



# LAKE CHAMPLAIN GENERAL MANAGEMENT PLAN

Section 542 Environmental Assistance Program for the  
Lake Champlain Watershed

U.S. Army Corps of Engineers  
New York District  
in partnership with  
the Lake Champlain Basin  
Program

December 2017



US Army Corps  
of Engineers®  
New York District



Lake Champlain  
Basin Program

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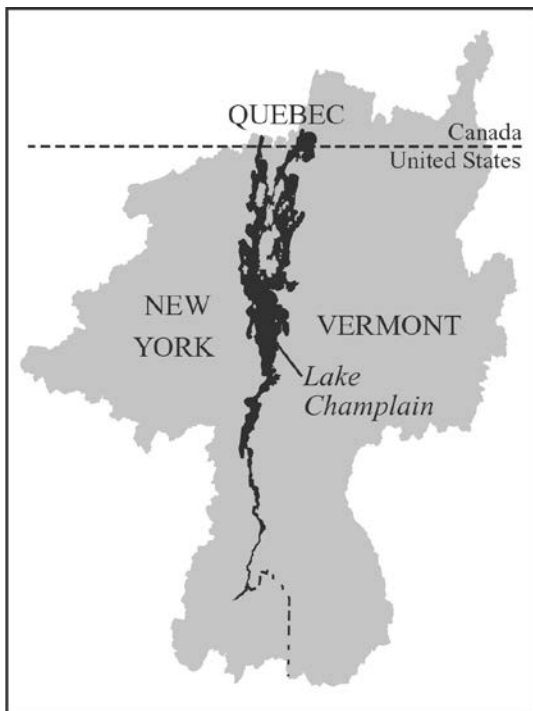
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## INTRODUCTION

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 was updated in June 2007 and again in June 2017, to reflect the progress to date, update the screening and selection process, reflect the changes in law, 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 2007 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), as amended. The Lake Champlain Watershed authorized project area is shown in **Figures 1 and 2**.

**Figures 1 and 2. Lake Champlain Basin Maps, Regional and by County**



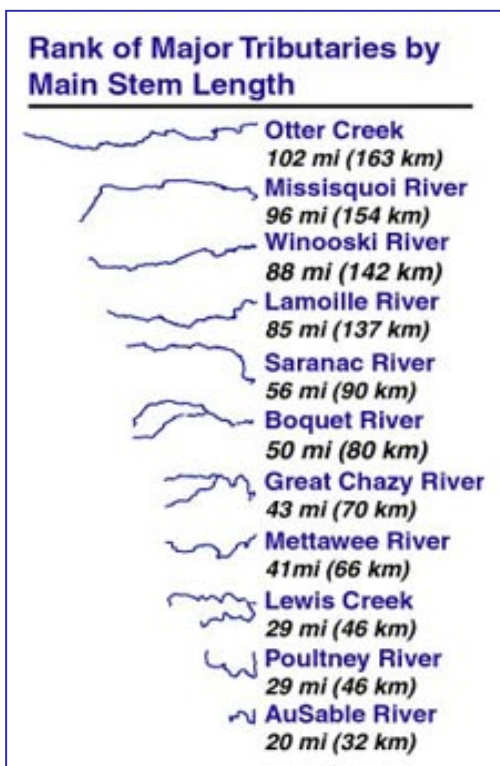
Lake Champlain Drainage Basin



## Section 542 of WRDA 2000

In December 2000, Public Law #106-541, the WRDA 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, design 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. The full project authority is provided in **Appendix A**.



**Figure 3. Major Tributaries in the Lake Champlain Watershed, as Ranked by Length**

Source: Lake Champlain Basin Program

## 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 3**). There are eight sub-watersheds: 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 2**). The Lake Champlain study area includes two states, 16 counties, 57 New York municipalities and 145 Vermont municipalities. The Lake Champlain Watershed area contains sections of New York's 2<sup>1st</sup> District (Representative Elise Stefanik – R), and Vermont's At Large District (Representative Peter Welch - D). Senatorial interest lies with New York

Senators Kirsten Gillibrand (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.

*Mad River, VT (206)* - The New York District completed a preliminary restoration plan (PRP) which determined that there was federal interest in continuing to 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 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. A Preliminary Restoration Plan and Project Management Plan were completed in 2006. If a non-federal partner is identified a feasibility study may be initiated.

*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.

A feasibility study may be initiated, subject to the availability of federal and non-federal funds.

*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. A feasibility study may be initiated, subject to the availability of federal and non-federal funds.

*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 March 2002, the Vermont Agency of Natural Resources (VTANR) indicated its willingness to act as the non-federal sponsor. A feasibility study may be initiated, subject to the availability of federal and non-federal funds.

*Lake Champlain, VT (206)* – A Section 206 (Aquatic Ecosystem Restoration) study was 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.

*New Haven River, Bristol, VT (206)* - The District completed a preliminary restoration plan (PRP), which determined that there is federal interest in continuing to 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.

*Winooski River, Montpelier, VT* – A flood risk management study for the City of Montpelier, Vermont was authorized under Section 309(I) of the Water Resources Development Act of 1992. A reconnaissance report was complete in 1996 and updated in 2009. In 2010 a Feasibility Cost Sharing Agreement was executed with the City of Montpelier with support from the State of Vermont. The focus of the study is to manage flood risk from ice jams on the Winooski River in downtown Montpelier. Alternatives involving ice piers were ranked highest during the 1996 Reconnaissance Report and were to be reviewed in greater detail during the feasibility phase.

Existing conditions, surveys, and hydrologic and hydraulic models have been completed and updated by the Corps' Cold Regions Research and Environmental Laboratory in Hanover, NH. This study has not been funded since 2010.

## Navigation

*Narrows of Lake Champlain, NY & VT* – Authorized by the Rivers and Harbors Act of 1917, this project provided for the installation and maintenance of fender booms at Putts Rock, Putts Leap, Narrows near Dresden, Pulpit Point, and Cedar Mountain; a total length of 13.5 miles. The existing project is about 77% complete, with a channel 12 feet deep width of 150 feet having been excavated throughout the entire length of the improvement, except at the Elbow, where the width is 110 feet. Fender booms have been placed at the Elbow and opposite the Delaware and Hudson railroad trestle. Maintenance dredging of the channel was last performed in 2002. Fiscal Year 2017 funds are being used to perform project condition surveys and minor maintenance to the east side fender boom anchoring system. Future funding would be used to perform caretaker status work, including minor channel maintenance activities and inspection of fender booms.

*Gordon's Landing* – Authorized in the Rivers and Harbors Act of 1887, a rock breakwater, extending 800 feet from the shoreline out to the minus 16-foot contour of Lake Champlain was constructed. The breakwater protects a local single cross-lake commercial ferry landing terminal from wind and wave action and ice flows. the seaward head segment of the rock breakwater is in need of rebuilding and repair.

*Burlington Harbor Oil Bollard Removal* - Section 108 of the FY2004 Energy and Water Appropriations Act the Secretary was authorized to remove and dispose of oil bollards and associated debris in Burlington Harbor, Vermont. The oil bollards are early to mid-twentieth century caisson-type structures previously used to facilitate pumping petroleum products from barges to associated tank farms on the waterfront.



Three of the eight oil bollards will be removed through this project. A Design Documentation Report and Plans & Specifications have been completed. Working closely with the City of Burlington and the Lake Champlain Maritime Museum, the Corps conducted archaeological surveys, underwater remote sensing surveys and historical assessments to support the design of the project. The project was completed in Spring 2014.

