

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
MINNESOTA ENVIRONMENTAL QUALITY BOARD
FOR THE
MINNESOTA RIVER BASIN FEASIBILITY STUDY

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

WITNESSETH, THAT:

WHEREAS, by resolution dated May 10, 1962, the Committee on Public Works, U.S. House of Representatives has requested a review of the Minnesota River Basin, Minnesota, South Dakota, North Dakota, and Iowa with a view to determining the advisability of further improvements in the Minnesota River Basin for navigation, flood control, recreation, low flow augmentation, and other related land and water resources;

WHEREAS, the U.S. Army Corps of Engineers conducted a reconnaissance study of the Minnesota River Basin concerning flooding, navigation, low flow augmentation, recreation, ecosystem restoration, and other related water resource problems and opportunities pursuant to such request and determined that further planning in the nature of a feasibility study for watershed management, ecosystem restoration, water quality, recreation, and other related water resource problems and opportunities should proceed;

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

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the *Study*;

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

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

WHEREAS, the Government and Non-Federal Sponsor have the full authority and

capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Study* in accordance with the terms of this Agreement; and

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

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

ARTICLE I – DEFINITIONS

[SEE NOTE - 9]

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for watershed management, ecosystem restoration, water quality, and recreation at the Minnesota River Drainage Basin, Minnesota, South Dakota, North Dakota, and Iowa, as generally described in the Reconnaissance Study, Minnesota River Basin, Minnesota, South Dakota, North Dakota and Iowa Report, approved by _____ on _____. The term includes the *non-Federal in-kind contributions* described in paragraph K. of this Article.

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

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

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

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

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

2. the decision document for the study is duly approved by the Government, if the project or project modification that is the subject of this *Study* will not require further Congressional authorization to implement the recommended plan; or

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

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

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

H. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

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

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

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

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

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

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

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

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

4. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations,

award of contracts or commencement of work on the *Study* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for the *non-Federal in-kind contributions*, shall be exclusively within the control of the Government.

5. At the time the U.S. Army Engineer, St. Paul District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

6. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *non-Federal in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *non-Federal in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

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

8. Notwithstanding paragraph A.4. and paragraph A.6., if the award of any contract for work on the *Study*, or continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, would result in *excess study costs*, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for work on the *Study*, and continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Study* or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, but in no event shall the award of contracts or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces be deferred for more than six months. If the Government and the Non-Federal Sponsor agree to not proceed or fail to reach agreement on proceeding with further contract awards for the *Study*, or the continuation of work on the *Study* using the Government's or the Non-Federal Sponsor's own forces, the parties shall terminate this

Agreement and proceed in accordance with Article IX.E. of this Agreement.

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

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

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement will be less than the Non-Federal Sponsor's required share of 50 percent of *study costs to be shared during the period of study*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph C.1.a. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

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

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

1. The Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share prior to any consideration of the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

2. The Non-Federal Sponsor shall provide funds in the amount determined by this

paragraph in accordance with Article IV.C.3. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph D.1. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph F. of this Article.

E. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *non-Federal in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *non-Federal in-kind contributions*.

1. Acceptance by the Government of *non-Federal in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *non-Federal in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *non-Federal in-kind contributions* are necessary for the *Study*.

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

3. The Non-Federal Sponsor's costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *non-Federal in-kind contributions* are provided and the time the costs are included in *total study costs*.

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

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

F. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph C.1.a. and paragraph D.1. of this Article for the costs of the *non-Federal in-kind contributions* determined in accordance with

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

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

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

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

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

ARTICLE III - STUDY COORDINATION TEAM

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

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

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

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; external peer review, if required; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of and scheduling for the *non-Federal in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

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

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

ARTICLE IV - METHOD OF PAYMENT

[SEE NOTE - 15]

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

1. As of the effective date of this Agreement, *total study costs* are projected to be \$_____ ; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement is projected to be \$_____ ; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement are projected to be \$_____ ; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement is projected to be \$_____ ; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement is projected to be \$_____ ; and the *non-Federal proportionate share* is projected to be _____ percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 1, 2008 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; *study costs to be shared during the period of study*; the amount of funds determined in accordance with Article II.C.1.a. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.1.b. of this Agreement; *excess study costs*; the amount of funds determined in accordance with Article II.D.1. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement; the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.E. of this Agreement; the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement; and the *non-Federal proportionate share*.

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

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for work on the *Study* or commencement of work on the *Study* 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 its projected share under Article II.C.1.b. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, **St. Paul District (B6)**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable

to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to Article II.F. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations to be shared during the period of study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations to be shared during the period of study as financial obligations to be shared during the period of study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **30** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, *study costs to be shared during the period of study*, and *excess study costs*. In addition, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *study costs to be shared during the period of study* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, **St. Paul District (B6)**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total

contributions provided by the Non-Federal Sponsor for *study costs to be shared during the period of study* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.G. of this Agreement, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

3. Should the final accounting show that the Non-Federal Sponsor's total required share of *excess study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto the Non-Federal Sponsor, within the applicable time frame described below, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, **St. Paul District (B6)**" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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

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

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

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

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

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

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

iii. no later than 2 years after the date of the termination of the

Study, whichever is earliest.

ARTICLE V - DISPUTE RESOLUTION

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

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by 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 *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with

Government Auditing Standards and the cost principles in 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 study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”.

ARTICLE VIII - RELATIONSHIP OF PARTIES

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

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fail 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 performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Study*.

C. In the event the Government projects that the amount of Federal funds the

Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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

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

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

additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE X - NOTICES

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

If to the Non-Federal Sponsor:

If to the Government:

Minnesota River Basin Project Manager
St. Paul District, U.S. Army Corps of Engineers
190 Fifth Street East
St. Paul, Minnesota 55101-1638

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XI - CONFIDENTIALITY

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

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

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

DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL SPONSOR]

BY: _____

[TYPED NAME]

[TITLE IN FULL]

BY: _____

[TYPED NAME]

[TITLE IN FULL]

DATE: _____

DATE: _____

[SEE NOTE - 29]

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the [FULL NAME OF NON-FEDERAL SPONSOR], that the [FULL NAME OF NON-FEDERAL SPONSOR] is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the [FULL NAME OF NON-FEDERAL SPONSOR] in connection with the feasibility study for the [FULL NAME OF "STUDY"], and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the [FULL NAME OF NON-FEDERAL SPONSOR] have acted within their statutory authority.

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

[SIGNATURE]

[TYPED NAME]

[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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

[SIGNATURE OF FCSA SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____