



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

NOV 04 2005

CECW-MVD

MEMORANDUM FOR COMMANDER, MISSISSIPPI VALLEY DIVISION (CEMVD-PD-SP)

SUBJECT: Environmental Infrastructure, City of St. Louis, Missouri, Metropolitan Sewer District Old Mill Creek Combined Sewer Outflow Rehabilitation, Section 219 Project Cooperation Agreement

1. The subject Project Cooperation Agreement (PCA) has been approved by the Assistant Secretary of the Army (Civil Works) (ASA(CW)). Copies of the ASA(CW) approval memorandum (enclosure 1) and the approved PCA (enclosure 2) are enclosed. Signature authority is delegated to the St. Louis District Commander.
2. You must ensure that the PCA is signed by the sponsor as approved by ASA(CW), without deviation, not later than 21 calendar days after the date of this memorandum. The St. Louis District should prepare a minimum of four final PCA originals. Upon execution, the district will retain two copies of the executed PCA. The remaining executed PCA's should be provided to the sponsor. An electronic copy of the executed PCA should be forwarded to CECW-MVD (John Lucyshyn) not later than 14 days after final signature.
3. If any deviations to the approved PCA are required, prior to signature by the sponsor, the district will transmit a memorandum notifying CECW-MVD of the reasons for the deviations and requesting approval of the deviations. Only after receipt of written approval from CECW-MVD, will the deviations be incorporated into the approved PCA.
4. If the 21-day suspense will not be met, prior to PCA signature by the sponsor, the district will transmit a memorandum notifying CECW-MVD of the reasons for the slip or identifying changed conditions and the recommended course of action.
5. Any questions should be directed to Mr. John Lucyshyn at 202-761-4515.

FOR THE COMMANDER:

Encls  
as

THOMAS W. WATERS, P.E.  
Chief, MVD Regional Integration Team  
Directorate of Civil Works

AMENDMENT NUMBER 1  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**THE METROPOLITAN ST. LOUIS SEWER DISTRICT**  
FOR  
DESIGN AND CONSTRUCTION  
OF THE  
**OLD MILL CREEK COMBINED SEWER OVERFLOW PROJECT**  
**ST. LOUIS, MISSOURI**

THIS AMENDMENT is entered into this 11<sup>th</sup> day of December, 2009 by and between the Department of the Army (hereinafter the "Government") represented by the U.S. Army Corps of Engineers, St. Louis District (hereinafter the "District Commander") and the Metropolitan St. Louis Sewer District (hereinafter the "Non-Federal Sponsor"), represented by the Executive Director.

WITNESSETH, THAT:

WHEREAS, Section 219(b) of WRDA 1992 (Public Law 102-580), as amended, specifies the cost-sharing requirements applicable to the Project and provides that the Non-Federal share of total project costs shall not be less than 25 percent;

WHEREAS, Section 219(f)(32) of WRDA 1992 (Public Law 102-580), as amended by Section 502(b) of WRDA 1999 and Section 5100 of WRDA 2007 (PL 110-114), which increased the authorized amount from \$15,000,000 to \$35,000,000 in Federal funds for the statutory limitation on Federal participation in the Section 219 Environmental Infrastructure Assistance Project (hereinafter the "Section 219(f)(32) Limit"); This section also replaced the term "project" with the term "projects" and added "and St. Louis County" before Missouri.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the design and rehabilitation of approximately 13,933 linear feet of Old Mill Creek arched limestone and brick combined sewer and appurtenances in an area south of Chouteau Avenue, east of Ranken Avenue and west of

South 2<sup>nd</sup> Street in the City of St. Louis, as generally described in the amended Letter Report, Environmental Infrastructure Assistance Project, Metropolitan St. Louis Sewer District (MSD) dated October 2009 as approved by the District Commander.

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

a. Paragraph 4 is deleted and replaced in its entirety with the following text:

4. As of the effective date of this Agreement, a total of \$16,576,000 has been allocated for the Section 219 Environmental Infrastructure Assistance Project, of which \$7,000,000 has been made available from the American Recovery and Reinvestment Act of 2009. The Government makes no commitment to request the Congress to provide additional Federal funds for the Section 219 Environmental Infrastructure Assistance Program, or the Project. Further, the Government's financial participation in the Project is limited to the Federal funds that the Government actually makes available to the Project and the Government's financial participation in the Section 219 Environmental Infrastructure Assistance Project is limited by the Section 219(f)(32) Limit. In the event the Government determines that the amount of Federal funds that the Government has made available to the Project in the then-current or upcoming fiscal year is not sufficient to meet the Federal share of funds required to continue construction, the Government shall notify the Non-Federal Sponsor in writing of the insufficiency of funds and of the date the Government projects that Federal funds made available to the Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government for the Project, future performance under this Agreement shall be suspended, and the parties shall proceed in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.D. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