### **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 two decades, the District has prepared 28 such studies.

*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. Projects in recent years have removed upwards of 1,615 acres of the aquatic plants water chestnut, and Eurasian water-milfoil infesting the Lake Champlain Basin. The New York District and State of Vermont partner annually, executing a PPA for approximately \$1,000,000 per year, cost-shared 50/50.

*Waterbury Dam, VT* – The project was authorized in the Rivers and Harbors Act of 1927. The Director of Emergency Conservation Work authorized the construction of the dam in June 1933 and the construction was overseen by the Corps. The dam is inspected annually by the Corps in cooperation with the State of Vermont under the Inspection of Completed Works Program. The Project was last licensed in 1954, well before the passage of the Clean Water Act in 1972.

Modifications and updates to the dam have been made periodically in the over 80 years since it's construction, though more are needed to keep it functioning and to

bring it under compliance with environmental regulations. The authority to modify the dam was made in the Flood Control Act of 1944 and subsequently under appropriations in the 1980's. The most recent effort to modify the dam was conducted under the Dam Safety Assurance Program under the authority of Section 1203 of the Water Resource Development Act of 1986. Appropriations with directive bill language were made in subsequent years starting in 2001 through 2005 by the Congress to modify the project by constructing seepage control features and temporary repairs to the gated spillway structure. The repairs were expected to extend the useful life of the spillway gates by ten to fifteen years. However, the temporary repairs did not fully address deficiencies that exist in the spillway. As part of this effort a Design Report was prepared in 2006 for a full replacement of the spillway at a future date to address the remaining structural problems. For example, the flood storage pool cannot be raised to the full height as intended due to the structural deficiencies of the spillway, which restrict the operation of the gates, and contribute to turbidity and water quality problems associated with the current impaired operations of the spillway gates.

The recent work was completed and along with an updated Operation and Maintenance Manual, was turned over to the State in September 2010. The dam is inspected annually by the Corps in cooperation with the State of Vermont under the Inspection of Completed Works Program.

As part of the Federal Energy Regulatory Commission relicensing of the dam, a water quality certificate was issued in 2014 by Vermont's Agency of Natural Resources (ANR) which laid out myriad ecological issues caused by the design and operation of Waterbury Dam and the modifications needed to both the design and operations in order to bring the dam to compliance with environmental regulations. On June 13, 2012, the U.S. EPA listed Waterbury Reservoir as impaired due to sedimentation and turbidity which impact the waterbody's ability to support aquatic life (State of Vermont 2012 303(d) List of Waters, Part A- Impaired Surface Waters in Need of TMDL, June 2012).

The current design and operation of the dam is contributing to water quality issues and non-compliance with the Clean Water Act, as well as degraded designated habitat. The ecological issues have to do with both the current flow regulation negatively impacting habitat and water quality, as well as the water level fluctuations and the artificial flow regulation by the Project. All waters affected by the proposal under consideration are designated coldwater fish habitat for the protection and management of fisheries.

#### Proposed Modifications to Waterbury Dam

One of the proposed modifications to Waterbury Dam is to replace the turbine runner with a runner that has reduced hydraulic capacity and automatic switching between turbine and bypass pipe in order to maintain conservation flows during

non-generation. Currently the flows are managed solely to produce maximum hydroelectric power generation. The proposed change would initiate minimum conservation flow releases of 108 cfs from April through June and 60 cfs from July through March. This change would assist in reaching water quality compliance for natural flow regime and fluctuation of water levels and is crucial for converting the system to a year-round run of river.

Flow management currently does not allow for aquatic vegetation to establish itself, which degrades habitat, foraging, and worsens turbidity problems. Furthermore, peaking operations at Waterbury Dam have a significant effect on flows in the lower Winooski River downstream of the dam. Several species of fish, including lake sturgeon and walleye, ascend the Winooski River from Lake Champlain to spawn downstream of Winooski City. Artificially fluctuating flows at this time of year can disrupt spawning and affect reproductive success. Lake sturgeon is a state-listed endangered species.

Another proposal is to install turbine venting to aerate water discharged through the station. Currently the Project discharges oxygen-deficient water into the tailrace due to its design. The depth of the outlet conduit entrance is 90 feet which results in thermal stratification during summer. The Project draws water from the hypolimnion zone, where water typically has low dissolved oxygen that does not meet the water quality saturation standards.

The current design and operations also contribute to excessive turbidity in the waters released from the dam during the winter drawdown period because the sediments exposed to winter drawdown are particularly susceptible to erosion as a result of needle ice formation loosening the soil. Sediment-laden water enters the reservoir during drawdown setting up turbidity currents that flow by gravity toward the outlet. Along the way, these currents pick up additional sediment from the reservoir bottom. Changes to design and operation are proposed to help alleviate the turbidity problem, including submerging two silt terraces to a minimum elevation of 570 feet before spring snowmelt and high inflows. This would cover and insulate the exposed reservoir bed when the reservoir is drawn, reducing needle ice formation and exposure to rainfall.

Finally, lack of fish passage past the dam also impacts ongoing salmonid restoration in the watershed. The Winooski River is a major tributary to Lake Champlain and is a component of the Lake Champlain salmonid restoration and enhancement program. As part of the program, the Department of Fish and Wildlife has worked to restore landlocked Atlantic salmon to the river and to create a new run of migratory steelhead rainbow trout. Upriver habitat can be used as spawning and nursery habitat. The Department of Fish and Wildlife's future hope is to re-establish self-sustaining populations of these fish so that stocking can eventually be reduced or eliminated. Upon a request of the Department of Fish and Wildlife, Vermont DEC

may be required to provide fish passage facilities or participate in a trap-and-transport facility to move migratory fish upstream of Waterbury Dam.

As a key part of the solution to the ecological issues posed by the dam described above, ANR recommended that the Project keep a full pool below the gated spillway elevation to improve water quality in the Little River and Winooski River. The full pool would not be allowed until such time as the spillway was replaced. To that end, the State of Vermont has requested that the Corps begin the design of a new spillway under the Lake Champlain Basin Program. The Corps' Fiscal Year 2017 Funding Work Plan contains \$400,000 to initiate this effort. A letter was received from the State of Vermont, dated June 28, 2017 requesting that the Corps initiate this work and that the State would act as the non-federal sponsor and cost sharing partner.

