined and approved by the District as creditable work, the District must request that the Assistant Secretary of the Army (Civil Works) approve this credit if it is determined that the work is integral to the project. This request must be submitted to Headquarters through North Atlantic Division, *prior* to PCA Approval request. This Credit Approval Request must include the following supporting documentation and information

- Section 542 of the 2000 Water Resources Development Act (WRDA) Authorization language

- Lake Champlain Watershed Environmental Assistance Program General Management Plan Project Management Plan
- Description of Pre-PCA creditable work and how it is determined to be integral to the project
- Sponsor Support Letter

***Lands, Easements, Rights-of-way, Relocation, or Dredged material disposal (LERRDs)***

The non-Federal sponsor may also receive credit for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out the project (based on fair market value, and including costs for obtaining permits needed for construction of eligible projects on publicly owned or controlled lands), but not to exceed 35% of the total project costs.

**Program Funding**

Congress authorized \$20,000,000 of Federal funding for this program. The appropriations to date have been as follows:

<b>Fiscal Year</b>	<b>Appropriation</b>	<b>Expended</b>
2003	\$ 500,000	\$ 11,200
2004	\$ 500,000	\$ 88,500
2005	\$ 500,000	\$ 90,000
2006	\$ 1,500,000	\$ 143,300
2007	TBD	TBD
<b>Total</b>	<b>\$ 3,000,000</b>	<b>\$ 333,000</b>
<b>Authorized Federal Funds Remaining</b>		<b>\$ 19,967,000</b>

### **Program Coordination Costs**

The New York District will be responsible for program oversight and management. Efforts to update the General Management Plan, screening and selection of projects, attending programmatic meetings with the Lake Champlain Steering Committee, the States, and other potential non-Federal sponsors will be accomplished at a cost not to exceed \$100,000 per fiscal year. These costs are a 100% Federal responsibility and are used at the discretion of the New York District Program Manager.

### **Project Specific Pre-PCA Coordination Costs**

In addition to Program Administrative costs, the District may use up to a maximum of \$20,000 to prepare and negotiate a PMP, obtain a letter of intent, and develop and negotiate a Project Cooperation Agreement. These costs are a 100% Federal responsibility and are used at the discretion of the New York District Program Manager.

### **GENERAL MANAGEMENT PLAN UPDATES**

The strategy for implementing qualified projects is based on the availability of funding for the program and is re-evaluated each year dependant upon federal funding availability. The Program Administrators will update the subject General Management Plan.




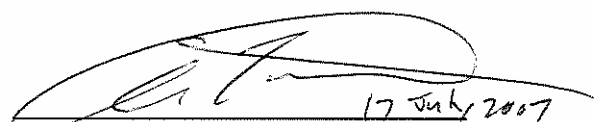
**CONCLUSIONS AND RECOMMENDATIONS**

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The New York District recommends approval of this revised GMP for implementation of qualified projects authorized by Section 542 WRDA 2000. This GMP outlines the process by which the District will provide planning, design and construction assistance for qualified projects, subject to approval by the Lake Champlain Basin Program, New York District and HQUSACE and/or CENAD. The recommendations contained herein reflect the information available at this time and current Corps policies governing cost-sharing of individual projects.

They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works program from the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified at higher levels. The non-Federal sponsor(s) will also be afforded an opportunity to comment further.

  
William Howland (date)  
Director, Lake Champlain JUN 29 2007  
Basin Program

  
Aniello L. Tortora 17 July 2007 (date)  
Colonel, U.S. Army  
District Commander

**APPENDIX A**  
**Section 542 of the 2000 Water Resources Development Act**



**SEC. 542. LAKE CHAMPLAIN WATERSHED, VERMONT AND NEW YORK.**

(a) *DEFINITIONS-* In this section, the following definitions apply:

(1) *CRITICAL RESTORATION PROJECT-* The term `critical restoration project' means a project that will produce, consistent with Federal programs, projects, and activities, immediate and substantial ecosystem restoration, preservation, and protection benefits.

(2) *LAKE CHAMPLAIN WATERSHED-* The term `Lake Champlain watershed' means--

(A) the land areas within Addison, Bennington, Caledonia, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, and Washington Counties in the State of Vermont; and

(B)(i) the land areas that drain into Lake Champlain and that are located within Essex, Clinton, Franklin, Warren, and Washington Counties in the State of New York; and

(ii) the near-shore areas of Lake Champlain within the counties referred to in clause (i).

(b) *CRITICAL RESTORATION PROJECTS-*

(1) *IN GENERAL-* The Secretary may participate in critical restoration projects in the Lake Champlain watershed.

(2) *TYPES OF PROJECTS-* A critical restoration project shall be eligible for assistance under this section if the critical restoration project consists of--

(A) implementation of an intergovernmental agreement for coordinating regulatory and management responsibilities with respect to the Lake Champlain watershed;

(B) acceleration of whole farm planning to implement best management practices to maintain or enhance water quality and to promote agricultural land use in the Lake Champlain watershed;

(C) acceleration of whole community planning to promote intergovernmental cooperation in the regulation and management of activities consistent with the goal of maintaining or enhancing water quality in the Lake Champlain watershed;

(D) natural resource stewardship activities on public or private land to promote land uses that--

(i) preserve and enhance the economic and social character of the communities in the Lake Champlain watershed; and

(ii) protect and enhance water quality; or

(E) any other activity determined by the Secretary to be appropriate.

(c) *PUBLIC OWNERSHIP REQUIREMENT-* The Secretary may provide assistance for a critical restoration project under this section only if--

(1) the critical restoration project is publicly owned; or

(2) the non-Federal interest with respect to the critical restoration project demonstrates that the critical restoration project will provide a substantial public benefit in the form of water quality improvement.

(d) *PROJECT SELECTION-*

(1) *IN GENERAL-* In consultation with the Lake Champlain Basin Program and the heads of other appropriate Federal, State, tribal, and local agencies, the Secretary may--

(A) identify critical restoration projects in the Lake Champlain watershed; and

(B) carry out the critical restoration projects after entering into an agreement with an appropriate non-Federal interest in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) and this section.