## ARTICLE VI - METHOD OF PAYMENT

Paragraph A is deleted and replaced in its entirety with the following text:

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. At least quarterly thereafter during the period of construction, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, and of the Non-Federal proportionate share. On the effective date of this Agreement, project costs to the government can not exceed \$35,000,000 and the Non-

Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$11,670,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

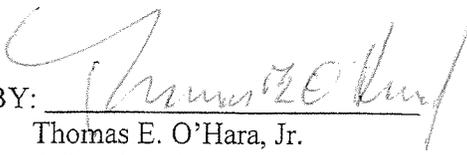
ARTICLE XIX – LIMITATION ON GOVERNMENT EXPENDITURES is deleted in its entirety and replaced with the following text:

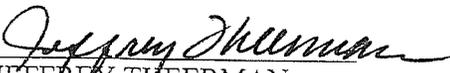
In accordance with Section 219(f)(32) of WRDA 1992 (Public Law 102-580), as amended by Section 502(b) of WRDA 1999 and Section 5100 of WRDA 2007 (PL 110-114), the Government's financial participation in all elements of the Section 219 Environmental Infrastructure Assistance Project, including this Project, is limited to \$35,000,000 unless otherwise authorized by law, which shall include all Federal funds expended by the Government for planning, design, and construction of the Section 219 Environmental Infrastructure Assistance Project except for costs incurred on behalf of the Non-Federal Sponsor in accordance with Article II.B. or Article II.E. of this Agreement. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

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

DEPARTMENT OF THE ARMY

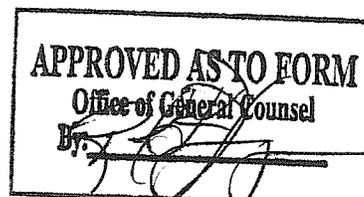
METROPOLITAN ST. LOUIS  
SEWER DISTRICT

BY:   
Thomas E. O'Hara, Jr.  
Colonel, U.S. Army  
District Commander

BY:   
JEFFREY THEERMAN  
Executive Director  
Metropolitan St. Louis Sewer District

DATE: Dec 11, 2009

DATE: 11/3/09



CERTIFICATE OF AUTHORITY

I, Randy E. Hayman, do hereby certify that I am the principal legal officer of the Metropolitan St. Louis Sewer District, that the Metropolitan St. Louis Sewer District 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 Metropolitan St. Louis Sewer District in connection with the Old Mill Creek Combined Sewer Overflow Project, St. Louis, Missouri, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the Metropolitan St. Louis Sewer District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
~~November~~ 3<sup>rd</sup> day of November, 2009.

  
\_\_\_\_\_  
RANDY E. HAYMAN  
Metropolitan St. Louis Sewer District General Counsel

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.

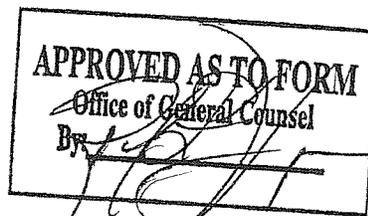
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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.

  
JEFFREY THEERMAN  
Executive Director  
Metropolitan St. Louis Sewer District

DATE: 11/3/09



CERTIFICATION OF LEGAL REVIEW

*Amendment Number 1 to The Project Cooperation Agreement Between The Department of the Army and The Metropolitan St. Louis Sewer District for Design and Construction of the Old Mill Creek Combined Sewer Overflow Project, St. Louis, Missouri* has been fully reviewed by the Office of Counsel, USAED, St. Louis, and is approved as legally sufficient.

Reviewed by:

  
\_\_\_\_\_  
Jeffrey E. Asbed  
Assistant District Counsel

Certified by:

  
\_\_\_\_\_  
William P. Levins  
District Counsel

Date:

11-10-09

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, Jeffrey Theerman, do hereby certify that I am the Executive Director of the Metropolitan St. Louis Sewer District, (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Old Mill Creek Combined Sewer Overflow Project, St. Louis, Missouri; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Old Mill Creek Combined Sewer Overflow Project, St. Louis, Missouri.

IN WITNESS WHEREOF, I have made and executed this certification this  
16 TH day of November, 2009.