## **PROGRAM ADMINISTRATORS AND THEIR ROLES**

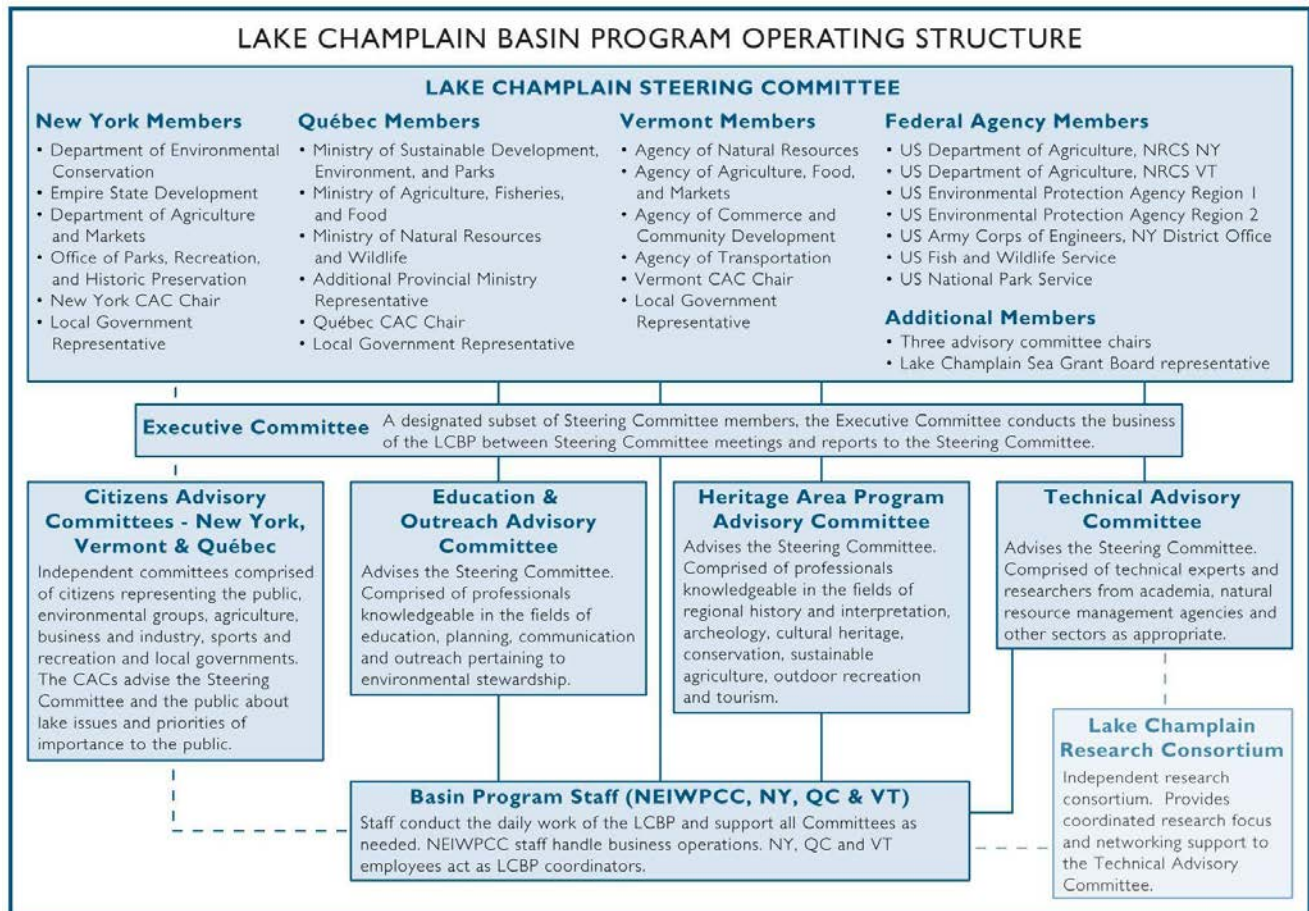
The New York District is the lead Corps District in administering the program. The District will provide planning, design and construction assistance within the Lake Champlain Watershed at the request of an eligible non-Federal sponsor. The Corps is authorized to provide planning, design and construction 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), as amended. 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, Heritage Area Program Advisory Committee, Citizen's Advisory Committees and the TAC. 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.



**Figure 4. LCBP Operating Structure**



## THE LAKE CHAMPLAIN WATERSHED

In an effort to facilitate implementation of priority actions, an overview of water quality challenges 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 (OFA)* (2003, updated 2010 and 2017). This plan lays out the goals and priorities of the Section 542 Environmental Assistance Program’s non-federal partners and other federal stakeholders. The *OFA* was signed by the Governors of New York and Vermont and the Regional Administrators of the USEPA. The *OFA*’s key functions are to coordinate programs and implementation activities, support local level implementation and public involvement, measure and monitor success relative to benchmarks, and promote and advise partner communications. More detailed information can be found in the *Opportunities for Action*, available at <http://www.lcbp.org/about-us/opportunities-for-action/>. The goals in the plan address:

- Clean water, focused on water quality monitoring, understanding the risk of toxic pollutants, and reducing nutrient inputs to water bodies,
- Healthy ecosystems, focused on habitat restoration, protection of native species and aquatic invasive species spread prevention,
- Thriving communities, focused on community involvement in stewardship of natural and cultural resources in the basin, and
- An informed and involved public, which involves education and outreach, communication with students, media, educators, and children, and scientific literacy.

Descriptions of the watershed system, water quality, and environmental challenges are summarized in the following two sections.

### Overview of the Lake Champlain Watershed System

- The Lake Champlain Basin covers 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 120 miles long, flowing north from Whitehall, NY to the Richelieu River in Québec, with 587 miles 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.



1. The South Lake, with Champlain Bridge pictured, and the Adirondack High Peaks in the background.  
**Photo by Matt McCarthy. Source: LCPB, 2017**

- The Lake is 12 miles at widest point, covering a surface area of 435 square miles. There are over 70 islands in the lake.
- At its deepest point, the Lake is over 400 feet deep, but its average depth is 64 feet. The maximum depth of some of the Lake's bays is less than 15 feet.
- The volume of the lake averages 6.8 trillion gallons.
- Precipitation averages 30 inches annually in the Lake Champlain valley, and 50 inches 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 95.5 feet above mean sea level.



- The Basin includes the highest elevations in both New York - Mt. Marcy at 5344 feet – and Vermont - Mt. Mansfield at 4393 feet. The growing season averages from 150 days on the shoreline to 105 days in the higher altitudes.

(Lake Facts Source: LCBP, 2017)

## **Water Quality and Environmental Challenges**

Although Lake Champlain remains a vital and attractive lake with many assets, there are several serious water quality and environmental problems in several areas, that demand action. *Opportunities for Action* identifies high priority goals which include clean water, healthy ecosystems, foster thriving communities, and inform and involve the public.

## **Current LCBP 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 Lake Champlain Long-Term Water Quality and Biological Monitoring Program, which entails extensive sampling at 15 lake sites and 18 tributary sites 10 to 20 times each year typically requires up to \$550,000 annually. Additional funds are also directed to monitor the effectiveness of agricultural, forestry, 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.

## **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 planning, design and construction processes in terms of potential projects; 2) obtain public input regarding challenges, opportunities, constraints, alternatives, outputs, impacts, and costs of potential projects; 3) identification of new projects; and 4) coordinate 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 Stormwater Improvement Project** in the Village of Lake George, NY was selected as a “pilot project” in 2004 and 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 which flows into Lake Champlain. This project is complete and cost \$282,000.

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

- **Potash Brook River Restoration Project: City of 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. A Project Partnership Agreement (PPA) was executed in partnership with the City of South Burlington, VT. USACE participation in the project was suspended prior to final design and construction due to federal delays in signing a cost sharing agreement for construction. The non-federal sponsor decided to proceed to construction without the USACE participation and the project is complete. The total project cost was \$1,800,000, with \$38,000 spent of federal dollars.
- **Water Treatment Control Plant Phosphorus Reduction Planning Study: City of Plattsburgh, NY** – A study in the amount of \$538,000 was initiated in 2007, to 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). The final report was completed in 2009 and includes 30% level of designs of the recommended plan.
- **Bartlett Brook Stormwater Management Project, City of South Burlington, VT** The Bartlett Brook North project was proposed by the City of South Burlington, VT and approved by the LCBP. A PPA was executed in partnership with the City of South Burlington, VT. The Project is a combination of stormwater management installations and upgrades to reduce non-point pollutants entering the Bartlett Brook and Potash Brook watersheds, and manage flooding by upgrading failing drainage infrastructure in two suburban neighborhoods. Construction work includes drainage swales and grass channels, a bioretention area,

infiltration trenches to reduce sediment transport into the watersheds, wetland ponds, and a closed drainage system (larger pipes and catch basins). This project is under construction, with completion scheduled for September 2017. Total project cost is estimated at \$1,980,400.

