

PROJECT PARTNERSHIP AGREEMENT BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF VERMONT  
FOR AQUATIC PLANT CONTROL IN  
VERMONT

THIS AGREEMENT is entered into this 15 day of ~~September~~ September, 2020, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. the **U.S. Army Engineer, New York District** (hereinafter the District Engineer), and **the State of Vermont Agency of Natural Resources** (hereinafter the "State"), represented by Commissioner Peter Walke, Agency of Natural Resources, Department of Environmental Conservation.

WITNESSETH, THAT:

WHEREAS, a comprehensive program to provide for control and progressive eradication of obnoxious plant growths from the navigable waters, tributary streams, connecting channels and other allied waters of the United States was authorized by Section 104 of the Rivers and Harbors Act of 1958, codified as amended at 33 U.S.C. 610;

WHEREAS, studies conducted by the Government under this authority have led to the development of a program for the control of Eurasian watermilfoil, waterchestnut and other undesirable aquatic plants in the State of Vermont;

WHEREAS, the Government and the State desire to enter into a Project Partnership Agreement for operation of the Program (hereinafter the "Program" as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 (c) (6) of the Water Resources Development Act of 1966, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Program;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources protect, or separable element thereof, until each State has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the State does not qualify for a reduction of the maximum non-Federal cost-share pursuant to the guidelines that implement Section 103 (m) of the

Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Aquatic Plant Control in Vermont Program, if any, and sets forth procedures for adjusting any such maximum amount; and

WHEREAS, the Government and the State have the full authority and capability to perform in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

## **ARTICLE I - DEFINITIONS & GENERAL PROVISIONS**

A. The terms "annual operational program" and "program" shall mean all planning, engineering, design and actual harvesting related to implementation of the control plan as described in the Annual Work Plan for fiscal year 2020 (Appendix A).

B. The terms "total annual operational program costs" and "total program costs" shall mean all costs incurred by the State and the Government directly related to the total operational program, as further described in the Annual Work Plan for fiscal year 2020. Such costs shall include, but not necessarily be limited to, actual harvesting costs; costs of applicable engineering and design; supervision and administration costs; costs associated with the provision of appropriate transfer sites for the harvested materials and disposal at suitable landfills; costs associated with inspection of Program activities by either the Government or the State; costs of investigations to identify the existence and extent of hazardous substances in accordance with Article IV.A of this Agreement; the costs of historic preservation activities in accordance with Article XVII.A of this agreement; costs of participation in the Project Coordination Team in accordance with Article VI of this Agreement; costs of contract disputes settlements or awards; costs of audit in accordance with Article X of this Agreement; the value of lands, easements, rights-of-way, relocations, and suitable transfer sites or material disposal areas for which the Government affords credit in accordance with Article V of the Agreement; and all costs for preparing the Annual Works Plan for fiscal year 2020, This term does not include any costs of dispute resolution under Article VIII of this Agreement.

C. The term "fiscal year" means one year beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup> of the following year.

D. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge hereof.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising,

or replacement and attendant demolition of the affected facility or part thereof.

## **ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE STATE**

A. The State shall accomplish all activities for the operation of the Program in accordance with the Annual Work Plan developed by the parties for fiscal year 2020.

B. In accordance with Article III of this Agreement and the Annual Work Plan, the State shall provide all lands, easements, rights-of-way, including suitable transfer sites and material disposal areas, and shall perform or ensure performance of all relocations in accordance with the Annual Work Plan for fiscal year 2020.

C. As further specified in Article VII, the Government and the State shall each provide 50 percent of the total annual operational program costs incurred under the Aquatic Plant Control Program by the Government and the State in performing the approved efforts identified, assigned and undertaken pursuant to this Agreement as described in the Annual Work Plan.

D. Prior to issuing invitations for bids the State shall submit to the District Engineer for approval the detailed plans, specifications, data for analysis of design, and a general program outlining the order, rate of prosecution and method (contract or hired labor) for accomplishing the major items of work and setting forth the estimated cost thereof. In the event that the State prosecutes herein by contract, all bids received and the proposed provisions of any contract shall be subject to review by the Government prior to award. Any such contract shall contain all applicable provisions required by Federal law and regulations, including, but not necessarily limited to, applicable labor and equal opportunity provisions.