BY: Jeffrey Theerman

TITLE: Executive Director

DATE: 11/16/09



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

03 NOV 2005

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Project Cooperation Agreement for Old Mill Creek Combined Sewer  
Overflow Rehabilitation, Missouri, Section 219 Environmental Infrastructure Assistance

This responds to Mr. Waters' memorandum dated October 17, 2005, requesting approval of subject draft agreement. The draft agreement is approved.

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Authority to sign the final agreement on behalf of the Department of the Army is hereby delegated to the district commander.

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

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

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE METROPOLITAN ST. LOUIS SEWER DISTRICT  
FOR  
DESIGN AND CONSTRUCTION  
OF THE  
OLD MILL CREEK COMBINED SEWER OVERFLOW PROJECT  
ST. LOUIS, MISSOURI

THIS AGREEMENT is entered into this 30<sup>th</sup> day of November, 2005, by and between the Department of the Army (hereinafter the "Government") represented by the Acting U.S. Army Engineer, St. Louis District (hereinafter the "District Engineer") and the Metropolitan St. Louis Sewer District (hereinafter the "Non-Federal Sponsor"), represented by the Executive Director.

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WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for water-related environmental infrastructure and resource protection and development projects pursuant to Section 219 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, (hereinafter the "Section 219 Program");

WHEREAS, the Secretary is authorized to provide design and construction assistance for St. Louis, Missouri, as authorized by Section 219(f)(32) of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, (hereinafter the "Section 219 Environmental Infrastructure Assistance Project");

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for design and construction assistance for the Old Mill Creek combined sewer overflow project in the City of St. Louis, Missouri (an element of the Section 219 Environmental Infrastructure Assistance Project and hereinafter the "Project," as defined in Article I.A. of this Agreement.);

WHEREAS, Section 219(b) of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, specifies the cost-sharing requirements applicable to the Project and provides that the Non-Federal share of total project costs shall not be less than 25 percent;

WHEREAS, Section 219(f)(32) of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, provides that \$15,000,000 in Federal funds is the statutory limitation on Federal participation in the Section 219 Environmental Infrastructure Assistance Project (hereinafter the "Section 219(f)(32) Limit");

WHEREAS, in lieu of design of the Project by the Government, the Non-Federal Sponsor proposes to provide a design for the Project prepared for the Non-Federal Sponsor by the Architect-Engineer firm O'Brien & Gere;

WHEREAS, as there is no authority to allow for credit for non-Federal work-in-kind relating to design or construction of the Project, the Non-Federal Sponsor proposes to gratuitously provide the design for use by the Government, thereby reducing overall total project costs for the Project;

WHEREAS, the Government and the Non-Federal Sponsor believe that use of the design provided by the Non-Federal Sponsor may be of mutual benefit to the parties;

WHEREAS, the Non-Federal Sponsor warrants that it has the legal authority to provide the design for use by the Government, free and clear of any legal encumbrances including, but not limited to, any intellectual property restrictions;

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WHEREAS, the Non-Federal Sponsor agrees to hold the Government harmless from any and all liability that may result from the Government's use of the design provided by the Non-Federal Sponsor;

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;

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 construction of the Project in accordance with the terms of this Agreement.

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

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the design and rehabilitation of approximately 3,660 linear feet of Old Mill Creek arched limestone and brick combined sewer and appurtenances in an area south of Chouteau Avenue, east of Ranken Avenue and west of

Ohio Street, generally along LaSalle Street in the City of St. Louis, as generally described in the Letter Report, Environmental Infrastructure Assistance Project, Metropolitan St. Louis Sewer District (MSD), dated June 2005, and approved by the U.S. Army Engineer, St. Louis on July 24, 2005.

B. The term “total project costs” shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s engineering and design costs; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.5. of this Agreement; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. and XVIII.C. of this Agreement; costs incurred by the Government to comply with Federal design, procurement, and contracting requirements related to its use of the design provided by the Non-Federal Sponsor in accordance with Article II.A.2. of this Agreement; actual construction costs, supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, suitable borrow and dredged or excavated material disposal areas and permit costs for which the Government affords credit toward total project costs in accordance with Article IV of this Agreement, not to exceed 25 percent of total project costs; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; any costs of dispute resolution under Article VII of this Agreement; or the Non-Federal Sponsor’s costs of negotiating this Agreement. The term shall also not include any costs incurred by the Non-Federal Sponsor, or any third party, in providing the Project design to the Government.