(2) *CERTIFICATION-*

*(A) IN GENERAL- A critical restoration project shall be eligible for financial assistance under this section only if the appropriate State official for the critical restoration project certifies to the Secretary that the critical restoration project will contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed.*

*(B) SPECIAL CONSIDERATION- In certifying critical restoration projects to the Secretary, the appropriate State officials shall give special consideration to projects that implement plans, agreements, and measures that preserve and enhance the economic and social character of the communities in the Lake Champlain watershed.*

*(e) COST SHARING-*

*(1) IN GENERAL- Before providing assistance under this section with respect to a critical restoration project, the Secretary shall enter into a project cooperation agreement that shall require the non-Federal interest--*

*(A) to pay 35 percent of the total costs of the project;*

*(B) to provide any land, easements, rights-of-way, dredged material disposal areas, and relocations necessary to carry out the project;*

*(C) to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the project; and*

*(D) to hold the United States harmless from any claim or damage that may arise from carrying out the project, except any claim or damage that may arise from the negligence of the Federal Government or a contractor of the Federal Government.*

*(2) NON-FEDERAL SHARE-*

*(A) CREDIT FOR DESIGN WORK- The non-Federal interest shall receive credit for the reasonable costs of design work carried out by the non-Federal interest before the date of execution of a project cooperation agreement for the critical restoration project, if the Secretary finds that the design work is integral to the project.*

*(B) CREDIT FOR LAND, EASEMENTS, AND RIGHTS-OF-WAY- The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out the project.*

*(C) FORM- The non-Federal interest may provide up to 50 percent of the non-Federal share in the form of services, materials, supplies, or other in-kind contributions.*

*(f) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS- Nothing in this section waives, limits, or otherwise affects the applicability of Federal or State law with respect to a project carried out with assistance provided under this section.*

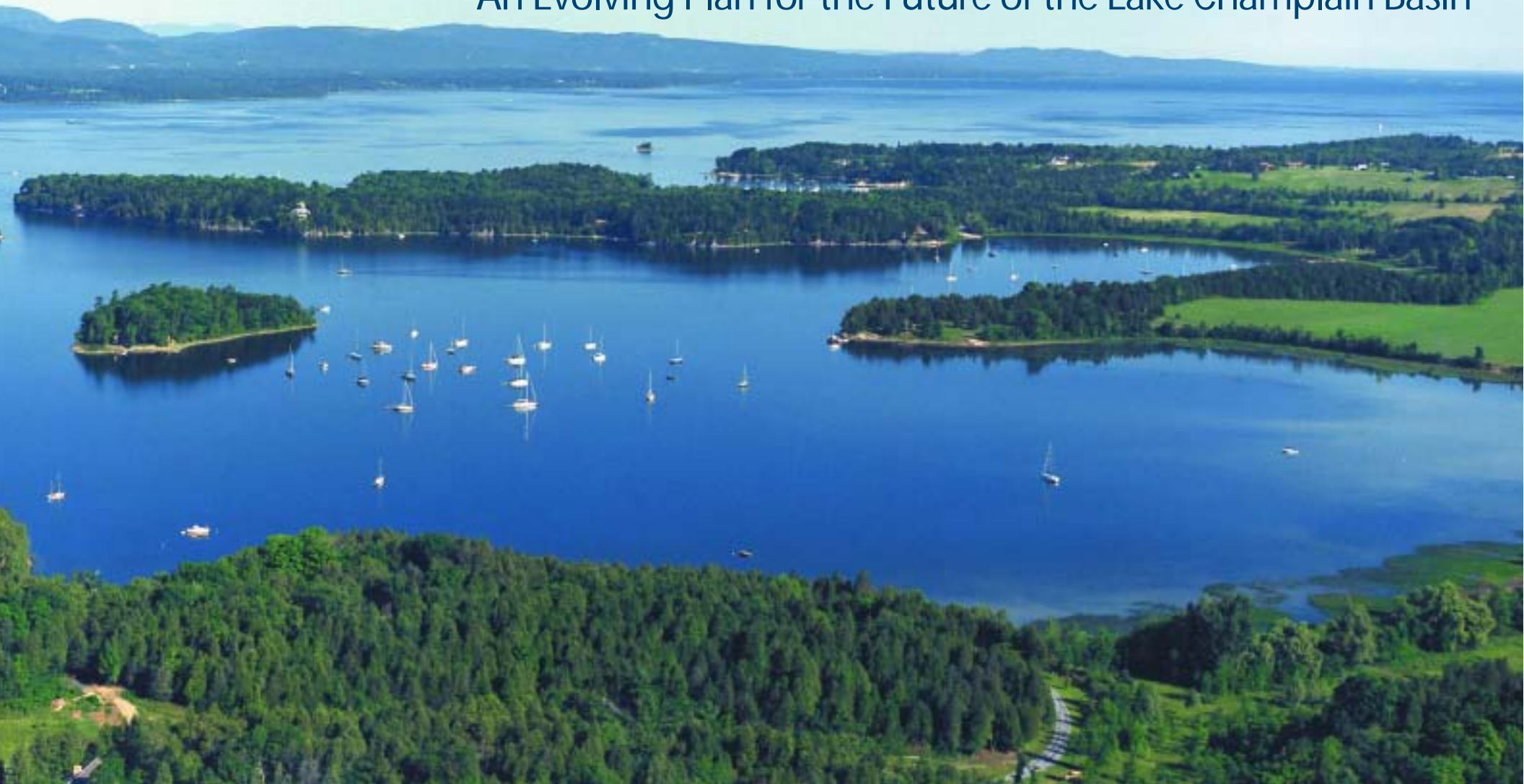
*(g) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section \$20,000,000, to remain available until expended.*

