

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
SOUTH CAROLINA STATE PORTS AUTHORITY  
FOR  
CHARLESTON HARBOR, SOUTH CAROLINA PROJECT

THIS AGREEMENT is entered into this 19<sup>th</sup> day of July, 2017, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Commander, Charleston District (hereinafter the "District Commander") and the South Carolina State Ports Authority (hereinafter the "Non-Federal Sponsor"), represented by its President and Chief Executive Officer.

WITNESSETH, THAT:

WHEREAS, construction of the locally preferred plan for the Charleston Harbor, South Carolina Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by Section 1401(1) of the Water Resources Development Act of 2016, Public Law 114-322;

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

WHEREAS, the Non-Federal Sponsor will pay 100 percent of construction costs of the Project that exceed the construction costs of the national economic development plan (hereinafter the "NED Plan", as defined in Article I.B. of this Agreement);

WHEREAS, the Non-Federal Sponsor considers it to be in its own interest to expedite construction of the Project by advancing portions of the Federal share of the cost of the Project, as authorized by 33 U.S.C. 561; 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 for the locally preferred plan, which includes deepening the existing entrance channel from -47 to -54 feet Mean Lower Low Water (MLLW), including wave allowances, and extending the entrance channel about three miles to the -54 depth contour MLLW; deepening the inner harbor from -45 to -52 feet MLLW from the Entrance Channel to the confluence of the Wando and Cooper Rivers, about two miles up the Wando River to the Wando Welch Terminal and about three miles up the Cooper River to the Hugh K. Leatherman Sr. Terminal; deepening the upper harbor from -45 to -48 feet MLLW from upper end of the Hugh K. Leatherman Sr. Terminal to the North Charleston Terminal; enlarging the existing turning basins at the Wando Welch Terminal to approximately 1615 feet, the Hugh K. Leatherman Sr. Terminal (referred to as the New Navy Base terminal in study documents) to approximately 1,680 feet, and the North Charleston Terminal to approximately 1,525 feet; construction of improvements to the dredged material placement facilities at the Daniel Island Dredged Material Placement Facility and the Clouter Creek Dredged Material Placement Facility; channel widening measures ranging from 50 to 250 feet at various locations throughout the harbor; preservation of approximately 665 acres of freshwater wetlands and construction of approximately 33 acres of artificial reef for mitigation purposes; and environmental and shoreline erosion monitoring and adaptive management (if necessary), as generally described in the Charleston Harbor Post 45, Charleston, South Carolina Final Integrated Feasibility Report and Environmental Impact Statement, dated June 2015 and approved in accordance with the Report of the Chief of Engineers on September 8, 2015 (hereinafter the "Decision Document"). The term does not include any aids to navigation or local service facilities.

B. The term "NED Plan" means the general navigation features, which includes deepening the existing entrance channel from -47 to -52 feet MLLW, including wave allowances, and extending the entrance channel to the -52 depth contour MLLW; deepening the inner harbor from -45 to -50 feet MLLW from the Entrance Channel to the confluence of the Wando and Cooper Rivers, about two miles up the Wando River to the Wando Welch Terminal, and about three miles up the Cooper River to the Hugh K. Leatherman Sr. Terminal (referred to as the New Navy Base terminal in study documents); deepening the upper harbor from -45 to -48 feet MLLW from upper end of the Hugh K. Leatherman Sr. Terminal to the North Charleston Terminal; enlarging the existing turning basins at the Wando Welch Terminal to approximately 1615 feet, and the Hugh K. Leatherman Sr. Terminal to approximately 1,680 feet, and the North Charleston Terminal to approximately 1,525 feet; construction of improvements to the dredged material placement facilities at the Daniel Island Dredged Material Placement Facility and the Clouter Creek Dredged Material Placement Facility; channel widening measures ranging from 50 to 250 feet at various locations throughout the harbor; preservation of approximately 476 acres of freshwater wetlands and construction of approximately 33 acres of artificial reef for mitigation purposes; and environmental and shoreline erosion monitoring and adaptive management (if necessary), as generally described in the Decision Document. The term does not include any aids to navigation or local service facilities.

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 directly related to design and construction of the Project, including mitigation and monitoring, and cost shared. The term includes, but is not necessarily limited to: the Government’s costs and the Non-Federal Sponsor’s creditable contributions pursuant to the terms of the Design Agreement executed on December 16, 2015; the costs of historic preservation activities except for data recovery for historic properties; the Government’s costs of engineering, design, and construction (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; and the Non-Federal Sponsor’s creditable costs for providing in-kind contributions, if any. The term does not include any costs for operation and maintenance; dispute resolution; participation in the Project Coordination Team; audits; or additional work; or the Non-Federal Sponsor’s cost for providing real property interests except for those provided for mitigation, relocations, or negotiating this Agreement.