C. The term “financial obligations for design and construction” shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term “non-Federal proportionate share” shall mean the ratio of the Non-Federal Sponsor’s total cash contribution required in accordance with Article II.D.2. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term “period of construction” shall mean the time period from execution of this Agreement to the date that the U.S. Army Engineer for the St. Louis District (hereinafter the “District Engineer”) notifies the Non-Federal Sponsor in writing of the Government’s determination that construction of the Project is complete, or the date that

this Agreement is terminated in accordance with Article XIV or XV.C., whichever is earlier.

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

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (including any bridge thereto) 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 removal of the affected facility or part thereof.

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

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I. The term "betterment" shall mean a change requested by the Non-Federal Sponsor in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the construction of that element. The term does not include features in addition to the Project.

J. The term "Federal program funds" shall mean funds or grants provided directly to the Non-Federal Sponsor by a Federal agency, other than the Department of the Army, and any non-Federal matching share required therefore.

## 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, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. 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. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. As determined by the Government, to the extent it does not interfere with Government contract administration, the Government will afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance of the contract modification to the contractor. In any instance where providing the Non-Federal Sponsor with notification of a contract

modification or change order is not possible prior to issuance of the contract modification, the Government will provide such notification in writing at the earliest date possible. As determined by the Government, to the extent it does not interfere with Government contract administration, the Government will afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to the Government's resolution of such claims. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders (including those that change the design provided by the Non-Federal Sponsor), resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Subject to the conditions of this paragraph, a Project design provided by the Non-Federal Sponsor shall be reviewed by the Government for compliance with Federal criteria, including bidability, constructability, operability and environmental criteria, and if, in the sole discretion of the Government, such design provided by the Non-Federal Sponsor is determined to be adequate, in whole or in part, the design, or parts thereof determined to be adequate, may be incorporated into a Government procurement solicitation and contract.

a. All Government procurement solicitations and contracts shall comply with Federal statutory and regulatory requirements, including but not limited to the Federal Acquisition Regulation, and nothing in this Agreement shall preempt or alter such requirements.

b. The Government, in its sole discretion, may modify a design, or parts thereof, provided by the Non-Federal Sponsor to meet Federal design, procurement or environmental compliance requirements.

c. If the Government determines that a design provided by the Non-Federal Sponsor is inadequate for any reason, the Government shall design the Project.

d. Any costs incurred by the Government under paragraph A.2. of this Article shall be included in total project costs and shared in accordance with the provisions of this Agreement.

3. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

4. As of the effective date of this Agreement, Congress has provided \$9,576,000 for the Section 219 Environmental Infrastructure Assistance Project, of which \$4,380,000 is currently projected to be available for the Project. The Government makes no commitment to request the Congress to provide additional Federal funds for the

Section 219 Environmental Infrastructure Assistance Project, or the Project. Further, the Government's financial participation in the Project is limited to the Federal funds that the Government actually makes available to the Project and the Government's financial participation in the Section 219 Environmental Infrastructure Assistance Project is limited by the Section 219(f)(32) Limit. In the event the Government determines that the amount of Federal funds that the Government has made available to the Project in the then-current or upcoming fiscal year is not sufficient to meet the Federal share of funds required to continue construction, the Government shall notify the Non-Federal Sponsor in writing of the insufficiency of funds and of the date the Government projects that Federal funds made available to the Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government for the Project, future performance under this Agreement shall be suspended, and the parties shall proceed in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.D. of this Agreement as a contingency to pay costs of termination, including any costs of contract claims and contract modifications.

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5. If the Government determines that the total amount of Federal funds provided by the Congress for the Project has reached the Government's limit on financial participation as defined in Article XIX, and the Government predicts that the Federal funds the Government will make available to the Project within the Government's limit on financial participation will not be sufficient to meet the Federal share of total project costs, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government predicts that the Federal funds that will have been made available by the Government to the Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the Project within the Government's limit on financial participation, the parties shall terminate this Agreement and proceed in accordance with Article XIV of this Agreement.

6. 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"). However, the Government shall not issue the solicitation for the first construction contract for the Project or commence construction of the Project using the Government'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).

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing

and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a 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 an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 25 percent of total project costs in accordance with the provisions of this paragraph.

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1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article and Articles V, X, XV.A. of this Agreement will be less than 25 percent of total project costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of total project costs.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services 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 requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between

the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

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

H. The Non-Federal Sponsor warrants to the Government that the Project design provided to the Government is free of any legal encumbrances and use restrictions including, but not limited to, any intellectual property rights and outstanding licensing requirements. The Government shall use the design provided by the Non-Federal Sponsor exclusively for the purpose of the Project encompassed by this Agreement.