**APPENDIX B**  
**Opportunities for Action – Lake Champlain Basin Program**



# OPPORTUNITIES FOR ACTION

An Evolving Plan for the Future of the Lake Champlain Basin



Prepared by the Lake Champlain Steering Committee

*April 2003*



For full text of *Opportunities for Action*, please visit:

<http://www.lcbp.org/viewofa.htm>





## Lake Champlain Basin Program

Gordon Center House  
P.O. Box 204  
54 West Shore Road  
Grand Isle, VT 05458

(802) 372-3213  
(800) 468-LCBP  
lcbp@lcbp.org  
www.lcbp.org





**APPENDIX C**  
**Sample Letter of Request**



District Engineer  
U.S. Army Corps of Engineers, New York District  
ATTN: Planning Division  
26 Federal Plaza, 21<sup>st</sup> Floor  
New York, NY 10278

Dear Sir:

The purpose of this letter is to seek the assistance of the U.S. Army Corps of Engineers under Section 542 of the Water Resources Development Act of 2000, in implementing a critical restoration project on the (*river or creek*) in the vicinity of (*city or town, etc.*).

*(Briefly describe the nature and severity of the environmental problem. Be as specific as possible; include results from studies, if appropriate. Include the estimated schedule and cost of the project, including design. Briefly describe the known issues that might affect the acceptability of any recommended solutions, from the perspective of local government and/or the public.)*

It is understood that the (*non-federal sponsor*) would be able to pay at least 35 percent of the total cost of a project; to provide any land, easements, rights-of-way, and relocations necessary to carry out the project; to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs associated with the project; and pay the minimum cash requirement.

Please contact (*name, address, telephone*) for further information.

Sincerely,

*(Name and title of public official authorized to request study)*

**APPENDIX D**  
**Model Project Cooperation Agreements**





DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

FEB 03 2006

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Section 542 Project Cooperation Agreement for Design and Construction Assistance for the Village of Lake George, New York Storm Drain Improvement Project

This responds to Dr. Theriot's memorandum dated January 31, 2006, requesting approval of the subject draft agreement. The draft agreement is approved, subject to reducing the \$3,000,000 identified in Article II.C1. to reflect any rescissions and reductions for savings and slippage. Authority to sign the final agreement on behalf of the Department of the Army is hereby delegated to the district commander.

You are encouraged to develop and approve a model agreement for Section 542 projects of this nature. Until the model agreement is approved by Corps Headquarters, you may use the subject agreement as an interim model for all future Section 542 projects. Approval of individual draft Section 542 agreements that follow this interim model is hereby delegated to Corps Headquarters. Re-delegation of this approval authority is not authorized, until such time as the final model agreement is approved. Corps Headquarters may delegate execution of individual Section 542 agreements that follow the interim model to the Major Subordinate Commands or the District Commanders upon approval of the draft agreement.

A handwritten signature in cursive script that reads "John Paul Woodley, Jr." is positioned above the typed name.

John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**Village of Lake George, New York**  
FOR  
DESIGN AND CONSTRUCTION  
ASSISTANCE  
FOR THE  
**Village of Lake George, New York, Storm Drain Improvement Project**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the **U.S. Army Engineer, New York District** and the **Village of Lake George, New York** (hereinafter the “Non-Federal Sponsor”), represented by **the Mayor**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to participate in critical restoration projects in the Lake Champlain watershed located in Vermont and New York (hereinafter the “Section 542 Program”) pursuant to Section 542 of the Water Resources Development Act of 2000, Public Law 106-541 (hereinafter “Section 542”);

WHEREAS, Section 542 provides that the Secretary of the Army may provide assistance for a critical restoration project only if the project is publicly owned or if the Non-Federal Sponsor demonstrates that the critical restoration project shall provide a substantial public benefit in the form of water quality improvement;

WHEREAS, the **[FILL IN TITLE OF APPROPRIATE STATE OFFICIAL FOR CRITICAL RESTORATION PROJECTS]** has certified to the Secretary of the Army that the *Project* shall contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed;

WHEREAS, Section 542 provides that \$20,000,000 in Federal funds are authorized to be appropriated for critical restoration projects pursuant to the Section 542 Program;

WHEREAS, the U.S. Army Engineer, New York District (hereinafter the “District Engineer”) has determined that **Village of Lake George, New York, Storm Drain Improvement Project** in **Lake George Village, Warren County, New York** (hereinafter the “*Project*”, as defined in Article I.A. of this Agreement) is eligible for implementation under Section 542;

WHEREAS, Section 542 provides that the Secretary of the Army shall not provide assistance for a critical restoration project until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project in accordance with Section

221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), as amended and Section 542;

WHEREAS, Section 542 specifies the cost-sharing requirements applicable to the *Project* including that the Secretary of the Army shall afford credit for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary if the Secretary finds that the design work is integral to the *Project*;

WHEREAS, on \_\_\_\_\_ the Secretary issued a finding that the design work performed by the non-Federal interest is integral to the *Project*;

WHEREAS, Section 542 authorizes the Non-Federal Sponsor to provide up to 50 percent of the required non-Federal share in the form of services, materials, supplies, or other in-kind contribution;

WHEREAS, the Non-Federal Sponsor desires to perform certain work (hereinafter the “*non-Federal design and construction work*” as defined in Article I.N. of this Agreement) which is a part of the *Project*;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for design and construction of the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* 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 implementation of the *Project*.

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

## ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean the design and construction of stormwater infiltration structures within the Beach Road Parking lot in the Village of Lake George, New York as generally described in the **Project Management Plan and the Lake Champlain Watershed Environmental Assistance Program General Management Plan**, dated June, 2004 and approved by CENAD on June, 2004. The term includes the *non-Federal design and construction work* described in paragraph N. of this Article.

