

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**THE COMMONWEALTH OF VIRGINIA ACTING BY AND THROUGH ITS  
STATUTORY AGENT THE VIRGINIA PORT AUTHORITY**  
FOR  
**THE NORFOLK HARBOR AND CHANNELS NAVIGATION IMPROVEMENTS  
PROJECT, VIRGINIA**

THIS AGREEMENT is entered into this 26<sup>th</sup> day of April, 2022, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Norfolk District (hereinafter the "District Engineer") and the Commonwealth of Virginia acting by and through its statutory agent the Virginia Port Authority (hereinafter the "Non-Federal Sponsor"), represented by its CEO and Executive Director.

WITNESSETH, THAT:

WHEREAS, construction of the Norfolk Harbor and Channels Navigation Improvements Project, Virginia, (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by Section 2201 (a) of the Water Resources Development Act (WRDA) of 1986 and Section 1403 of the America's Water Infrastructure Act of 2018 (Public Law 115-270);

WHEREAS, Section 101 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor's full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the general navigation features, which includes deepening the Atlantic Ocean Channel to a required depth of -59 feet Mean Lower Low Water (MLLW), deepening the Thimble Shoal Channel to a required depth of -56 feet MLLW, deepening the Norfolk Harbor Channel to a required depth of -55 feet MLLW, deepening the Norfolk Harbor Entrance Channel to a required depth of -55 feet MLLW, deepening the Newport News Channel to a required depth of -55 feet MLLW, widening the Thimble Shoal Channel east of the

Chesapeake Bay Bridge Tunnel (CBBT) to 1,300 feet, widening the Thimble Shoal Channel west of the CBBT to 1,400 feet for 5.1 statute miles, widening Anchorage F to 3,620 feet and associated modifications of the approach area, deepening Anchorage F to a required depth of -51 feet MLLW, with dredged material placement in the Dam Neck Ocean Disposal Site, the Norfolk Ocean Disposal Site and the Craney Island Dredged Material Management Area, and including any toll charges for disposition of dredged material in the Craney Island Dredged Material Management Area required for construction, operation, and maintenance of the general navigation features (hereinafter the “toll charges”) at the Port of Virginia, Virginia, as generally described in the Norfolk Harbor Navigation Improvements Final General Reevaluation Report and Environmental Assessment, dated June, 2018 and approved by the Chief of Engineers on June 29, 2018 and the Norfolk Harbor Navigation Improvements Final Meeting Area Validation Report and Supplemental Environmental Assessment, dated January, 2022 and approved by the Division Commander for the North Atlantic Division on January 26, 2022. Craney Island Dredged Material Management Area is the only anticipated upland dredged material placement facility for this project.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to design and construction of the general navigation features of the Project. The term includes the Government’s costs and the Non-Federal Sponsor’s creditable contributions pursuant to the terms of the Design Agreement executed on February 6, 2019; the Government’s engineering, design, and construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any highway or railroad bridges over navigable waters of the United States); the Government’s supervision and administration costs; the Government’s costs of removing obstructions; and the Non-Federal Sponsor’s creditable costs for providing in-kind contributions, if any; the costs of mitigation, including monitoring and adaptive management if applicable; and the costs of historic preservation activities except for data recovery for historic properties.. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; additional work, if any; or the Non-Federal Sponsor’s cost for negotiating this Agreement or for providing relocations or real property interests, except for those provided for mitigation. It also does not include any costs for local service facilities or for aids to navigation.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities. Acquisition of real property interests may require the performance of relocations and removal of obstructions.

E. The term “relocation” means the alteration, lowering, raising, or replacement and attendant demolition of a utility (including privately and publicly owned pipelines, cables, and related facilities located in or under navigable waters of the United States, regardless of whether they serve the general public), cemetery, highway or railroad (including any bridge thereof), or public facility that interferes with construction, operation, and maintenance of the Project, excluding any highway or railroad bridges over navigable waters of the United States.

F. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

G. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for North Atlantic Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

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

I. The term “Maximum Cost Limit” means the statutory limitation, as applicable, on the total cost of the Project, as determined by the Government in accordance with Section 902 of WRDA 1986, as amended (33 U.S.C. 2280), and Government regulations issued thereto.

J. The term “obstruction” means any utility or structure located in or under navigable waters of the United States that must be removed to construct, operate, and maintain the Project but that does not require relocation.

