

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
COMMONWEALTH OF VIRGINIA
FOR
DESIGN AND CONSTRUCTION
FOR THE
GREAT WICOMICO RIVER, VIRGINIA ELEMENT, CHESAPEAKE BAY OYSTER
RECOVERY PROJECT

THIS AGREEMENT is entered into this 06 day of December, 2024, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Norfolk District and the Commonwealth of Virginia (hereinafter the "Non-Federal Sponsor"), represented by the Commissioner of the Virginia Marine Resources Commission.

WITNESSETH, THAT:

WHEREAS, Section 704(b)(2)(D) of the Water Resources Development Act (hereinafter "WRDA") of 1986, as amended (33 U.S.C. 2263), authorizes the Secretary of the Army to design and construct projects for oyster restoration and rehabilitation in the Chesapeake Bay and its tributaries (hereinafter commonly referred to as the "Chesapeake Bay Oyster Recovery Program");

WHEREAS, projects undertaken by the Government under the Chesapeake Bay Oyster Recovery Program are developed, and their effectiveness evaluated, in consultation with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration;

WHEREAS, construction of the Great Wicomico River, Virginia element of the Chesapeake Bay Oyster Recovery Project was completed on September 2015 (hereinafter the "Completed Project", as defined in Article I.A. of this Agreement) pursuant to the Project Cooperation Agreement that the Government and Non-Federal Sponsor entered into on September 17, 2001, as amended by the First Amendment on July 21, 2004 (hereinafter the "PCA");

WHEREAS, cost shared adaptive management for the Completed Project (hereinafter the "Project", as defined in Article I.B. of this Agreement) is necessary to ensure the functionality and benefits of the Completed Project are garnered, as explicitly described in the performance standards section of the adaptive management plan, as approved by the Division Commander for North Atlantic Division (hereinafter the "Division Commander") on May 23, 2023;

WHEREAS, Section 704(b)(4) of WRDA 1986, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Non-Federal Sponsor understands that no credit or reimbursement will be afforded for the value of real property interests, relocations, and in-kind services that exceeds 25 percent of construction costs, or for real property interests that were previously provided as an item of local cooperation for another Federal project;

WHEREAS, as of the effective date of this Agreement, \$4,150,000 of Federal funds provided by Congress is available to carry 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 “Completed Project” means the construction of the Great Wicomico River, Virginia element consisting of sanctuaries of 20 acres of Medium-Relief Reefs and 41 acres of Low-Relief Reefs, and 65 acres of non-sanctuary spat-on-shell production areas, with re-shelling of the spat-on-shell areas at a rate sufficient to replace any shells removed during spat-on-shell movement and stocking operations that was completed on September 2015 pursuant to the PCA.

B. The term “Project” means the cost shared adaptive management measures consisting of raising some of the reefs from low relief to high relief, construction of up to 7 acres of new reef, and adding habitat stones throughout the reef network, as generally described in the Final Supplemental Environmental Assessment, including the Adaptive Management and Monitoring Plan, dated April 2023 and approved by the Division Commander on May 24, 2023 (hereinafter the “Decision Document”).

C. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (See 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.

D. 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 directly related to design, and construction of the Project and cost shared. The term includes the Government’s cost of pre-Agreement planning activities related to the Decision Document; the Government’s costs of engineering, design, and construction; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing any additional real property interests and relocations required for the Project and for providing in-kind services; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; 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; or the Non-Federal Sponsor’s cost to negotiate this Agreement.

E. The term “real property interests” means the lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas that are

required for the Project. Acquisition of real property interests may require the performance of relocations.

F. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation for the Project. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

G. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Norfolk District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

H. The term “in-kind services” means those services, including materials, provided by the Non-Federal Sponsor after October 1, 2000 that enhance the viability of oyster restoration, are cost effective, and identified as being integral to the Project or Completed Project and approved in writing by the Division Commander. To be integral to the Project, the service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind services 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.

I. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.”

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. However, if after completion of the design portion of the Project the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.E. 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 contribute 25 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction, operation, and maintenance of the Project.