- **Lake Champlain Canal Barrier Feasibility Study, Fort Edward, NY** – The Lake Champlain Canal Barrier Feasibility Study will inventory potential hydrologic barriers to prevent the spread of aquatic invasive species through the Champlain Canal. The study will conduct a cost benefits analysis of selected alternatives, and select a preferred alternative based on the analysis and support of project partners. The New England Interstate Water Pollution Control Commission (NEIWPCC) has agreed to a PPA, which is being routed to USACE Assistant Secretary of the Army for Civil Works (ASA-CW) office for approval. A previous PPA was signed with the New York State Canal Corporation in 2013 and approved by USACE ASA-CW, however, subsequent to PPA signing, the control of the canal was transferred to the New York State Power Authority, and NEIWPCC was identified as an appropriate and willing new cost sharing partner, with cooperation from New York State. Study initiation is expected in FY17 with an estimated project cost of \$570,000.

Contingent upon federal funding and eligible applications, projects will continue to be implemented through this Program. Updated GMP's will provide 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 water quality challenges, such as those outlined in *Opportunities for Action*. Projects located within the Lake Champlain Basin 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) are eligible for consideration. Large water quality and habitat restoration projects requiring planning/design and construction that cost greater than \$1M are best suited for this grant funding, though projects of any cost will be considered.

Applicants may request assistance for a variety of project types, e.g. planning studies, designs, construction of already existing designs<sup>1</sup>, design and construction of a project, etc.

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

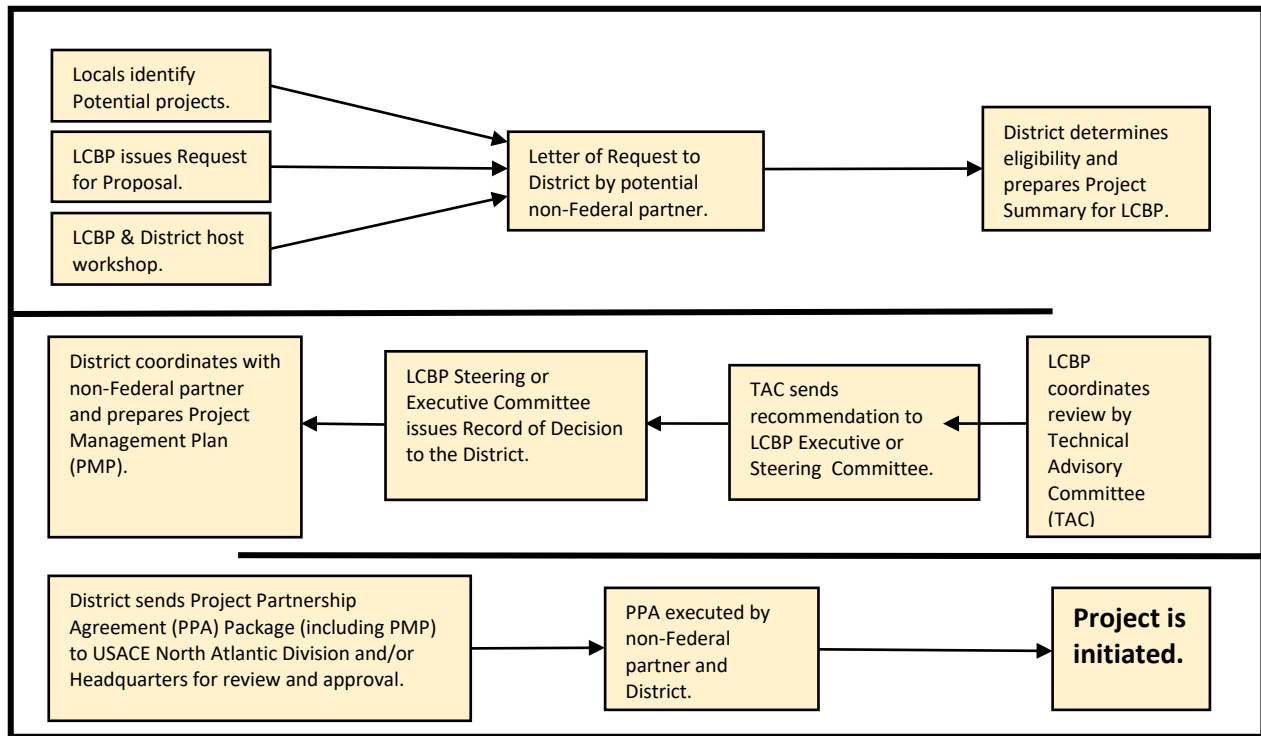
New projects will be considered for initiation when a letter of request is sent to the Corps by a potential local sponsor (See **Appendix B - Sample Letter of Request**). Requests may be submitted to the District for consideration at any time. If found to be eligible, the project summary will be submitted to the LCBP, who will coordinate with the Technical Advisory Committee (TAC) for an independent technical review according to the project's potential for water quality/habitat improvement and ability to address the priority areas of concern identified in *Opportunities for Action* and the GMP. This process may entail LCBP obtaining additional information from the applicants. The TAC will send a project proposal evaluation and recommendation to the LCBP Steering Committee, who will make a recommendation to the District in the form of a Record of Decision.

Proposals for projects not selected for assistance under this program may be maintained by the USACE 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 (PMP) and Project Partnership Agreement (PPA) negotiations for the highest ranking projects recommended by the LCBP Steering Committee through a Record of Decision. The Corps will initiate projects based on the LCBP Steering Committee's recommendation, federal funds available, non-federal funds available and other factors, as appropriate.

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If an applicant requests that the Corps construct already existing designs, the applicant should be aware that designs must meet Corps standards. Applicants may go to <http://www.nan.usace.army.mil/Portals/37/docs/EngDiv/ManStdsProc2009.pdf> for design submission requirements that the Corps uses during construction. The [Engineer Regulation \(ER\) 1110-2-1150, "Engineering and Design for Civil Works Projects,"](#) 31 August 1999 is another resource for applicants seeking design credit.

Implementing New Projects – Flowchart – Figure 5



### Eligible Applicants

Any municipal entity, state or interstate agency, Native American nation, or qualifying non-profit organization within the Lake Champlain Watershed is eligible to serve as a non-Federal partner. 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 (NY), Natural Resource Conservation District (VT) or a Regional Planning Commission. Two or more eligible entities may submit a joint application for inter-municipal proposals. If an applicant is selected and partners with the USACE, they are called the non-federal sponsor and/or partner.

**Sponsors must have the legal and financial capability to fulfill the requirements of cost sharing and local cooperation.** The sponsor must generally agree to the following:

- Provide without cost to the United States, all lands, easements, rights-of-way, relocations and disposal areas (LERRDs) necessary for construction, operation, and maintenance of a project, including provision of all necessary access routes and utility relocations.
- Provide cash or work-in-kind contributions to meet the cost-share requirements described below in the *Cost Sharing and Project Budgets* section.