K. The term “additional work” means items of work related to, but not cost shared as part of, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall complete design and undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section

601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Non-Federal Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. The Non-Federal Sponsor shall provide 10 percent of construction costs allocated by the Government to that portion of the Project with a channel depth not in excess of 20 feet; 25 percent of construction costs allocated by the Government to that portion of the Project with a channel depth in excess of 20 feet but not greater than 50 feet; and 50 percent of construction costs allocated by the Government to that portion of the Project with a channel depth in excess of 50 feet.

a. If providing in-kind contributions as part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

b. After considering the contributions provided pursuant to the Design Agreement and the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year to meet its cost share. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.C.1.

c. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of construction, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.1.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, acquire or compel the removal of obstructions, except for those obstructions for which the Government exercises the navigation servitude or otherwise compels such removal, and perform or ensure the performance of relocations required for construction, operation, and maintenance of the Project. For each relocation of a utility, or portion thereof, located in or under navigable waters of the United States that is required to accommodate a channel depth over 45 feet, the Non-Federal Sponsor shall pay to the owner of the utility at least one half of the owner's relocation costs, unless the owner voluntarily agrees to waive all or a portion of the Non-Federal Sponsor's contribution.

3. The Non-Federal Sponsor shall pay an additional 10 percent of construction costs (hereinafter the "additional 10 percent payment"), less any credit afforded by the

Government for the real property interests and relocations required for the Project, over a period not to exceed 30 years in accordance with Article VI.D.

4. The Non-Federal Sponsor shall ensure that the local service facilities are constructed, operated, and maintained, at no cost to the Government, and that all applicable licenses and permits necessary for construction, operation, and maintenance of such work are obtained.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. The Government, as it determines necessary and subject to the availability of funds, shall operate and maintain the Project using funds appropriated by the Congress and, if applicable, funds provided by the Non-Federal Sponsor. The operation and maintenance will generally consist of a continuation of existing operation and maintenance practices for the channels and anchorage. Maintenance dredging and related support activities would be conducted on a regular annual basis, determined by and monitored with periodic condition surveys, with individual channel reaches dredged on cycles of every other year or longer so that dredging occurs almost every year with channel reaches alternating from year to year. Dredged material placement will follow the existing practices of Craney Island Dredged Material Management Area receiving material from the inner channels and Dam Neck Ocean Disposal Site receiving material from Thimble Shoal Channel and Atlantic Ocean Channel.

1. For general navigation features in excess of 50 feet, the Non-Federal Sponsor shall pay 50 percent of the excess cost of operation and maintenance, which includes operation and maintenance of dredged material placement facilities (toll charges), over that cost which the Government would have incurred for operation and maintenance of the Project if the channel had a depth of 50 feet. No later than August 1<sup>st</sup> prior to each fiscal year in which such operation and maintenance will be performed, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.E.

2. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Non-Federal Sponsor shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Non-Federal Sponsor shall not otherwise modify or improve the dredged material placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408.

F. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

H. The Non-Federal Sponsor may request in writing that the Government perform additional work on the Non-Federal Sponsor's behalf. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of construction of such work, in advance of the Government performing the work. In addition, the Non-Federal Sponsor is responsible for providing, at no cost to the Government, any additional real property interests and relocations determined by the Government to be required for construction, operation, and maintenance of such work.

### ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests required for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and provide the Government with authorization for entry thereto according to the Government's construction schedule for the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project and, in accordance with Article IV.A., that the real property interests are investigated and that HTRW does not exist in, on, or under the real property interests.

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

C. The Government, after consultation with the Non-Federal Sponsor, shall identify obstructions to construction, operation, and maintenance of the Project and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such obstructions and shall provide the Non-Federal Sponsor with a written notice to proceed with acquiring or compelling the removal of such obstructions. The Non-Federal Sponsor shall acquire or compel the removal of such obstructions in accordance with the Government's construction schedule for the Project. If the owner of an obstruction cannot be located, has filed for bankruptcy, or no longer exists as a legally constituted entity, the Government shall remove the obstruction during construction of the Project after following all applicable procedures in Parts 325 and 326 of Title 33 of the Code of Federal Regulations.

D. To the maximum extent practicable, no later than 30 calendar days after the Government provides the Non-Federal Sponsor with written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, perform the necessary relocations, or invoke the navigation servitude or compel utility relocations or removal of obstructions under navigable waters of the United States. The Government's provision of real property interests or relocations on the Non-Federal Sponsor's behalf, or invoking the navigation servitude or otherwise compelling utility relocations or removal of obstructions under navigable waters of the United States does not alter the Non-Federal Sponsor's responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.

1. In General. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work. The Government shall acquire the real property interests, perform the relocations, or invoke the navigation servitude or otherwise compel utility relocations or removal of obstructions under navigable waters of the United States, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title, and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds.