2. If providing in-kind services as part of its 25 percent cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such services. As functional portions of the services are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Any in-kind services provided by the Non-Federal Sponsor shall be subject to a technical review and on-site inspection by the Government to verify it is suitable for use in carrying out the Project. 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, as applicable.

3. After considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its 25 percent cost share for the then-current fiscal year. The determination of such estimated amount of funds will also consider the Non-Federal Sponsor's 25 percent cost share for pre-Agreement planning activities related to the Decision Document that were previously incurred by the Government. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

4. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st 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.

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 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 effect(s) of construction are determined to be 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. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, the District Commander shall so notify the Non-Federal Sponsor in writing within 30 calendar days of such determination, and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof, in conjunction with the Completed Project. Such activities will generally consist of maintaining the reefs as “closed” for shellfish harvest, following the approved April 2023 Adaptive Management and Monitoring Plan. The Government shall provide the Non-Federal Sponsor with an updated OMRR&R Manual and as-built drawings, as necessary. The Government and the Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

1. The Government’s undertaking the Project has no effect on the Non-Federal Sponsor’s continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Completed Project pursuant to the PCA, except for any portion thereof that is modified by construction of the Project and addressed in the updated OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Completed Project and the Project. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement or the PCA and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project and the Completed Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or the PCA or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement and the PCA.

3. Any monitoring and adaptive management for the Completed Project beyond that required for the Project shall be a part of the Non-Federal Sponsor’s OMRR&R responsibilities.”

F. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the outputs produced, hinder operation and maintenance, or interfere with the proper function of the Project.

G. The Non-Federal Sponsor shall not use the Project, or real property interests required for construction, operation, and maintenance of the Project, as a wetlands bank or mitigation credit for any other project.

H. 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.

I. 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. 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.

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. Prior to the Non-Federal Sponsor initiating acquisition of such real property interests or the Government initiating construction on real property interests already owned or controlled by the Non-Federal Sponsor, in accordance with Article IV.A., the Non-Federal Sponsor shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of the Project. Subject to the requirements in Article IV.B., the Non-Federal Sponsor shall acquire the real property interests and shall 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.

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. 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, or perform the necessary relocations. 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 the acquisitions, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the 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. The Government's provision of real property interests or performing relocations on the Non-Federal Sponsor's behalf 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.

D. 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 or Commonwealth law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) displaced persons 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 in, on, or under real property interests the Non-Federal Sponsor owns or controls or 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.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

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

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

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

C. The Government and the Non-Federal Sponsor agree that the amount of Non-Federal Sponsor's costs that are eligible for inclusion in the construction costs and credited towards the Non-Federal Sponsor's share of such costs shall be determined in accordance with the following procedures, requirements, and conditions and 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 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.

(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 services, 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 not eligible for credit, or those 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.

(4) No credit shall be afforded for real property interests that are required for the Project if such interests were previously credited as part of the Completed Project.

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. If such real property interests are eligible for credit, the Non-Federal Sponsor shall 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 C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the 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 include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, 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.D., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable State or Commonwealth law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind services that were undertaken prior to the effective date of this Agreement.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of

relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the Commonwealth of Virginia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. 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. In-Kind Services. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind services that are integral to the Project.

a. 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 services, which may include engineering and design; construction; supervision and administration; and providing shell stock material and adult and juvenile seed oysters, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. For shell stock material and adult and juvenile seed oysters, the date the Non-Federal Sponsor provides the Government with possession shall be used to determine the fair market value for crediting purposes.

b. 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 services are completed and credit is afforded; in-kind services performed prior to October 1, 2000; the value of in-kind services obtained at no cost to the Non-Federal Sponsor; shell stock material and adult and juvenile seed oysters that the Government determines are not suitable for carrying out the Project; in-kind services previously credited on another project carried out under the Chesapeake Bay Oyster Recovery Program or any another Federal project; or costs that exceed the Government's estimate of the cost for such in-kind services.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the 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 only be entitled to credit for real property interests, relocations, and in-kind services up to 25 percent of construction costs. In addition, the Non-Federal Sponsor shall not receive credit for real property interests that were previously provided as an item of local cooperation for another Federal project.