E. The State shall secure competitive bids, by advertising for all work to be performed by contract, or, with the approval of the District Engineer, perform the Program work with its own forces.

F. The State shall submit to the District Engineer a detailed estimate of cost, a tabulation of all bids received, and a request for approval of award of a contract to the lowest qualified bidder and furnish such copies of the contract as may be required and submit to the District Engineer, for approval, any amendments or modifications thereof.

G. The State shall provide adequate continuous engineering inspection and submit an end-of-season progress report showing the work done throughout the current year's Program.

H. The State shall provide necessary facilities and access for inspection of the Program by the District Engineer.

I. The State shall keep accurate and adequate cost accounts and records, open at all times for inspection and audit by the District Engineer.

J. The State shall not use Federal Funds to meet the State's share of total program costs under this Agreement unless the federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

K. The State agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

### **ARTICLE III- REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLAINT WITH PUBLIC LAW 91 – 646, AS AMENDED**

A. The Government, after consultation with the State, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the State with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the State must provide for construction, operation, and maintenance of the Project, and shall provide the State with a written notice to proceed with acquisition. The State shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The State shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the State, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the State with general written descriptions, including maps as appropriate, of such relocations and shall provide the State with a written notice to proceed with such relocations. The State shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the State written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the State may request in writing that the Government acquire all or specified portions of such real property interests, or perform the necessary relocations. If the Government agrees to such a request, the State, in accordance with Article VII.E., must provide funds sufficient to cover the costs of the acquisitions, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the State except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the State by quitclaim deed or deeds. The State shall accept delivery of such deed or deeds. The Government's providing real property interests or performing

relocations on behalf of the State does not alter the State's responsibility under Article VII for the costs of any cleanup and response related thereto.

D. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the State assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the State will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

#### **ARTICLE IV - HAZARDOUS SUBSTANCES**

A. The State shall be responsible for undertaking any investigations 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 real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the State with prior specific written direction, in which case the State shall perform such investigations in accordance with such written direction. All actual costs incurred by the State for such investigations for hazardous substances shall be included in total program costs and cost-shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IX.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the State and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and the State shall not proceed with the acquisition of such real property interests until the parties agree that the State should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that

might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the State shall be responsible, as between the Government and the State, 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 be paid solely by the State without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the State fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the State's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a discovery, the State and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the State, the State shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the State shall execute the Project in a manner that will not cause liability to arise under CERCLA.

#### **ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, CREDIT FOR IN-KIND CONTRIBUTIONS, AND CREDIT FOR PRE- AGREEMENT DESIGN WORK**

A. The Government shall include in construction costs, and credit towards the State's share of such costs, the value of State provided real property interests and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the State shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the State shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the State agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The State shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the State on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the State provides the Government with authorization for entry thereto shall be used to determine the fair market value. The fair market value of real property interests acquired by the State 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) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the State shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the State provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the State is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the State the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the State exceeds the approved appraised amount, the Government, at the request of the State, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the State, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the State shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides

written approval of the appraisals, the State shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing. If the Government provides written disapproval of the appraisals, the Government and the State shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the State may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. However, the fair market value for crediting purposes shall be the lesser of the amount of the court award for the real property interests taken (or the amount of any stipulated settlement, if applicable), or the amount determined by an appraisal prepared by the Government.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the State and releases the State in writing from its obligation to appraise the real property interest, and the State submits to the Government a copy of the owner's written release; or

(2) the State determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the State determines that an appraisal is unnecessary, the State shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the State must offer the owner the option of having the State appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the State's share of such costs, the incidental costs the State incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include 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., and other payments by the State 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 pursuant to Article III.

2. Relocations. The Government shall include in construction costs and credit towards the State's share of such costs, the value of any relocations performed by



the State that are directly related to construction, operation, and maintenance of the Project.

a. 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.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, 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 Vermont would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include 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 do not include any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs and credit towards the State's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the State incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the State's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the State; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement 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 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the State's failure to comply with its obligations under these laws.