B. The term “*total project 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 design and construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the costs of the Non-Federal Sponsor’s *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement; the Government’s design costs not incurred pursuant to any other agreement for the *Project*; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A., Article XVII.B., and Article XVII.D.1. of this Agreement; the Government’s actual construction costs; the costs of the *non-Federal design and construction work* determined in accordance with Article II.B.6. of this Agreement, but not to exceed 50 percent of the Non-Federal Sponsor’s required share of 35 percent of total project costs; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; the Government’s costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.3. of this Agreement; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* work under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government’s costs for data recovery activities in accordance with Article XVII.D.2. and Article XVII.G. of this Agreement; or the Non-Federal Sponsor’s costs of negotiating this Agreement.

C. The term “*period of design and construction*” shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

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

E. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total project costs* for *pre-Agreement design work* and *non-Federal design and*

*construction work*, as determined by the Government, and the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

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

H. The term "*functional portion of the Project*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, New York District (hereinafter the "District Engineer") in writing, although the remainder of the *Project* is not complete.

I. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. 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 therefore.

K. The term "*Section 542 Program Limit*" shall mean the amount of Federal funds authorized to be appropriated for the Section 542 Program. As of the effective date of this Agreement, such amount is \$20,000,000.

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

M. The term "*pre-Agreement design work*" shall mean the work performed prior to the effective date of this Agreement by the Non-Federal Sponsor that is directly related to design of the *Project* and that was not performed pursuant to any other agreement for the *Project*.

N. The term "*non-Federal design and construction work*" shall mean planning, design, construction, supervision and administration, and other activities associated with design and construction of the *Project* that are performed by the Non-Federal Sponsor after the effective date of this Agreement and after written approval by the District Engineer. The term does not include the design or construction of *betterments* or the provision of lands, easements, rights-of-way, *relocations*, or the construction of improvements required on lands, easements, and rights-of-



way to enable the disposal of dredged or excavated material that are associated with the *non-Federal design and construction work*.

## 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 design and construct the *Project*, except for the *pre-Agreement design work* and *non-Federal design and construction work*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall design and construct the *non-Federal design and construction work* in accordance with applicable Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project*, commence design of the *Project* using the Government’s own forces, or commence review of the *pre-Agreement design work* provided by the Non-Federal Sponsor, until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter “NEPA”) (42 U.S.C. 4321-4370e). However, neither the Government nor the Non-Federal Sponsor shall issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government’s or the Non-Federal Sponsor’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor 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 design or construction using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *non-Federal*

*design and construction work*, shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, 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 *non-Federal design and construction work*, including relevant plans and specifications, 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 design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *non-Federal design and construction work* shall be exclusively within the control of the Non-Federal Sponsor.

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

7. Notwithstanding paragraph A.3. and paragraph A.5. of this Article, if the award of any contract for design or construction of the *Project*, or continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces would result in *total project costs* exceeding \$285,000.00, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for design or construction of the *Project*, and continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Project* or the continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces, but in no event shall the award of contracts or the continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design or construction of the *Project* using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with

design or construction of the *Project* using the Government's own forces.

B. The Non-Federal Sponsor shall contribute 35 percent of *total project costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be necessary for construction, operation, and maintenance of the *Project*.

2. The Non-Federal Sponsor shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement; (b) the amount of credit to be afforded for the *pre-Agreement design work* pursuant to paragraph B.5. of this Article; (c) the amount of credit to be afforded for the *non-Federal design and construction work* pursuant to paragraph B.7. of this Article that does not exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total project costs*; and (d) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the *Section 542 Project Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 35 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article, as determined in accordance with Article IV of this Agreement; (b) the amount of credit to be afforded for the *pre-Agreement design work* pursuant to paragraph B.5. of this Article; (c) the amount of credit to be afforded for the *non-Federal design and construction work* pursuant to paragraph B.7. of this Article that does not exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total project costs*; (d) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; and (e) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

4. The Government shall determine and include in *total project costs* any reasonable costs incurred by the Non-Federal Sponsor for *pre-Agreement design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project*. 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 project costs* for *pre-Agreement design work*.

a. *Pre-Agreement design work* shall be subject to a review by the

Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

b. Where the Non-Federal Sponsor's cost for completed *pre-Agreement design work* is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs.

c. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project costs* pursuant to this Agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

d. The Non-Federal Sponsor's costs for *pre-Agreement design work* that may be eligible for inclusion in *total project 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 *pre-Agreement design work* was completed and the time the costs are included in *total project costs*.

e. The Government shall not include in *total project costs* any costs for *pre-Agreement design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

5. The Government, in accordance with this paragraph, shall afford credit toward the Non-Federal Sponsor's share of *total project costs* for the costs of the *pre-Agreement design work* determined in accordance with paragraph B.4. of this Article. However, the maximum amount of credit that can be afforded for the *pre-Agreement design work* shall not exceed the lesser of the following amounts as determined by the Government: the value of the Non-Federal Sponsor's contributions required under paragraph B.2. of this Article and Article V, Article X, and Article XIV.A. of this Agreement or the Government's estimate of the costs of the *pre-Agreement design work* if the work had been accomplished by the Government.

6. The Government shall determine and include in *total project costs* any costs incurred by the Non-Federal Sponsor for *non-Federal design and construction work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project* but not to exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total project costs*. 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 project costs* for *non-Federal design and construction work*.

a. *Non-Federal design and construction work* shall be subject to an on-site inspection and determination by the Government that the work was accomplished in a satisfactory manner and is suitable for inclusion in the *Project*.

b. The Non-Federal Sponsor's costs for *non-Federal design and construction work* that may be eligible for inclusion in *total project costs* pursuant to this Agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

c. The Non-Federal Sponsor's costs for *non-Federal design and construction work* that may be eligible for inclusion in *total project 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 *non-Federal design and construction work* was completed and the time the costs are included in *total project costs*.

d. The Government shall not include in *total project costs* any costs for *non-Federal design and construction work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

e. In the performance of the construction portion of the *non-Federal design and construction work*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti- Kickback Act (formerly 40 U.S.C. 276c)). Inclusion of costs for *non-Federal design and construction work* in *total project costs* may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