2. Relocations of Utilities Located in or under Navigable Waters of the United States. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude or otherwise compel relocation of utilities located in or under navigable waters of the United States, the Non-Federal Sponsor must demonstrate that it has made a good faith effort to negotiate with the owner(s) for relocation of the utilities; that it lacks authority to compel relocation of the utilities through eminent domain or other legal proceedings; and that payment obligations for relocation costs, as between the Non-Federal Sponsor and the utility owner(s), are clear under the laws of the Commonwealth of Virginia and the terms of applicable non-Federal permits, licenses, or agreements. The Non-Federal Sponsor must also obtain a letter from the Commonwealth of Virginia, signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude. The Government exercising the navigation servitude or otherwise compelling relocation of utilities does not negate or otherwise affect the Non-Federal Sponsor's payment obligations for relocation costs under the laws of the Commonwealth of Virginia; the terms of applicable non-Federal permits, licenses, or agreements; or Section 101(a)(4) of WRDA 1986, as amended (33 U.S.C. 2211(a)(4)).

3. Removal of Obstructions. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude or otherwise compel removal of obstructions, the Non-Federal Sponsor must demonstrate that the owner of the obstruction has no compensable interest under the laws of the Commonwealth of Virginia or the terms of applicable non-Federal permits, licenses, or agreements; that it has made a good faith effort to negotiate with the owner(s) for removal of the obstructions; and that it lacks authority to compel removal of obstructions through eminent domain or other legal proceedings. The Non-Federal Sponsor must also obtain a letter from the Commonwealth of Virginia, signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude or otherwise compel removal of the obstructions.

E. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

#### ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the

Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

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

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

## ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government, in accordance with the following procedures, requirements, and conditions, shall credit the value of real property interests and relocations required for the Project against the additional 10 percent payment. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

### 1. Real Property Interests.

a. General Procedure. For each creditable real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for such real property interests.

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

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-Federal Sponsor's request, 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 appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event that the issues cannot be resolved, 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. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

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

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

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of

available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall credit the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such relocations.

a. For a relocation other than a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation.

b. For a relocation of a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the costs borne by the Non-Federal Sponsor but shall not exceed the total value of the relocation as determined by the Government.

c. If the Government exercises the navigation servitude or otherwise compels any relocation of utilities, the Government shall credit the costs incurred by the Government and paid by the Non-Federal Sponsor pursuant to Article III.D.

d. In general, the value of a relocation shall be equivalent to the costs, documented to the satisfaction of the Government, incurred to provide the relocation. The value may not exceed the amount 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. For the relocation of a highway or road, including any bridge thereof, that is owned by a public entity, a functionally equivalent facility may be constructed to the current design standard that the Commonwealth of Virginia would apply under similar conditions of geography and traffic load. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and

administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Removal of Obstructions. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such removal.

a. If the owner has a compensable interest in the obstruction, the Non-Federal Sponsor is responsible for all costs to acquire the necessary interest and such costs are creditable. Any such obstruction acquired by the Non-Federal Sponsor will be removed by the Government during construction, with the Government's costs of such removal included in construction costs.

b. If the owner does not have a compensable interest but can be located, the Non-Federal Sponsor shall ensure that the obstruction is removed at the owner's expense. Costs incurred by the Non-Federal Sponsor to compel such removal are not eligible for credit.

c. If the owner does not have a compensable interest and cannot be located, has filed for bankruptcy, or no longer exists as a legally constituted entity, the Government will remove the obstruction during construction, with the Government's costs of such removal included in construction costs.

d. Any action by the Government to exercise the navigation servitude or otherwise compel removal of obstructions does not alter the cost sharing and crediting described in this paragraph.

B. The Government, in accordance with the following procedures, requirements, and conditions, shall include in construction costs, the costs for in-kind contributions determined by the Government to be integral to the Project and credit such costs against the non-Federal share of construction costs. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

2. No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are

completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; costs that exceed the Government's estimate of the cost for such in-kind contributions; or against the additional 10 percent payment.

C. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project. In addition, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for the cost of real property interests, relocations, or the Government exercising the navigation servitude or authority under the Rivers and Harbors Appropriation Act of 1899, as amended, in excess of the additional 10 percent payment.

#### ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$471,786,000, with the Government's share of such costs projected to be \$235,893,000 and the Non-Federal Sponsor's share of such costs projected to be \$235,893,000, which includes creditable in-kind contributions projected to be \$208,774,000 and the amount of funds to be provided during construction projected to be \$27,119,000. In addition, the Non-Federal Sponsor's additional 10 percent payment for the Project, excluding interest, paid over a period not to exceed 30 years, is projected to be \$47,179,000, reduced to \$37,021,000 after deducting creditable real property interests and relocations, which are projected to be \$10,158,000. Average annual costs for the operation and maintenance activities for the Project are projected to be \$8,264,000, with the Government's costs projected to be \$4,132,000 and the Non-Federal Sponsor's costs projected to be \$4,132,000. The costs for additional work are projected to be \$0. These amounts are estimates only that are 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. While undertaking construction, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year. While undertaking cost shared operation and maintenance activities, if applicable,

the Government will provide appropriate financial reports periodically to the Non-Federal Sponsor.

C. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide funds by delivering a check payable to “FAO, USAED, Norfolk (E4)” to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal cost share as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s required share of such costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

3. Upon completion or termination of construction of the Project, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor to meet its cost share, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to “FAO, USAED, Norfolk (E4)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Such final accounting does not limit the Non-Federal Sponsor’s responsibility to pay its cost share, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its cost share, the Government shall refund such excess amount, subject to the availability of funds for the refund.

D. Payment of Additional 10 Percent.

1. As a part of the final accounting conducted pursuant to Article VI.C.3., the Government shall determine the additional 10 percent payment and then deduct the creditable value, in accordance with Article V, of real property interests and relocations for the Project. If the remainder is greater than zero, the Government shall calculate initial annual installments amortized over a period not to exceed 30 years using an interest rate determined in accordance with Section 106 of WRDA 1986. The payment period begins on the date the Government notifies the Non-Federal Sponsor of the amount of the initial annual installments.

2. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of this amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of WRDA 1986. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

3. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government's notification pursuant to paragraph D.1. of this Article, and each annual installment thereafter on the anniversary date of such notification, through either payment method specified in Article VI.C.3.

E. Payment of Funds for Operation and Maintenance.

1. The Non-Federal Sponsor shall provide funds required to meet its share of operation and maintenance costs of general navigation features in excess of 50 feet through either payment method specified in Article VI.C.3.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of operation and maintenance costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover such operation and maintenance costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

F. If the Government agrees to acquire or perform, as applicable, real property interests or relocations on the Non-Federal Sponsor's behalf, invoke the navigation servitude or compel utility relocations or removal of obstructions, or undertake additional work on the Non-Federal Sponsor's behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days after receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.C.3. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in

the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction if the Maximum Cost Limit is exceeded.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement 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 VIII - HOLD AND SAVE

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

#### ARTICLE IX - DISPUTE RESOLUTION

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

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

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

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

## ARTICLE XI - RELATIONSHIP OF PARTIES

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. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

## ARTICLE XII - NOTICES

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

If to the Non-Federal Sponsor:  
CEO and Executive Director  
The Virginia Port Authority  
Virginia Port Authority  
600 World Trade Center  
Norfolk, Virginia 23510

If to the Government:  
District Commander  
U.S. Army Corps of Engineers, Norfolk District  
803 Front Street  
Norfolk, VA 23510

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

ARTICLE XIII - 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 XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS


The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the General Assembly of the Commonwealth of Virginia, where creating such an obligation would be inconsistent with Article X, Section 7 of the Constitution of the Commonwealth of Virginia. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

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

DEPARTMENT OF THE ARMY

COMMONWEALTH OF VIRGINIA  
ACTING BY AND THROUGH ITS  
STATUTORY AGENT, THE  
VIRGINIA PORT AUTHORITY

BY: Brian P. Hallberg  
BRIAN P. HALLBERG  
Colonel, U.S. Army  
District Engineer

BY:   
STEPHEN A. EDWARDS  
CEO and Executive Director  
Virginia Port Authority

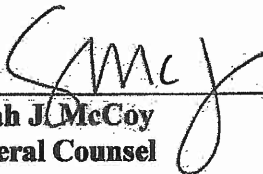
DATE: 26 Apr 2022

DATE: 07/21/2022

CERTIFICATE OF AUTHORITY

I, Sarah McCoy, do hereby certify that I am the principal legal officer for the Virginia Port Authority, that the Virginia Port Authority 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 Virginia Port Authority in connection with the Norfolk Harbor and Channels Navigation Improvements Project, Virginia, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this agreement on behalf of the Virginia Port Authority acted within [INSERT: his or her, as applicable] statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
18<sup>th</sup> day of March 20    .

  
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Sarah J. McCoy  
General Counsel

## CERTIFICATION REGARDING LOBBYING

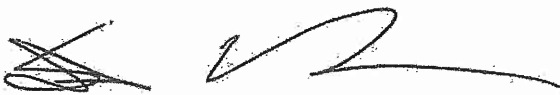
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



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STEPHEN A. EDWARDS  
CEO AND EXECUTIVE DIRECTOR  
VIRGINIA PORT AUTHORITY

DATE: 03/18/2022