- Comply with provisions of pertinent federal laws (e.g. the National Environmental Policy Act, Endangered Species Act, Clean Water Act, etc.)
- Work with the USACE to obtain permits, state and otherwise.
- Once the project is completed, it must be maintained and operated without cost to the United States (i.e. operations and maintenance are the non-federal sponsors' responsibility at 100% non-federal expense).

All Letters of Request must be submitted to the USACE and evaluated and processed according to the provisions described in this Invitation for Letters of Request.

### ***Applicant Project Goals***

Projects which address the goals of concern noted in the *OFA* will be a high priority for the Environmental Assistance Program and are subject to the Section 542 of WRDA 2000 authority, as amended (**Appendix A**). For the US federal fiscal year 2018 Lake Champlain Environmental Assistance Program, the following goals were identified by the LCBP in the 2017 *Opportunities for Action*. Each goal is addressed by **objectives, strategies, and task areas**. The plan also identifies anticipated **outputs** and **outcomes** for each task area. The emphasis for the program is on water quality protection for projects too large to be funded at the local level, particularly for the goals and objectives identified below<sup>2</sup>:

### **GOAL I: CLEAN WATER**

Lake Champlain waters will be clean enough for people to swim, boat, fish and drink with minimal treatment, and will support a healthy ecosystem. Improving the water quality of Lake Champlain and its watershed is necessary to sustain diverse ecosystems and support vibrant communities and viable working landscapes. Strategies in this section focus on maintaining the current monitoring network, understanding the risk of toxic pollutants, and reducing nutrient inputs to water bodies.

Goal I may be achieved by addressing the following objectives identified in the plan and would support best management practices that reduce nutrient loading to the lake, minimize the risk of toxins to human health and the environment, and address flood resilience and climate change impacts to communities and habitats in the basin.

Objective I.A. Improve scientific knowledge and understanding of water quality conditions and trends in Lake Champlain and the effectiveness of management approaches

Objective I.B. Reduce Contaminants of Concern and Pathogens

Objective I.C. Reduce Nutrient Loading

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<sup>2</sup> The *OFA* is updated periodically to reflect changed conditions and priorities. Applicants should check for updates to the priorities prior to applying.

## GOAL II: HEALTHY ECOSYSTEMS

Lake Champlain's aquatic ecosystems will support a rich diversity and abundance of native species, and will be resilient to climate change and free of aquatic invasive species. A healthy Lake Champlain ecosystem is critical to maintaining a high functioning Lake, but it is vulnerable to existing and future impacts. Wetland and upland habitat, in particular riparian and shoreland habitat areas must be identified, prioritized, protected and restored in each sub-watershed. Native species, notably threatened or vulnerable species, must be conserved while the impact of aquatic invasive and non-native species is reduced through improved management strategies.

Goal II may be achieved by addressing the following objectives in the plan and would support projects that protect habitat and native species of concern, promote aquatic organism passage, and prevent the spread of aquatic invasive species.

Objective II.A. Support Conservation of Vulnerable Habitat

Objective II.B. Preserve and Enhance Biodiversity

Objective II.C. Prevent the Spread of Aquatic Invasive Species

## GOAL III: THRIVING COMMUNITIES

Lake Champlain Basin communities have an appreciation and understanding of the Basin's rich natural and cultural resources, and have the capacity to implement actions that will result in sound stewardship of these resources while maintaining strong local economies. Lake Champlain is a destination for recreation and tourism, and contributes to the region's renowned quality of life. Community involvement to improve Lake Champlain and its watershed is critical to achieving common goals for Lake Champlain. Champlain Valley National Heritage Partnership objectives for preserving the region's rich cultural heritage and connecting people to the landscape are integrated into this local partner goal.

Goal III may be achieved by addressing the following objectives in the plan and would support projects that engage multiple stakeholders in the basin, design and implement green infrastructure, focus business innovations to support water quality, and link the community to the cultural heritage and natural resources in the basin. Ecological restoration and water quality improvements in the Basin intrinsically support the following objectives and may contribute to the accomplishment of the thriving communities goal. Any project funding through the Section 524 Environmental Assistance Program must fall within the authority of the program (**Appendix A**).

Objective III.A. Engage and Support Community & Management Partners

Objective III.B. Support Water-Wise Economic Development

Objective III.C. Support Awareness and Conservation of Cultural Heritage Resources

Objective III.D. Support Lake and Basin Recreation



#### **GOAL IV: INFORMED AND INVOLVED PUBLIC**

Basin residents and visitors will understand and appreciate the Lake Champlain basin resources, and will possess a sense of personal responsibility that results in behavioral changes and actions to reduce pollution. Public outreach is core component of the Lake Champlain Basin Program's work. This goal outlines ways to improve communication, scientific literacy, and cultural guidance to communities, partners, the media, K-12 educators, and children

Goal IV may be achieved by addressing the following objectives in the plan and would support projects that engage youth in stewardship opportunities, promote lake friendly products and practices, and help assess changes in the public's knowledge and behavior surrounding clean water practices. Any project funding through the Section 524 Environmental Assistance Program must fall within the authority of the program (**Appendix A**).

Objective IV.A. Enhance formal learning at all educational levels

Objective IV.B. Build awareness through informal learning of Lake Champlain Basin issues across all age groups.

Objective IV.C. Facilitate changes in behavior and actions of citizens

Details on these goals, objectives and other strategies, as well as updates over time, can be found online at [www.lcbp.org](http://www.lcbp.org).

#### ***Application Submission***

The application process, formatting and organization requirements are detailed below. A respondent may submit Letters of Request for more than one project. *If proposed projects involve existing designs, one copy of design plans should be submitted with the Letter of Request.*

Letters of Request should be sent to:

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

You may scan and submit a Letter of Request electronically, however it must be on official letterhead and signed. To obtain an email address for submissions or for general questions on this program, please consult the LCBP website [www.lcbp.org](http://www.lcbp.org) or call (800) 468-5227 (from NY or VT) or (802) 372-3213. You may also direct questions to USACE at 917-790-8007 or [cenan-pa@usace.army.mil](mailto:cenan-pa@usace.army.mil).

### ***Application Procedure***

1. Submit a Letter of Request to the USACE (see below for detailed instructions). The USACE will determine if a project is eligible to receive assistance through this program and will so inform the applicant.
2. If a project is deemed eligible, the USACE will work with the applicant to complete a project summary.
3. The project summary will be submitted to LCBP for review and ranking. LCBP will provide recommendations to the USACE based on this review.
4. Upon approval and subject to the availability of federal funds, the USACE will proceed with project implementation for the highest-ranking projects. The USACE will select projects based on LCBP's recommendations, availability of federal and non-federal funds, and other factors, as appropriate.
5. Upon selection, the USACE will proceed with development of a Project Management Plan and will negotiate a Project Partnership Agreement with the non-Federal partner.
6. Project summaries of projects not selected for implementation will be maintained and periodically screened and prioritized by the LCBP for a period not to exceed three years.

### **Project Evaluation and Selection Criteria**

Projects which address the priority areas of concern and fall within the Section 542 authority will be a high priority for the Lake Champlain Environmental Assistance Program. Additionally, applications will be reviewed and ranked according to how well they address the following:

- 1) Demonstration of *Effectiveness* - Project objectives should effectively address one or more of the priorities identified 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.
- 2) Demonstration of *Efficiency* - The merit and feasibility of the proposed methods for carrying out the project in a cost-effective way will be evaluated. Corps support involves a process that is more appropriate for large-scale projects (i.e. multi-year process, studies that cost \$200,000 or more, and construction costs of at least \$500,000).
- 3) 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.