7. The Government, in accordance with this paragraph, shall afford credit toward the Non-Federal Sponsor's share of *total project costs* for the costs of the *non-Federal design and construction work* determined in accordance with paragraph B.6. of this Article. However, the maximum amount of credit that can be afforded for the *non-Federal design and construction work* shall not exceed the lesser of the following amounts as determined by the Government: the value of the Non-Federal Sponsor's contributions required under paragraph B.2. of this Article and Article V, Article X, and Article XIV.A. of this Agreement or the Government's estimate of the costs of the *non-Federal design and construction work* if the work had been accomplished by the Government.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$1,500,000 of Federal funds have been provided by Congress for the Section 542 Program of which \$185,250 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 542 Program or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D.2. and Article XVII.G. of this Agreement 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 542 Program has reached the *Section 542 Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 542 Program Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D.2. and Article XVII.G. of this Agreement, 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 542 Program Limit*, the parties shall terminate this Agreement and proceed in accordance with Article XIII.E. of this Agreement.

D. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. In addition, the Government shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government’s Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the

entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

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

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

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

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

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterment*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY,  
RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND  
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction, operation, and maintenance of the *Project*, including those necessary for *relocations*, the borrowing of material, and the disposal of

dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be necessary for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

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

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for design and construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and



specifications for all improvements the Government determines to be necessary for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

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

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

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.

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

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are necessary for the *non-Federal design and construction work*, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *non-Federal design and construction work*, or, if the Non-Federal Sponsor performs the construction with its own forces, the date that the Non-Federal Sponsor begins construction of the *non-Federal design and construction work*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

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

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

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

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

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

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

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in

accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

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

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of New York would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

E. The value of the improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements necessary on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.H.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

## ARTICLE V - PROJECT 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 Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall

keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and the construction portion of the *non-Federal design and construction work*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; the costs of *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement; the credit to be afforded for the *pre-Agreement design work* pursuant to Article II.B.5. of this Agreement; the performance of *non-Federal design and construction work*; the costs of *non-Federal design and construction work* determined in accordance with Article II.B.6. of this Agreement; the credit to be afforded for the *non-Federal design and construction work* pursuant to Article II.B.7. of this Agreement; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project*; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. Except for the *non-Federal design and construction work*, the Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project* except for the *non-Federal design and construction work*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations. Further, the Project Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *non-Federal design and construction work* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *non-Federal design and construction work*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement including compliance with applicable Federal, State, or local laws or regulations.

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

## ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records, and provide to the Non-Federal Sponsor current projections of, costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement, the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement, the credit to be afforded for the *pre-Agreement design work* pursuant to Article II.B.5. of this Agreement, the costs included in *total project costs* for the *non-Federal design and construction work* determined in accordance with Article II.B.6. of this Agreement, and the credit to be afforded for *non-Federal design and construction work* pursuant to Article II.B.7. of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$285,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$3,250; the *non-Federal proportionate share* is projected to be 35 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.G. of this Agreement is projected to be \$5,500; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$70,000; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement are projected to be \$21,000; the credit to be afforded for the *pre-Agreement design work* pursuant to Article II.B.5. of this Agreement is projected to be \$21,000; the costs included in *total project costs* for the *non-Federal design and construction work* determined in accordance with Article II.B.6. of this Agreement are projected to be 26,500 the credit afforded for *non-Federal design and construction work* pursuant to Article II.B.7. of this Agreement is projected to be \$26,500; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. 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 April 30, 2006 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.G. of this Agreement; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the costs included in *total project costs* for the *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement; the credit to be afforded for the *pre-Agreement design work* pursuant to Article II.B.5. of this Agreement; the costs included in *total project costs* for the *non-Federal design and construction work* determined in accordance with Article II.B.6. of this Agreement; the credit afforded for *non-Federal design and construction work* pursuant to Article II.B.7. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

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

1. Not less than 30 calendar days prior to the scheduled date for: (a) issuance of the solicitation for the first contract for review of the *pre-Agreement design work* provided by the Non-Federal Sponsor; (b) commencement of review of the *pre-Agreement design work* provided by the Non-Federal Sponsor using the Government's own forces; (c) issuance of the solicitation for the first contract for design of the *Project*; or (d) commencement of design of the *Project* using the Government's own forces, whichever is scheduled to first occur, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any credit the Government projects will be afforded for the *pre-Agreement design work* and *non-Federal design and construction work* pursuant to Article II.B.5. and Article II.B.7. of this Agreement, respectively, to meet its projected share under Article II.B.2. and Article XVII.G. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, NEW YORK DISTRICT to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the 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, after consideration of any credit the Government projects will be afforded for the *pre-Agreement design work* and *non-Federal design and construction work* pursuant to Article II.B.5. and Article II.B.7. of this Agreement, respectively, to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction* as *financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities pursuant to Article XVII.G. of this Agreement as those financial obligations 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 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

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

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, NEW YORK DISTRICT 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 *total project costs* and the costs of any data recovery activities exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 542 Program*

*Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

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

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

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

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar

days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to “FAO, USAED, NEW YORK DISTRICT” to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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

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

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the

Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE IX – HOLD AND SAVE

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

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project 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 OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - 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; Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

#### ARTICLE XII - 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 XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C.2. of this Agreement, 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 project costs* and the Federal share of costs for data recovery activities in accordance with Article XVII.D.2. and Article XVII.G. of this Agreement 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.