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.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (including any bridge thereof), or public facility, excluding any highway or railroad bridges over navigable waters of the United States, when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

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 South Atlantic Division. 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 investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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 "additional work" means items of work related to, but not included in, 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. Except for funds allocated for the Project, the Non-Federal Sponsor shall provide all funding required after the date of execution of this Agreement for construction of the Project as follows:

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsor shall provide to the Government \$5,659,000, to cover estimated costs for the current fiscal year, excluding the cost of contract awards. For each subsequent fiscal year of construction, including monitoring and adaptive management, if any, the Government will notify the Non-Federal Sponsor in writing of estimated costs, excluding the costs for contract awards, for that fiscal year, and the Non-Federal Sponsor, in accordance with Article V.C., shall provide the funds necessary to cover such costs to the Government no later than 15 calendar day after such notification.

2. No later than 30 calendar days prior to the scheduled date for award of each contract, the Government will provide written notification to the Non-Federal Sponsor of the amount of funds required by the Government to award such contract, and the Non-Federal Sponsor, in accordance with Article V.C, shall provide to the Government the funds necessary to award that contract no later than 10 calendar days prior to the scheduled award date. In addition, no later than 10 calendar days after notification by the Government to exercise any contract option, the Non-Federal Sponsor shall provide to the Government the full amount of the costs associated with such option, as determined in writing by the Government.

3. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. No later than 15 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds, in accordance with Article V.C.

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

C. In providing in-kind contributions, if any, 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 and provide the Government with a copy of as-built drawings for the work.

D. The Non-Federal Sponsor shall construct, operate, and maintain, at no cost to the Government, the local service facilities, including obtaining all applicable licenses and permits necessary for construction, operation, and maintenance of such work.

E. Using funds provided by the Non-Federal Sponsor, the Government shall undertake construction of the Project in accordance with Federal laws, regulations, and policies. In the event that funds are appropriated and allocated for the Project during construction of the Project, the Government will use those funds toward the Federal share of construction contracts not yet awarded.

1. 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 solicitations for contracts, 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.

2. 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 (NHPA) of 1966, as amended. 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, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

F. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the Project using funds appropriated by the Congress and, as applicable, funds provided by the Non-Federal Sponsor.

1. The Non-Federal Sponsor shall provide 100 percent of the increase in annual operation and maintenance costs determined by the Government to be in excess of that required for the NED Plan. 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 V.D.

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 exclusive right to operate and maintain or manage dredged material placement facilities including the exclusive right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. However, nothing contained herein shall convey to the Government any real property interest owned or controlled by the Non-Federal Sponsor.

G. The Non-Federal Sponsor may request in writing that the Government perform additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander for South Atlantic Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article V.E., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

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 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: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), 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.

J. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, 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 in accordance with Section 902 of the Water Resources Development Act of 1986, as amended. 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.

K. The Non-Federal Sponsor has elected to advance funding required to construct the Project and understands that neither execution of this Agreement nor acceptance of funds constitutes, represents, or implies any commitment on the part of the Department of the Army or the Federal Government to budget or appropriate funds for construction of the Project or to provide for repayment of the Federal share of construction of the Project. To the extent that funds are appropriated and allocated specifically for repayment, the Government shall repay the Non-Federal Sponsor the Federal share of the cost of the NED Plan, as provided in Article VI, that was funded by the Non-Federal Sponsor.

ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND  
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed 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 shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of 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 necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall 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, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor 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 V.E., must provide funds sufficient to cover the costs of the acquisitions or relocations in advance of the Government performing the work. The Government shall acquire the real property interests and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the 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 providing real property interests or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

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

#### ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and 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.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already



initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

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

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. 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 liability to arise under CERCLA.

#### ARTICLE V- PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$529,204,000, and construction costs allocated to the NED Plan are projected to be \$440,080,000. Costs for additional work are projected to be \$4,723,000. 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. While undertaking construction, the Government shall provide the Non-Federal Sponsor with quarterly 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, 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.

C. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide its required funds by delivering a check payable to "FAO, USAED, Charleston (K2)" 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.