5. Pre-Agreement Design Work. The Government shall credit towards the State's share of construction costs, the costs, documented to the satisfaction of the Government, that the State incurred in providing or performing pre-Agreement design work integral to the Project, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article X to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. The State shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the State's employees, no later than 60 calendar days after the effective date of this Agreement. Failure to provide such documentation in a timely manner may result in denial of credit.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time of completion of the pre-Agreement design work and the time credit is afforded; for the value of non-Federal design work obtained at no cost to the State; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

3. No reimbursement will be provided for any pre-Agreement design work that exceeds the State's share of construction costs under this Agreement.

D. Notwithstanding any other provision of this Agreement, the State shall not be entitled to credit for real property interests and relocations that exceed 35 percent of construction costs or real property interests that were previously provided as an item of local cooperation for another Federal project.

## **ARTICLE VI - PROJECT COORDINATION TEAM**

A. To provide for consistent and effective communication, the State and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named representatives to a Project Coordination Team. Thereafter the Project Coordination Team shall meet as necessary until the end of the annual operational program. The Government's Project Manager and a counterpart named by the State shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the State's counterpart shall keep the Project Coordination Team informed to the progress of the program and of significant pending issues and actions, and shall seek the view of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end to the period of the Program, the Project Coordination Team shall generally oversee the Program, including issues related to design, plans and specifications; scheduling; real property and relocation requirements; real property

acquisition; contract awards and modifications; contract costs; the State's cost projections; final inspection of the entire Program; and other related matters. This oversight shall be consistent with the Annual Work Plan.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters 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 the Program, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total program costs and cost-shared in accordance with the provisions of this Agreement.

## **ARTICLE VII - METHOD OF PAYMENT**

A. The State shall implement the Program in accordance with the Annual Work Plan for fiscal year 2020 and after conclusion of control activities for the year, the Government shall pay to the State an amount necessary to ensure the Government's share equals 50 percent of the total program cost, subject to the availability of appropriations. Total costs for the fiscal year 2020 program are presently estimated to be \$1,000,000.

B. The Government shall pay its share of total Program costs in proportion to the rate of expenditures by the State in accordance with the following provisions:

1- After initiation of the Program, the Government will, subject to subparagraph 2 below, make payments upon receipt from the State of properly executed and duly certified invoices covering services satisfactorily performed during the preceding months.

2 - All work for which payment is requested by the State must be certified by the State to have been performed in accordance with this Agreement before the Government shall approve the request for payment. All payments to the State shall be subject to the availability of appropriations.

C. Upon completion of the Program and resolution of all relevant contract claims and appeals, the State shall compute the total Program costs and tender to the Government a final accounting of each share of Program costs. In the event the total payment by the Government to the State results in the State contributing less than its required share of total Program costs at the time of final accounting, the State shall within 91 calendar days after receipt of written notice, make a cash payment to the Government the amount required to meet its required share of total Program costs. In the event the State is determined at the final accounting to have provided more than 50 percent of total Program costs, the Government shall within 91 calendar days of the final accounting,

subject to the availability of appropriations, make a cash payment to the State in the amount required to meet its share of total Program costs.

D. The cost allocations and dollar amounts set out in this Article are based upon the best estimates of the State and the Government, and are subject to adjustments based on the costs actually incurred. Such estimates do not necessarily reflect the total financial responsibilities of the State and the Government.

E. If the Government agrees to acquire or perform, as applicable, real property interests or relocations, on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, New York (E3)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

#### **ARTICLE VIII - DISPUTE RESOLUTION**

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### **ARTICLE IX – HOLD AND SAVE**

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

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

A. The parties shall develop procedures for the maintenance by the State of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure

that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the State to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the State, provide to the State or independent auditors any such information necessary to enable an audit of the State's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the State without reimbursement or credit by the Government.

#### **ARTICLE XI - FEDERAL AND STATE LAWS**

In the exercise of their respective rights and obligations under this Agreement, the State and the Government agree to comply with all applicable Federal and State laws and regulations, including section 631 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto, as well as 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 XII - RELATIONSHIP OF PARTIES**

In the exercise of their respective rights and obligations under this Agreement, the Government and the State each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### **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 a party to this Agreement.

#### **ARTICLE XIV - TERMINATION OR SUSPENSION**

A. This agreement will continue in full force and effect for the duration of the FY 2020 Aquatic Plant Control Program, unless terminated earlier by either party hereto, upon providing 90 days written advance notice to the other party.