- 4) 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.
- 5) Demonstration of ability of the local entity to provide the required 35% non-federal match.

### ***Notification of Approval***

After the submittal of the Letter of Request, the USACE will contact eligible applicants. The USACE will then work with eligible applicants to complete and submit a project summary to the LCBP for review.

Applicants selected for support will be notified by the LCBP. Selection and notification will occur throughout the year, dependent upon available funding.

### **After a Project is Selected for Assistance**

Prior to submission, all applicants should be familiar with the general process and timeframe for projects that will be implemented via Section 542, the Lake Champlain Watershed Environmental Assistance Program.

Projects will be chosen according to pre-determined criteria (see **Project Evaluation and Selection Criteria** above). Corps and non-federal sponsors of the chosen project(s) will identify a project scope of work, budget, and schedule that is mutually agreeable. Upon agreement, the Corps and sponsor will execute a Project Partnership Agreement (PPA) which is a legal agreement between the Corps and the local sponsor (applicant) that provides formal assurances of cooperation by both parties. Upon execution of the PPA, the Corps will receive federal funds to execute the Scope of Work according to the approved project budget and schedule outlined in the PMP.

### ***Cost Sharing and Project Budgets***

Total project costs under Section 542 of WRDA 2000 will be cost-shared at 65% federal and 35% non-federal matching funds. Funding for the non-federal matching share may come from any non-federal funding source, which may include in-kind services or supplies. In-kind services completed prior to PPA approval (i.e., before Corps involvement) may be

credited only with specific USACE approval. The balance of the required 35% non-federal matching share must be provided in cash or in-kind services to be made available to the USACE for use in the project immediately after the PPA is executed. The term “in-kind” is defined as those tasks completed by the local sponsor in substitution of a cash contribution and **must be approved by the USACE prior to PPA execution**. The sponsor’s cost share includes a credit for the value of the sponsor’s contribution of lands, easements, rights-of-way, relocations and disposal areas (LERRDs). As described in the *Eligible Applicants* section, the sponsor is responsible for acquiring all LERRDs necessary for construction, operation and maintenance of a project, including the provision of all necessary access routes and utility relocations. If the sponsor already owns the real estate required for the project, the value of that real estate will still count toward the non-federal cost share and will reduce the amount of cash or in-kind services that the sponsor needs to contribute.

Proposed project budgets will be reviewed with the understanding that they are the best estimates of the applicant in response to this Invitation for Letters of Request. In preparation of the PPA with successful applicants, the USACE will confer with the applicant and the LCBP to further review project plans, and may require certain design revisions to ensure that the resulting project meets the design standards of the USACE. This review could result in some increase in overall project costs beyond that anticipated by the applicant. Any budget adjustments required to ensure that the proposed project will meet USACE standards will be determined prior to finalization of the PPAs, based on the full agreement of all parties, and will not be subject to change thereafter, except by mutual consent of the applicant and the USACE.

### ***Expected Timeline to Execute a PPA***

Applicants should expect to receive a decision on their application within about six months from submitting their request. Once they are approved, it should take about six months to execute a PPA. This includes the time it takes for the applicant’s legal team to approve the draft PPA and for the applicant to provide the financial self-certification. If this process is protracted, the timeline will be extended. If sponsors decide to seek in-kind credit for work performed prior to the PPA execution, the Corps will need to review and approve the work, which is routed to the highest levels of the USACE chain of command and approved by the Assistant Secretary for the Army for Civil Works (ASA-CW). The approval process for in-kind credit on pre-existing work can add approximately six additional months to the time it takes to execute a PPA and begin work.

### ***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 concern (*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 will be held periodically by LCBP and USACE personnel 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 Corps will work with the non-federal sponsor to prepare the project summaries, which will include the following information:

- Basic Information
  - Project title
  - Applicant name and contact information
  - Project need statement
- Project Details to include:
  - Project objectives
  - Background and planning approach
  - General Scope of Work (SOW) including tasks, schedule, estimated project budget, and supporting narrative
- How the project will address at least one of the LCBP's priorities in *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.
- Discussion of potential LERRDs requirements and sponsor's ability to acquire LERRDs or existing ownership information.
- Letters of Support stating the non-federal sponsor's intention to cost share and partner on the project
  - If there are other groups or agencies that will partner formally or informally or will act as cooperating agencies, letters of support from them may also be required
- Any other relevant supporting documents

### ***Projects Chosen for Implementation***

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

Non-federal sponsors of a project selected for implementation should be prepared to comply with the following requirements which are described more fully in the workshops:

- 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 to develop their existing Scope of Work that went into the project summary and build on it 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 Partnership Agreement Approval Request Package*. Once all documents are reviewed and approved by CENAD and Corps Headquarters (HQUSACE), a Project Partnership Agreement (PPA) will be executed by the non-federal sponsor and the New York District Corps of Engineers. Following PPA execution the project tasks will begin.

### **Project Management Plans**

A PMP is the first document to be completed after the project proposal is approved. 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 subject to change as the project progresses. Project cost estimates and the schedule of tasks in the PMP may vary. Clear descriptions of the scopes of work and cost/time estimates in the PMP will allow updates resulting from more information to be easily made. The PMP also includes which disciplines will comprise the Project Delivery Team (PDT) responsible for completing the project (i.e. biologist, hydraulic engineer, real estate specialist, etc.), and which individuals will be assigned to the PDT. The final PMP will be signed by the full PDT.

### **Project Partnership Agreements**

A PPA 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 PPA will be drawn up.

Federal involvement requires that a PPA 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 PPA's may be executed, depending upon the scope of work to be performed:

- **Design PPA** for planning-level or design of projects that are not for construction by the Corps.
- **Design/Construction PPA** 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, by Assistant Secretary for the Army for Civil Works (ASA(CW)), executed for the Village of Lake George, New York (Design/Construction PPA) and City of Plattsburgh, New York (Design PPA) projects are



provided in **Appendix C**. Model PPAs for the Section 542 Lake Champlain Watershed Environmental Assistance Program are currently being developed in HQUSACE. Until model PPAs are developed, negotiated PPAs will be reviewed by the non-federal sponsor, the New York District, and then approved by Corps of Engineer's Headquarters for execution. If PPA approval has been delegated to the North Atlantic Division, CENAD will review and approve the PPA after reviewing and approving the Project Fact Sheet, which is a succinct summary of the project for internal use within USACE and Congress.

### **Project Partnership Agreement Approval**

HQUSACE may delegate the approval for projects and PPAs to the District or CENAD. Regardless of which office has PPA approval authority, a *Project Partnership Agreement Approval Request Package* will be prepared by the PDT and must be submitted to that office and include the following supporting documentation:

- Name of Non-Federal Sponsor (i.e. the applicant who will cost-share and partner on the project)
- Non-Federal Sponsor Support Letter—an example can be provided to the applicant—this formally expresses need for the project and a desire to partner under this program
- State Certification Letter—demonstrates state support for the project if the non-federal sponsor is not the state
- Project Management Plan (PMP)
- Project Partnership Agreement Checklist (USACE District PDT prepares this)
- Draft Project Partnership Agreement
- Non-Federal Sponsor's Financial Capability Assessment and Financing Plan—an example can be provided to the non-federal sponsor—this demonstrates the ability to cost share on the project
- Real Estate Requirements—May not be applicable if the Real Estate Plan is to be done during the design phase of the project, after the PPA execution.