I. The Government, subject to the availability of funds and as limited by the Government's limit on financial participation as defined in Article XIX shall refund or reimburse to the Non-Federal Sponsor any contribution in excess of 25 percent of total project costs if the Government determines at any time the collective value of the following contributions has exceeded 25 percent of total project costs: (a) the value of the Non-Federal Sponsor's contributions under paragraph D. 2. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph D.1 of this Article, as determined in accordance with Article IV of the Agreement that do not exceed 25 percent of total project costs; and (c) the value of the Non-Federal Sponsor's contributions under Articles V, X, and XV.A. of this Agreement.

### ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. 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 end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in

such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the 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 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 end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for all improvements the Government determines to be required for the proper 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.

C. 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 removal of borrow materials and the proper 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 end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, 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 contract.

D. 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 during the period of construction pursuant to paragraphs A., B. or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

E. 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 by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, and rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that are provided using Federal program funds unless the Federal agency providing the Federal program funds verifies in writing that such credit is expressly authorized by statute. No amount shall be included in total project costs, no credit shall be afforded pursuant to this Article, nor reimbursement provided to the Non-Federal Sponsor, for any value in excess of 25 percent of total project costs.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials and dredged or excavated material disposal, 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. 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 B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

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 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, or the Non-Federal Sponsor chooses not to obtain a second appraisal, 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 B.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 B.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 B.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 shall, prior to instituting such proceedings, 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 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 sub-paragraph B.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 required for the 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 and Permit 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. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement. In addition, the Non-Federal Sponsor shall receive credit toward its share of total project costs all reasonable costs incurred by the Non-Federal Sponsor that are associated with obtaining permits necessary for the construction of the Project on publicly owned or controlled land subject to an audit in accordance with Article X of this Agreement to determine reasonableness, allowability, and allocability of costs.

5. Waiver of Appraisal. Except as required by paragraph B.3. of this Article, the Government may waive the requirement for an appraisal if it determines that an appraisal is unnecessary because the valuation problem 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.

C. 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 Missouri 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, but 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.

4. Inclusion of the value of relocations in total project costs is subject to satisfactory compliance with applicable Federal 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 (40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (40 U.S.C. 276c)). 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.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper 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.

## ARTICLE V - PROJECT COORDINATION TEAM

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

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C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; completion of all necessary NEPA coordination; development of 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 USC 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 et seq.) and the Copeland Anti-Kickback Act (formerly 40 USC 276c)) for relocations; the Government's cost projections; final inspection of the construction or portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

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 design and construction of the Project, 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 project costs and shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. At least quarterly thereafter during the period of construction, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, and of the non-Federal proportionate share. On the effective date of this Agreement, total project costs are projected to be \$7,197,300, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$1,786,725. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.D.2 and Article XVIII.C. 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: (a) review of the Non-Federal Sponsor provided design, or portion thereof; (b) commencement of review of the Non-Federal Sponsor provided design, or portion thereof, using the Government's own forces; (c) design of the Project; or (d) 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 to meet: (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 projected non-Federal proportionate share of financial obligations for design and construction through the first contract; (c) the projected non-Federal proportionate share of financial obligations for design and construction using the Government's own forces through the first through the first fiscal year; (d) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities pursuant to Article XVIII.C. of this Agreement through the first contract; and (e) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities pursuant to Article XVIII.C. of this Agreement using the Government's own forces through the first fiscal year. Not later than such scheduled date, the Non-Federal Sponsor shall either provide the Government with the full amount of the required funds by either delivering a check payable to "FAO, USAED, ST. LOUIS (B3)" to the District Engineer or verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or present the Government with an irrevocable letter of credit acceptable to the Government for the

required funds or provide an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Thereafter, until the construction of the Project is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for the Project, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected non-Federal proportionate share of financial obligations for design and construction for that contract and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities pursuant to Article XVIII.C. of this Agreement for that contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of the required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each fiscal year in which the Government projects that it will make financial obligations for design and construction of the Project using the Government's own forces or financial obligations for data recovery activities pursuant to Article XVIII.C. of this Agreement using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected non-Federal proportionate share of financial obligations for design and construction using the Government's own forces for that fiscal year and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities pursuant to Article XVIII.C. of this Agreement using the Government's own forces for that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary 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 XVIII.C. of this Agreement as those financial obligations are incurred. If at any time during the period of design and construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own

forces in the current fiscal year, 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 60 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. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in B of this Article. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, 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 thereafter, 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. of this Article.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, ST. LOUIS (B3)" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal

Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

## 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. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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## ARTICLE VIII – OPERATION, MAINTENANCE, REPAIR, REHABILITATION, and REPLACEMENT (OMRR&R)

Upon notification in accordance with Article II.C. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or portion of the Project, at no cost to the Government, in a manner compatible with the Project's design and in accordance with the OMRR&R manual and with applicable Federal and State laws as provided in Article XI of this Agreement. As between the Government and the Non-Federal Sponsor, the Government shall have no responsibility to operate, maintain, repair, rehabilitate, or replace the Project or portion of the Project.

## ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design (including any and all liability and/or damages arising from the Government's use of the design, or parts thereof, provided by the Non-Federal Sponsor), construction, operation, maintenance, repair, rehabilitation, and replacement of the Project and any Project-related 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, and 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, and other evidence pertaining to construction in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph 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. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act 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 agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; 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 such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

## ARTICLE XIII - OFFICIALS NOT TO BENEFIT

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

## ARTICLE XIV - 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 or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. In the event future performance under this Agreement is suspended pursuant to Article II.A.4. 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 costs of the Project; or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. If after review of the design provided by the Non-Federal Sponsor, modification of the design, or additional design of the Project by the Government in accordance with Article II.A.2. of this Agreement, the parties mutually agree in writing not to proceed with the construction of the Project, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article II.A.5. or Article XV of this Agreement, both parties shall conclude their

activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV 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 XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, 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. Sections 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 required for the construction, operation, and maintenance of the Project. However, for lands 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. 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.

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 required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government 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 both 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 work on 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 required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate construction or continue with construction 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 clean-up and response, to include 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 fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

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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 clean up 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, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XVI - NOTICES

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

If to the Non-Federal Sponsor:

Executive Director  
Metropolitan St. Louis Sewer District  
2350 Market Street  
St. Louis, Missouri 63103

If to the Government:

District Engineer  
US Army Engineer District, St. Louis  
Attn: CEMVS-PM-N  
1222 Spruce Street  
St. Louis, Missouri 63103

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.

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## ARTICLE XVII - 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 XVIII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the Project, shall perform any identification, survey, or evaluation of historic properties. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the Project, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as renumbered and amended by Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the statutory limitation on Federal participation for the Section 219 Environmental Infrastructure Assistance Project.

C. The Government shall not incur costs for archeological data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) 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. Section 469c-2(3)). Any costs of

archeological data recovery 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 219 Environmental Infrastructure Assistance Project, as follows: 25 percent will be borne by the Non-Federal sponsor and 75 percent will be borne by the Government.

#### ARTICLE XIX – LIMITATION ON GOVERNMENT EXPENDITURES

In accordance with Section 219(f)(32) of the Water Resources Development Act of 1992 (Public Law 102-580), as amended, the Government's financial participation in all elements of the Section 219 Environmental Infrastructure Assistance Project, including this Project, is limited to \$15,000,000 unless otherwise authorized by law, which shall include all Federal funds expended by the Government for planning, design, and construction of the Section 219 Environmental Infrastructure Assistance Project, except for costs incurred on behalf of the Non-Federal Sponsor in accordance with Article II.B. or Article II.E. of this Agreement. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

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

DEPARTMENT OF THE ARMY

METROPOLITAN ST. LOUIS  
SEWER DISTRICT

BY:   
GREGORY C. RAIMONDO  
Lieutenant Colonel, Corps of Engineers  
Acting District Engineer

BY:  BH  
JEFFREY THEERMAN  
Executive Director  
Metropolitan St. Louis Sewer District

DATE: 30 NOV 05

DATE: 11/28/05

CERTIFICATE OF AUTHORITY

I, Randy E. Hayman, do hereby certify that I am the principal legal officer of the Metropolitan St. Louis Sewer District, that the Metropolitan St. Louis Sewer District 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 Metropolitan St. Louis Sewer District in connection with the Old Mill Creek Combined Sewer Overflow Project, St. Louis, Missouri, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the Metropolitan St. Louis Sewer District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

28TH day of NOVEMBER, 2005



RANDY E. HAYMAN

Metropolitan St. Louis Sewer District General Counsel

## 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.

  
JEFFREY THEERMAN      BH  
Executive Director  
Metropolitan St. Louis Sewer District

DATE: 11/28/05