B. If either party fails to receive annual appropriations in amounts sufficient to meet expenditures for the Program, it shall notify the other party. After ninety (90) days either party may elect without penalty to terminate the Agreement or to delay future performance hereunder; however, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligations previously incurred. In the event that either party elects to terminate this agreement, the parties shall conclude their activities relating to the Program and proceed to a final accounting in accordance with Article VII.

C. It is understood and agreed that termination of this Agreement shall not end the obligation of the State to hold and save the Government free from claims arising under the Program as provided in Article XI.

#### **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 mailed by registered or certified mail, with return receipt, as follows:

1. If to the Government:

Joseph Seebode, P.E.  
Chief, Programs & Project Management Division  
Room 17419  
U.S. Army Engineer District, New York  
26 Federal Plaza  
New York, New York 10278-0090

2. If to the State:

Peter Walke  
Commissioner  
State of Vermont  
Agency of Natural Resources  
Department of Environmental Conservation  
1 National Life Drive, Davis 3  
Montpelier, Vermont 05602

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.

## **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 costs of identification, survey and evaluation of historic properties shall be included in total program costs and cost-shared in accordance with the provisions of the Agreement

B. As specified in Section 7(a) of Public Law 93-291 (16 U. S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total program costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Program.

C. The Government shall not incur costs for mitigation and data recovery that exceed that statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total program costs but shall be cost-shared between the State and the Government consistent with the minimum non-Federal cost-sharing requirements for the program as follows: 50 percent borne by the State, and 50 percent borne by the Government.

## ARTICLE XVIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

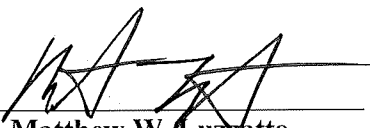
The State intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of Vermont. If the State is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed by the New York District Engineer.

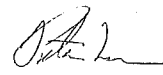
DEPARTMENT OF THE ARMY

VERMONT AGENCY OF NATURAL  
RESOURCES

BY: \_\_\_\_\_

  
**Matthew W. Luzzatto**  
Colonel, U.S. Army  
District Engineer

BY: \_\_\_\_\_

  
**Peter Walke**  
Commissioner  
Agency of Natural Resources, DEC  
State of Vermont

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

9/15/2020

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

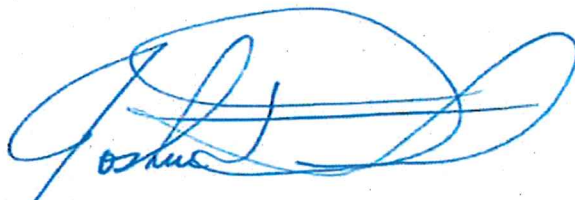
9/3/2020



## CERTIFICATE OF AUTHORITY

I, Joshua Diamond, do hereby certify that I am the Deputy Attorney General of the State of Vermont and that the **Agency of Natural Resources** 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 **State of Vermont** in connection with **Aquatic Plant Control** in Vermont 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 **Department of Environmental Conservation** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 9<sup>th</sup> day of September, 2020.

A handwritten signature in blue ink, appearing to read "Joshua R. Diamond", is written over a horizontal line.

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**Joshua R. Diamond**  
**Deputy Attorney General**

## CERTIFICATION REGARDING LOBBYING

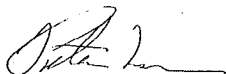
The undersigned certifies, to the best of his or her knowledge and belief that:

(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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**Peter Walke**  
**Commissioner, Agency of Natural Resources**  
**Department of Environmental Conservation**

DATE: 9/10/2020

## CERTIFICATE OF LEGAL REVIEW

The 2020 Project Partnership Agreement for Aquatic Plant Control in the State of Vermont has been fully reviewed by the Office of Chief Counsel, USACE-NAN, New York and is approved as legally sufficient.

LEE.LORRAINE.  
C.1228825367

Digitally signed by  
LEE.LORRAINE.C.1228825367  
Date: 2020.09.14 11:18:48  
-04'00'

Lorraine C. Lee  
District Counsel

14 Sept 2020  
Date