- Assessment of the Non-Federal Sponsor's Real Estate Capability (for PPAs that include construction)
- Environmental Compliance Documentation (if applicable)—Demonstrates a project has complied with applicable environmental regulations, permitting requirements, etc., as appropriate for the stage of the project and scope of the work
- Assistant Secretary of the Army – Civil Works: Pre-Agreement Credit Approval (if pre-agreement credit over \$100,000 is requested)
- Non-Federal Sponsor Certification of PPA—this certifies that those executing the agreement are acting within their statutory authority
- CENAN Certification of Legal Review—USACE District Council certifies their legal review of the PPA package

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 PPA was approved as an interim model by the ASA(CW) in February, 2006 and the Plattsburgh Design PPA was approved as an interim model by ASA(CW) in July, 2006.

The *Project Partnership Agreement Approval Request Package* will be submitted to the North Atlantic Division (CENAD) for approval. Upon approval, the CENAD will transmit the PPA Package to Headquarters for approval, unless PPA 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 PPA.

## **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 PPA has been executed. The form of disbursement of project funds depends on the project budget and the defined terms of the PPA.

### ***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 PPA, the non-federal sponsor shall provide their cash contribution to the New York District following PPA 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 PMP. 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 100 percent of its non-federal share in the form of these in-kind credits.

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

#### **POST-PPA CREDIT**

If in-kind creditable work is to be performed after PPA execution, it should be clearly described as such in the PMP and in the budget. The non-federal sponsor may contribute up to 100% 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-PPA 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 PPA for the critical restoration project, if the Secretary finds that the design work is integral to the project.

The PMP should clearly identify what work has been or will be performed as pre-PPA Credit. Once defined and approved by the District as creditable work, the District must

request that the North Atlantic Division Commander<sup>3</sup> approve credit over \$100,000, if it is determined that the work is integral to the project. Pre-PPA in-kind credit may be approved by the New York District Commander, per WRDA 2007. This request must be submitted to the North Atlantic Division *prior* to PPA 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, as amended
- Lake Champlain Watershed Environmental Assistance Program General Management Plan
- Project Management Plan
- Description of Pre-PPA 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 \$32,000,000 of federal funding for this program per the amended WRDA 2007. The appropriations to date have been as follows:

<b>Fiscal Year</b>	<b>Allocations</b>	<b>Obligations</b>
2003	\$ 42,000	\$ 11,646.21
2004	\$ 86,000	\$ 92,159.86
2005	\$ 76,000	\$ 85,986.19

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<sup>3</sup> The determination of whether or not proposed in-kind credit work is integral to the project was delegated from the ASA(CW) office to the Major Subordinate Command (MSC) Commander, in this case the North Atlantic Division Commander, in WRRDA 2014, Section 1018.

2006	\$ 840,000	\$ 287,191.89
2007	\$ 800,000	\$ 354,020.45
2008	\$ 2,360,000	\$ 116,709.17
2009	\$ 957,000	\$ 149,501.17
2010	\$ 920,000	\$ 159,955.75
2011	\$ (750,000)	\$ 160,440.52
2012	\$ (800,000)	\$ 162,730.03
2013	\$ 0	\$ 157,408.30
2014	\$ 0	\$ 127,744.76
2015	\$ 0	\$ 93,568.66
2016	\$ 400,000	\$ 1,509,402.26
2017	\$ 400,000	\$ 406,536
2018	TBD	TBD
<b>Total</b>	<b>\$ 5,331,000</b>	<b>\$ 3,807,766.77</b>
<b>Authorized Federal Funds Remaining from \$32 Million Authorization</b>		<b>\$ 28,192,233</b>

### Program Coordination Costs

The New York District will be responsible for program oversight and management. Efforts to update the General Management Plan (GMP), 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 \$150,000 per fiscal year. These costs are a 100% federal responsibility and are used at the discretion of the New York District.

### Project Specific Pre-PPA Coordination Costs

In addition to Program Administrative costs, the District may use up to a maximum of \$50,000 to prepare and negotiate a PMP, obtain a letter of intent, and develop and negotiate a Project Partnership Agreement. These costs are a 100% Federal responsibility and are used at the discretion of the New York District.

## GENERAL MANAGEMENT PLAN UPDATES

The strategy for implementing qualified projects is based on the priorities of the LCBP, updates to *Opportunities for Action* and availability of funding for the program.

## CONCLUSIONS AND RECOMMENDATIONS

The New York District recommends approval of this revised General Management Plan (GMP) for implementation of qualified projects authorized by Section 542 Water Resources Development Act 2000, as amended. 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, the New York District of the US Army Corps of Engineers (USACE or Corps), and Headquarters USACE and/or the North Atlantic Division of the Corps. 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.

 12/19/17

Eric Howe (date)

Director, Lake Champlain

Basin Program

 20171215

Thomas D. Asbery (date)

Colonel, U.S. Army

District Commander



**Lake Champlain Section 542  
Environmental Assistance Program  
General Management Plan 2017  
Appendices**

**Appendix A.....Section 542 Authority, WRDA 2000**

**Appendix B.....Letter of Request Requirements, Sample  
Letter of Request, and Project Summary Example**

**Appendix C.....ASA-CW Approved Interim Model Project  
Partnership Agreements**



**US Army Corps  
of Engineers®**  
New York District



**Lake Champlain  
Basin Program**

## **Appendix A**

### **Section 542 of WRDA 2000, as amended**

#### **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.

***Amendments to Section 542 WRDA 2000 in WRDA 2007***

**SEC. 3160. LAKE CHAMPLAIN WATERSHED, VERMONT AND NEW YORK.**

Section 542 of the Water Resources Development Act of 2000

(114 Stat. 2671) is amended—

(1) in subsection (b)(2)—

(A) by striking “or” at the end of subparagraph (D);

(B) by redesignating subparagraph (E) as subparagraph (G); and

(C) by inserting after subparagraph (D) the following:

“(E) river corridor assessment, protection, management, and restoration for the purposes of ecosystem restoration;

“(F) geographic mapping conducted by the Secretary using existing technical capacity to produce a high-resolution, multispectral satellite imagery-based land use and cover data set; or”;

(2) in subsection (e)(2)(A)—

(A) by striking “The non-Federal” and inserting the following:

“(i) IN GENERAL.—The non-Federal”; and (B) by adding at the end the following:

“(ii) APPROVAL OF DISTRICT ENGINEER.—Approval of credit for design work of less than \$100,000 shall be determined by the appropriate district engineer.”;

(3) in subsection (e)(2)(C) by striking “up to 50 percent of”; and

(4) in subsection (g) by striking “\$20,000,000” and inserting “\$32,000,000”.

## **Appendix B – Letter of Request Requirements, Sample Letter of Request, and Project Summary Example**

### **Letter of Request Requirements**

**The Letter of Request must include the following information:**

- A. NAME OF PROJECT & LOCATION
- B. NAME OF APPLICANT/SPONSOR. PLEASE INCLUDE CONTACT INFORMATION INCLUDING, PHONE, FAX, ADDRESS, AND EMAIL ADDRESS.
- C. DISCUSSION OF THE NON-FEDERAL SPONSOR INTEREST: Briefly describe the sponsor's level of need and interest.
- D. PROJECT DESCRIPTION
  - Identify the specific location of the project (state, county, town, river or creek, latitude & longitude).
  - Describe the nature and severity of the environmental problem.
  - Identify the studies performed to date, as well as the reports or material utilized in the planning or design of this project (if planning or design has already been performed).
  - Describe the specific problem(s) to be addressed and note the specific action(s) in *Opportunities for Action* that will be addressed by this project.
  - Include an 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.