2. Upon completion of construction, except for monitoring and adaptive management, 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. The Government shall conduct another final accounting after completion of monitoring and adaptive management and furnish the Non-Federal Sponsor with the written results of such final accounting. Should either final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 30 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. A final accounting does not limit the Non-Federal Sponsor's responsibility to pay such costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting after monitoring and adaptive management determines that funds provided by the Non-Federal Sponsor exceed the construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.

D. Payment of Funds for Operation and Maintenance.

1. The Non-Federal Sponsor shall provide the funds required for the increase in annual operation and maintenance costs in excess of that required for the NED Plan by delivering a check payable to "FAO, USAED, Charleston (K2)" 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.

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 the Non-Federal Sponsor's required share of 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. Any excess funds provided by the Non-Federal Sponsor will be retained by the Government and applied

towards the Non-Federal Sponsor's next payment of funds for such operation and maintenance.

E. If there are real property interests, relocations, or additional work provided on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Charleston (K2)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

#### ARTICLE VI – COST SHARE ALLOCATION AND CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall calculate the Federal and Non-Federal shares by allocating costs as follows:

1. The Non-Federal Sponsor's share is 25 percent of construction costs allocated to the NED Plan in excess of 20 feet but not greater than 50 feet; plus all incremental costs associated with implementation of the Project in excess of the NED Plan.

2. The Non-Federal Sponsor's share shall also include an additional amount equal to 10 percent of construction costs allocated to the NED Plan less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and relocations.

B. Within six months of the allocation of appropriations to repay the Non-Federal Sponsor for the Federal share of the cost of the NED Plan that was funded by the Non-Federal Sponsor, or as soon thereafter as practicable, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the creditable value of the real property interests, relocations, and in-kind contributions in accordance with this Article. Such amounts shall be subject to audit in accordance with Article X to determine reasonableness, allocability, and allowability.

1. Real Property Interests.

a. The Non-Federal Sponsor shall obtain, for each real property interest allocated by the Government to the NED Plan, 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 real property interests owned by the Non-Federal Sponsor on 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, except for such real property interests 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) The Government shall review the appraisal submitted by the Non-Federal Sponsor for each real property interest required. 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 Non-Federal Sponsor shall not receive credit for the value of the real property interest.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. The Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the 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 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. Incidental Costs. The Government shall credit the Non-Federal Sponsor for the incidental costs allocated by the Government to the NED Plan that the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III 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 law due to the acquisition of a real property interest pursuant to Article III.

2. Relocations. The Government shall credit the Non-Federal Sponsor for the value, documented to the satisfaction of the Government, of any relocations

performed by the Non-Federal Sponsor that are allocated by the Government to the NED Plan.

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

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of South Carolina would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in the construction costs and credit the Non-Federal Sponsor for the value, documented to the satisfaction of the Government, of any in-kind contributions integral to design and construction and allocated by the Government to the NED Plan.

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 contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, 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.

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

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

C. 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 or for costs associated with additional work.

#### 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 hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

C. Any suspension or termination of future performance under this Agreement shall not relieve the parties of liability for any obligation incurred.

#### 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 in accordance with Section 902 of the Water Resources Development Act of 1986, as amended.

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 request of the Non-Federal Sponsor, 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 costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor 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:  
President and CEO  
South Carolina State Ports Authority  
P.O. Box 22287  
Charleston, SC 29413-2287

If to the Government:  
District Commander  
U.S. Army Corps of Engineers, Charleston District  
69A Hagood Avenue  
Charleston, SC 29403-5107

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

SOUTH CAROLINA STATE PORTS  
AUTHORITY

BY: 

BY: 

Jeffrey S. Palazzini  
Lieutenant Colonel, U.S. Army  
District Commander

JAMES I. NEWSOME, III  
President and CEO

DATE: 19 Jul 17

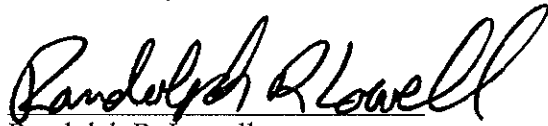
DATE: 7/19/17



CERTIFICATE OF AUTHORITY

I, RANDOLPH R. LOWELL, do hereby certify that I am the principal legal officer of the South Carolina State Ports Authority, that the South Carolina State Ports 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 South Carolina State Ports Authority in connection with the Charleston Harbor, South Carolina Project, 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. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the South Carolina State Ports Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19th day of JULY 2017



Randolph R. Lowell  
General Counsel  
South Carolina State Ports Authority

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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JAMES I. NEWSOME, III  
President and CEO  
South Carolina State Ports Authority

DATE: 7/19/17