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

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and proceed to an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article II.C. or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.2. and Article XVII.G. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

## ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total*

*project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

#### ARTICLE XV - NOTICES

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

If to the Non-Federal Sponsor:

Mayor, Village of Lake George  
26 Old Post Rd.  
P.O. Box 791  
Lake George, NY

If to the Government:

Chief, Plan Formulation Branch  
USACE  
26 Federal Plaza, 21<sup>st</sup> floor  
New York, NY 10278-0090



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 XVI - CONFIDENTIALITY

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

## ARTICLE XVII - HISTORIC PRESERVATION

A. The Government shall ensure compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f; hereinafter “Section 106”) prior to initiation of any work on the *Project*, including the construction portion of the *non-Federal design and construction work*. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, except for *non-Federal design and construction work*, shall prepare information and analyses as required by Section 106 and implementing regulations. Any costs incurred by the Government relating to compliance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. For *non-Federal design and construction work* the State, at the Government’s request, shall prepare information, analyses, and recommendations as required by Section 106 and implementing regulations. Any costs incurred by the State relating to compliance with this paragraph shall be included in the costs for *non-Federal design and construction work*.

D. The Government, as it determines necessary for the *Project*, except for *non-Federal design and construction work*, shall perform any identification, survey, evaluation, or mitigation of historic properties.

1. Any costs incurred by the Government for identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation for this *Project* and all other projects implemented pursuant to the Section 542 Program shall be borne entirely by the Government up to the statutory limit of one percent of the

total amount authorized to be appropriated to the Government for the Section 542 Program. None of the costs of data recovery activities shall be included in *total project costs*.

E. The State shall perform any identification, survey, evaluation, or mitigation (except for data recovery activities) of historic properties the Government determines necessary for the *non-Federal design and construction work* in accordance with this paragraph.

1. The State shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at minimum, the Secretary of the Interior's Professional Qualifications Standards. The State shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. In the event the Government determines that mitigation (except for data recovery activities) should be undertaken due to possible adverse effects to significant archeological or historical properties, the State shall formulate a plan in consultation with the Government and any other parties involved in the development of a Memorandum of Agreement executed in accordance with Section 106.

3. The State shall be responsible for implementing mitigation (except for data recovery activities) prior to the initiation of the construction portion of the *non-Federal design and construction work* affecting historic properties.

4. Any costs of identification, survey, evaluation, and mitigation (except for data recovery activities) of historic properties incurred by the State pursuant to paragraph E. of this Article shall be included in costs for *non-Federal design and construction work*.

F. The State shall include provisions in all of its contracts for the protection of cultural resources discovered during *non-Federal design and construction work*. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the State and Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before *non-Federal design and construction work* may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the State shall participate as a consulting party. In such a case, *non-Federal design and construction work* shall not continue until the Government sends written notification to the State. Where the State elects to perform the *non-Federal design and construction work* using its own forces, the same procedures shall be followed.

G. The Government shall not incur costs for data recovery activities that exceed the statutory one percent limit specified in paragraph D.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as

amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost-sharing requirements of the Section 542 Program, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

ARTICLE XVIII - 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

**Village of Lake George, NY**

BY: \_\_\_\_\_  
Richard J. Polo, Jr.  
Colonel, U.S. Army  
District Engineer

BY: \_\_\_\_\_  
**Robert. M. Blais**  
Mayor  
Village of Lake George, NY

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

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

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the Village of Lake George, NY, that the Village of Lake George, NY 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 Village of Lake George, NY in connection with the **Village of Lake George, New York, Storm Drain Improvement Project**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Village of Lake George, NY have acted within their statutory authority.

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

\_\_\_\_\_  
**Howard Krantz, Esq.**  
**Attorney for Village of Lake George, NY**

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

\_\_\_\_\_  
**Robert. M. Blais**  
**Lake George, New York Village Mayor**

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



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

JUL 14 2006

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Section 542 Project Cooperation Agreement for Design Assistance for the City of Plattsburgh, New York, Phosphorous Reduction Planning Study

This responds to Dr. Theriot's memorandum dated July 5, 2006, requesting approval of the subject draft agreement.

The draft agreement is approved, subject to removing the Mayor's name in Article XI.A. and inserting his title instead. The title should be used in this particular article because the name of the individual holding that position could change over the life of the agreement. The signature blocks at the end of the agreement should continue to include both names and titles. Authority to sign the final agreement on behalf of the Department of the Army is hereby delegated to the district commander.

You are encouraged to develop and approve a model agreement for Section 542 projects of this nature. Until the model agreement is approved by Corps Headquarters, you may use the subject agreement as an interim model for all future Section 542 design assistance projects. Approval of individual draft Section 542 agreements that follow this interim model is hereby delegated to Corps Headquarters. Re-delegation of this approval authority is not authorized, until such time as the final model agreement is approved. Corps Headquarters may delegate execution of individual Section 542 agreements that follow the interim model to the Major Subordinate Commands or the District Commanders upon approval of the draft agreement.

A handwritten signature in cursive script that reads "John Paul Woodley, Jr.".

John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**City of Plattsburgh, New York**  
FOR  
DESIGN  
ASSISTANCE  
FOR THE  
**Phosphorous Reduction Planning Study**

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the **U.S. Army Engineer, New York District** (hereinafter the District Engineer) and **City of Plattsburgh, New York** (hereinafter the “Non-Federal Sponsor”), represented by **the Mayor**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to participate in critical restoration projects in the Lake Champlain watershed located in Vermont and New York (hereinafter the “Section 542 Program”) pursuant to Section 542 of the Water Resources Development Act of 2000, Public Law 106-541 (hereinafter “Section 542”);

WHEREAS, Section 542 provides that the Secretary of the Army may provide assistance for a critical restoration project only if the project is publicly owned or if the Non-Federal Sponsor demonstrates that the critical restoration project shall provide a substantial public benefit in the form of water quality improvement;

WHEREAS, the **Regional Director of Region 5, New York State Department of Environmental Conservation** has certified to the Secretary of the Army that the *Project* shall contribute to the protection and enhancement of the quality or quantity of the water resources of the Lake Champlain watershed;

WHEREAS, Section 542 provides that \$20,000,000 in Federal funds are authorized to be appropriated for critical restoration projects pursuant to the Section 542 Program;

WHEREAS, the U.S. Army Engineer, New York District (hereinafter the “District Engineer”) has determined that **Phosphorous Reduction Planning Study in the City of Plattsburgh, New York** (hereinafter the “*Project*”, as defined in Article I.A. of this Agreement) is eligible for implementation under Section 542;

WHEREAS, Section 542 provides that the Secretary of the Army shall not provide assistance for a critical restoration project until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project in

accordance with Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), as amended and Section 542;

WHEREAS, Section 542 authorizes the Non-Federal Sponsor to provide up to 50 percent of the required non-Federal share in the form of services, materials, supplies, or other in-kind contribution;

WHEREAS, the Non-Federal Sponsor desires to perform certain work (hereinafter the “*non-Federal design work*” as defined in Article I.K. of this Agreement) which is a part of the *Project*;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for design of the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* 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 implementation of the *Project*.