ARTICLE VI - PROVISION OF NON-FEDERAL COST SHARE

A. As of the effective date of this Agreement, construction costs are projected to be \$5,511,000. The Government's share of such costs are projected to be \$4,133,000, which includes the costs incurred by the Government for pre-Agreement planning activities related to the Decision Document in the amount of \$70,000. The Non-Federal Sponsor's share of such costs are projected to be \$1,378,000, which includes creditable real property interests and relocations projected to be \$0, creditable in-kind services performed prior to the effective date of this Agreement were determined to be \$1,228,250 and creditable in-kind services to be performed after the effective date of this Agreement are projected to be \$149,750, and the amount of funds required to meet its 25 percent cost share projected to be \$0. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation of the Project are projected to be \$100,000. 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. 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 services; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs 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 required 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 required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction 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 the Non-Federal Sponsor's required share of such construction 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.

E. Upon completion or termination of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, 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. A final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, 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 share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.”

F. If the Government agrees to acquire or perform, as applicable, real property interests or relocations, 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 of 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.E. 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 that was 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.

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 design and 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, maintenance, repair, rehabilitation, and replacement 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.

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:
Commissioner
Virginia Marine Resources Commission
380 Fenwick Road, Hampton, VA 23651

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

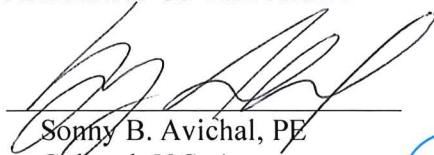
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

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

DEPARTMENT OF THE ARMY

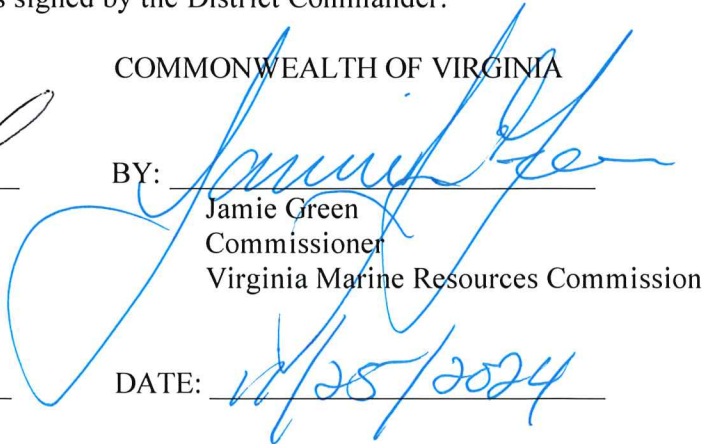
COMMONWEALTH OF VIRGINIA

BY:



Sonny B. Avichal, PE
Colonel, U.S. Army
Commanding

BY:



Jamie Green
Commissioner
Virginia Marine Resources Commission

DATE:

~~6/12/2024~~

12/6/2024

DATE:

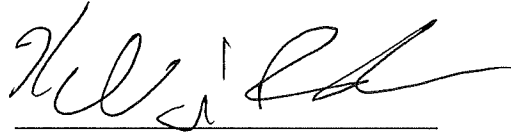
~~11/25/2024~~

12/25/2024

CERTIFICATE OF AUTHORITY

I, Kelci A.M. Block, do hereby certify that I am assigned as the principal legal officer for the Commonwealth of Virginia, Virginia Marine Resources Commission, that the Commonwealth of Virginia is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the Department of the Army and the Commonwealth of Virginia, Virginia Marine Resources Commission in connection with the Great Wicomico River, Virginia element, Chesapeake Bay Oyster Recovery Project and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Project Partnership 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 Project Partnership Agreement on behalf of the Commonwealth of Virginia, Virginia Marine Resources Commission acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
3rd day of December 2024.



Kelci A.M. Block
Assistant Attorney General

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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



Jamie Green
Commissioner
Virginia Marine Resources Commission

DATE: 11/25/2024