In General, describe the type of work to be accomplished & the expected results as well as any other relevant information.

## 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 or Madam:

The purpose of this letter is to seek 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.*
- *Identify the studies performed to date, as well as the reports or material utilized in the planning or design of this project (if planning or design has already been performed).*
- *Describe the specific problem(s) to be addressed and note the specific action(s) in Opportunities for Action that will be addressed by this project.*
- *Include an estimated schedule and cost of the project, including design.*
- *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*).



## **Project Summary Example**

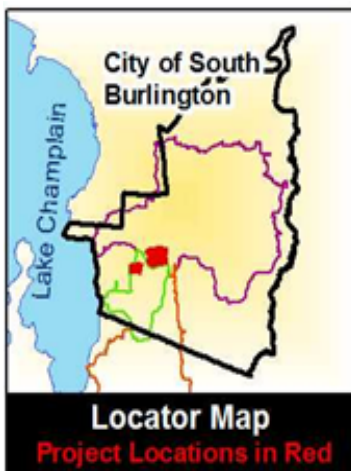
One example of a recent successful project supported by Section 542 is the Bartlett Brook North project in South Burlington, Vermont. This project completed design and an Environmental Assessment in 2012 and construction was initiated in July 2017 and scheduled to be completed in September 2017.

### **Project Information**

- Local Sponsor: City of South Burlington, VT
- Project Cost: \$1,986,444 (cost shared 65% federal / 35% non-federal)
- Timeline
  - Letter of Request submitted in January 2008
  - Bartlett Brook application approved in June 2008
  - Sponsor provided Scope of Work in May 2009
  - Project Management Plan signed in November 2009
  - Sponsor's work was approved for in-kind credit by the Assistant Secretary for the Army—Civil Works in January 2012
  - PPA executed 26 January 2012
  - Contract awarded on 17 March 2016
  - Notice to Proceed on 13 April 2016
  - Construction initiated on 5 July 2016
  - Construction completion in September 2017

### **Description of Work**

The work is to improve on-site drainage in two suburban areas (Stonehedge & Laurel Hill) which will reduce negative impact of storm water runoff from the developments on downstream receiving waters. The construction work includes drainage swales and grass channels, a bioretention area, infiltration trenches, wetland ponds, and a closed drainage system (larger pipes and catch basins).



**Background**

The Vermont Agency of Natural Resources determined that Bartlett Brook is not meeting state water quality standards due to impacts from unmanaged stormwater runoff. This watershed is located primarily within the South Burlington City limits. The City of South Burlington had identified five significant projects that would substantially improve the quality of runoff entering these waterways of which two projects in the Stonehedge and Laurel Hill South neighborhoods is being implemented as one project under the Lake Champlain Program authority. The two neighborhoods are in close proximity to each other and are part of one project, the Bartlett Brook North Stormwater Treatment Project.

The Stonehedge neighborhood was constructed beginning in the 1980s and is made up of 202 condominium units. This neighborhood experiences regular flooding, drainage and roadway problems relating to uncontrolled stormwater runoff. This includes flooding, sediment laden discharges, and aging/failing infrastructure. Currently, there is no effective stormwater treatment in place.

Laurel Hill South neighborhood was built 40 years ago, and consists of roughly 140 single family residences on lots of approximately 1/3 acres in size. Since the time it was built, the residents have experienced regular flooding. Lawns and basements are flooded almost annually. Multiple factors contribute to this problem with the main reason being the poor conveyance of stormwater through the existing drainage pipe network.

## **Appendix C – ASA-CW Approved Interim Model Project Partnership Agreements**

The following two PPAs were approved by the Assistant Secretary of the Army Office of Civil Works (ASA-CW) on February 3, 2001 and July 14, 2006, respectively, as “Interim PPA Models”. The Plattsburgh, NY interim model approved on July 14<sup>th</sup> is for design assistance projects, while the Lake George interim model includes both study and construction. The ASA memos delegate authority to Headquarters USACE to approve PPAs that follow the interim models and urge Headquarters USACE to develop and approve a model agreement which would allow Section 542 PPA approval authority to be delegated to the Major Subordinate Commands or District Commanders.



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.

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:

Mayor  
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: \_\_\_\_\_

**John 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\_\_.

\_\_\_\_\_  
**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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**John Stewart**  
**Mayor, City of Plattsburgh, NY**

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



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 black ink, reading "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 (hereinafter the “District Engineer”) 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 Regional Director for Region 5 of the New York State Department of Environmental Conservation, on behalf of the Commissioner, 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 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 January 25, 2006 the Secretary of the Army issued a finding that *pre-Agreement design work* for in-kind services that include preliminary design of a stormwater median and infiltration chambers to a 30 percent level of completion 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 *pre-Agreement design work* described in paragraph M. of this Article and 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 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. and Article XVII.C.1. of this Agreement; the Government’s actual construction costs; the sum of the costs of the *pre-Agreement design work* determined in accordance with Article II.B.4. of this Agreement and 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.C.2. and Article XVII.C.3. 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 determined by the Secretary of the Army to be integral to the *Project* 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 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 sum of the amount of credit to be afforded for the *pre-Agreement design work* pursuant to paragraph B.5 of this Article and 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 (c) 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 sum of the amount of credit to be afforded for the *pre-Agreement design work* pursuant to paragraph B.5 of this Article and 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*; (c) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; and (d) 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* and that when added to the costs for *non-Federal design and construction work* determined in accordance with paragraph B.6 of this Article do not 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 *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* and that when added to the costs for *pre-Agreement design work* determined in accordance with paragraph B.4. of this Article do not 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, \$2, 863,000 of Federal funds have been provided by Congress for the Section 542 Program of which \$183,625 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.C.2. and Article XVII.C.3. 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.C.2. and Article XVII.C.3. 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 \$282,500; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$2,375.00; the *non-Federal proportionate share* is projected to be 8.5 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.C.3. of this Agreement is projected to be \$0; 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 \$5,000; the credit afforded for *non-Federal design and construction work* pursuant to Article II.B.7. of this Agreement is projected to be \$5,000; 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.C.3. 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.C.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for: (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.C.3. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to “FAO, USAED, NEW YORK DISTRICT to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, 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.C.3. 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 such 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 such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written

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

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, NEW 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.C.2. and Article XVII.C.3. 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.C.3. 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  
New York District, 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, as it determines necessary for the *Project*, except for *non-Federal design and construction work*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform any identification, survey, or evaluation of historic properties the Government determines necessary for *non-Federal design and construction work* in accordance with this paragraph.

1. The Non-Federal Sponsor 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 Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and shall be responsible for resolving any deficiencies.

2. Any costs of identification, survey, or evaluation of historic properties incurred by the Non-Federal Sponsor pursuant to this paragraph shall be included in costs for *non-Federal design and construction work*.

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

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, 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*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph C.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 State and 65 percent will be borne by the Government.

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

#### ARTICLE 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 Assistant Secretary of the Army (Civil Works).

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.

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

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