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

## ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean a **Phosphorous Reduction Planning Study** as generally described in the **Project Fact Sheet**, dated December 15, 2005 and approved by Corps of Engineers North Atlantic Division on December 29, 2005. The term includes the *non-Federal design work* described in paragraph K. of this Article.

B. The term “*total design 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 design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s design costs not incurred pursuant to any other agreement for the *Project*; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government’s supervision and administration costs; the costs of the *non-Federal design work* determined in accordance with Article II.B.3. of this Agreement, but not to exceed 50 percent of the Non-Federal Sponsor’s required share of 35 percent of total design costs; the Non-Federal Sponsor’s and the Government’s costs



of participation in the Design 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 VII.B. and Article VII.C. of this Agreement. The term does not include any costs of *betterments* under Article II.F. of this Agreement; any costs of dispute resolution under Article V of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design*" shall mean the time from the effective date of this Agreement to the date that design of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article X of this Agreement, whichever is earlier.

D. The term "*financial obligations for design*" shall mean the financial obligations of the Government and the costs for the *non-Federal design work*, as determined by the Government that result or would result in costs that are or would be included in *total design costs*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the sum of the costs included in *total design costs* for *non-Federal design work*, as determined by the Government, and the Non-Federal Sponsor's total contribution of funds required by Article II.B.1. of this Agreement to *financial obligations for design*, as projected by the Government.

F. The term "*betterment*" shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

G. 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.

H. The term "*Section 542 Program Limit*" shall mean the amount of Federal funds authorized to be appropriated for the Section 542 Program. As of the effective date of this Agreement, such amount is \$20,000,000.

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

J. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on January 1 and ending on December 31.

K. The term "*non-Federal design work*" shall mean planning, design, supervision and administration, and other activities associated with design of the *Project* that are performed by the Non-Federal Sponsor after the effective date of this Agreement and

after written approval by the District Engineer. The term does not include the design of *betterments*.

## 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 design the *Project*, except for the *non-Federal design work*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall design the *non-Federal design work* in accordance with applicable Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project* or commence design of the *Project* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (hereinafter “NEPA”) (42 U.S.C. 4321–4370e).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor 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 design using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *non-Federal design work*, shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, 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 *non-Federal design work*, including relevant plans and specifications, 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 design using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *non-Federal design work* shall be exclusively within the control of the Non-Federal Sponsor.

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

7. Notwithstanding paragraph A.3. and paragraph A.5. of this Article, if the award of any contract for design of the *Project*, or continuation of design of the *Project* using the Government's or the Non-Federal Sponsor's own forces, would result in *total design costs* exceeding \$538,000.00, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for design of the *Project*, and continuation of design of the *Project* using the Government's or the Non-Federal Sponsor's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Project* or the continuation of design of the *Project* using the Government's or the Non-Federal Sponsor's own forces, but in no event shall the award of contracts or the continuation of design of the *Project* using the Government's or the Non-Federal Sponsor's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design of the *Project* using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with design of the *Project* using the Government's own forces.

B. The Non-Federal Sponsor shall contribute 35 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide funds in accordance with Article IV.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 35 percent of *total design costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the amount of credit to be afforded for the *non-Federal design work* pursuant to paragraph B.4. of this Article that does not exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total design costs* and (b) the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

2. The Government, subject to the availability of funds and as limited by the *Section 542 Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 35 percent of *total design costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; (b) the amount of credit to be afforded for the *non-Federal design work* pursuant to paragraph B.4. of this Article that does not exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total design costs*; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

3. The Government shall determine and include in *total design costs* any costs incurred by the Non-Federal Sponsor for *non-Federal design work*, subject to the conditions and limitations of this paragraph, that have not been incurred pursuant to any other agreement for the *Project* but not to exceed 50 percent of the Non-Federal Sponsor's required share of 35 percent of *total design costs*. 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 design costs* for *non-Federal design work*.

a. *Non-Federal design work* shall be subject to a review by the Government to verify that the work was accomplished in a satisfactory manner and is necessary for the *Project*.

b. The Non-Federal Sponsor's costs for the *non-Federal design work*, accomplished by an Architect-Engineer not employed by the Non-Federal Sponsor, shall be based on actual costs incurred by the Architect-Engineer plus reasonable profit.

c. The Non-Federal Sponsor's costs for *non-Federal design work* that may be eligible for inclusion in *total design costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VII.C. of this Agreement to determine the reasonableness, allocability and allowability of such costs.

d. The Non-Federal Sponsor's costs for *non-Federal design work* that may be eligible for inclusion in *total design 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 *non-Federal design work* was completed and the time the costs are included in *total design costs*.

e. The Government shall not include in *total design costs* any costs for *non-Federal design work* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

4. The Government, in accordance with this paragraph, shall afford credit toward the Non-Federal Sponsor's share of *total design costs* for the costs of the *non-Federal design work* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for the *non-Federal design work* shall not exceed the lesser of the following amounts as determined by the Government: the value of the Non-Federal Sponsor's contributions required under paragraph B.1. of this Article and Article III and Article VII of this Agreement or the Government's estimate of the costs of the *non-Federal design work* if the work had been accomplished by the Government.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$2,863,000.00 of Federal funds have been provided by Congress for the Section 542 Program of which \$349,700.00 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Section 542 Program or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article X.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for the Section 542 Program has reached the *Section 542 Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 542 Program Limit* will not be sufficient to

meet the Federal share of *total design costs*, 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 542 Program Limit*, the parties shall terminate this Agreement and proceed in accordance with Article X.C. of this Agreement.

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

E. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

F. The Non-Federal Sponsor may request the Government to include *betterments* in the design of the *Project*. Such requests shall be in writing and shall describe the *betterments* requested to be included in the design of the *Project*. If in its sole discretion the Government elects to include such *betterments* or any portion thereof in the design of the *Project*, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Government shall allocate the costs of the *Project* features that include *betterments* between *total design costs* and the costs of the *betterments*. The Non-Federal Sponsor shall be solely responsible for all costs of design of the *betterments* by the Government under this paragraph and shall pay all such costs in accordance with Article IV.D. of this Agreement.

### ARTICLE III - DESIGN COORDINATION TEAM

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

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

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary NEPA coordination; scheduling of reports and work products; plans and

specifications; design contract awards and modifications; design contract costs; the Government's cost projections; the performance of *non-Federal design work*; the costs of *non-Federal design work* determined in accordance with Article II.B.3. of this Agreement; the credit to be afforded for the *non-Federal design work* pursuant to Article II.B.4. of this Agreement; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. Except for the *non-Federal design work*, the Design Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design of the *Project* except for the *non-Federal design work*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations. Further, the Design Coordination Team may make recommendations to the Non-Federal Sponsor on matters related to the *non-Federal design work* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Design Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design of the *non-Federal design work*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations except as otherwise required by the provisions of this Agreement including compliance with applicable Federal, State, or local laws or regulations.

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

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the costs included in *total design costs* for the *non-Federal design work* determined in accordance with Article II.B.3. of this Agreement, and the credit to be afforded for *non-Federal design work* pursuant to Article II.B.4. of this Agreement.

1. As of the effective date of this Agreement, *total design costs* are projected to be \$538,000.00; the Non-Federal Sponsor's contribution of funds required

by Article II.B.1. of this Agreement is projected to be \$ \$94,150.00; the *non-Federal proportionate share* is projected to be 17.5 percent; the costs included in *total design costs* for the *non-Federal design work* determined in accordance with Article II.B.3. of this Agreement are projected to be \$94,150.00; the credit afforded for *non-Federal design work* pursuant to Article II.B.4. of this Agreement is projected to be \$94,150.00; and the Government's total financial obligations to be incurred to include *betterments* in the design of the *Project* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.F. of this Agreement are projected to be \$0. 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 April 1st and by each quarterly anniversary thereof until the conclusion of the *period of design* 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 design costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.1. of this Agreement; the *non-Federal proportionate share*; the costs included in *total design costs* for the *non-Federal design work* determined in accordance with Article II.B.3. of this Agreement; the credit afforded for *non-Federal design work* pursuant to Article II.B.4. of this Agreement, and the Government's total financial obligations to be incurred to include *betterments* in the design of the *Project* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.F. of this Agreement.

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

1. Not less than **30** calendar days prior to the scheduled date for issuance of the solicitation for the first contract for design of the *Project* or commencement of design of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any credit the Government projects will be afforded for the *non-Federal design work* pursuant to Article II.B.4. of this Agreement, to meet its projected share under Article II.B.1. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, NEW YORK DISTRICT EROC to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the 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, after consideration of



any credit the Government projects will be afforded for the *non-Federal design work* pursuant to Article II.B.4. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; and (b) the *non-Federal proportionate share of financial obligations for design* as *financial obligations for design* 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 **30** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design* 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 design 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 *total design costs* 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, New York District" 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 *total design costs* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by the *Section 542 Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.F. of this Agreement to include *betterments* in the design of the *Project* in accordance with the provisions of this paragraph.

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

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

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations to include *betterments* in the design of the *Project* and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of design of such *betterments* from being conducted in a timely manner, the Government shall conduct an interim accounting of design of such *betterments* 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 of design of such *betterments* to complete the final accounting of design of such *betterments* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for design of such *betterments* and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for including *betterments* in the design of the *Project* exceed the total contribution of funds provided by the Non-Federal Sponsor for design of such *betterments*, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New

York District” to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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

#### ARTICLE 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 – HOLD AND SAVE

Subject to the provisions of Article XIV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

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

regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total design 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 OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government 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 IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights 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 X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Project* is in the interest of the United States.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C.2. of this Agreement, 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 design 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.

C. In the event that this Agreement is terminated pursuant to this Article or Article II.C. of this Agreement, both parties shall conclude their activities relating to the *Project* 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 *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

## ARTICLE XI - NOTICES

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

If to the Non-Federal Sponsor:

Daniel L. Stewart  
City of Plattsburgh, New York  
City Hall, Plattsburgh, NY 12901

If to the Government:

District Engineer  
U.S. Army Corps of Engineers; New York District  
26 Federal Plaza; 21<sup>st</sup> Floor  
New York, NY 10278

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 XII - CONFIDENTIALITY

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

ARTICLE XIII - 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the **District Engineer**.

**DEPARTMENT OF THE ARMY**

**CITY OF PLATTSBURGH, NY**

BY: \_\_\_\_\_  
**Richard J. Polo, Jr.**  
**Colonel, U.S. Army**  
**District Engineer**

BY: \_\_\_\_\_  
**Daniel L. Stewart**  
**Mayor, City of Plattsburgh, NY**

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

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

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of the **City of Plattsburgh, NY**, that the **City of Plattsburgh, NY** 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 **City of Plattsburgh, NY** in connection with the **City of Plattsburgh, NY**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of **City of Plattsburgh, NY** have acted within their statutory authority.

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

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**John E. Clute**  
**Corporation Counsel**  
**City of Plattsburgh, New York**



## 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.

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**Daniel L. Stewart**  
**Mayor, City of Plattsburgh, NY**

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