AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOR THE
DELAWARE BAYSHORE, DOWNE TOWNSHIP, NEW JERSEY
FLOOD RISK MANAGEMENT FEASIBILITY STUDY

THIS AGREEMENT is entered into this 20th day of May, 2015, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Philadelphia District and the New Jersey Department of Environmental Protection (hereinafter the "Non-Federal Sponsor"), represented by the Commissioner.

WITNESSETH, THAT:

WHEREAS, the Government received a letter, dated March 6, 2015, from the New Jersey Department of Environmental Protection in which it stated its desire to participate in a feasibility study for bayside flood risk management in Downe Township, Cumberland County, New Jersey, and in which it acknowledged its financial responsibilities for the study and a project, if one is recommended;

WHEREAS, the Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s; hereinafter "Section 205") to allot from certain appropriations an amount not to exceed $55,000,000 per *fiscal year* for the implementation of small structural and nonstructural projects for flood control and related purposes; provided that no more than $10,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government initiated a feasibility study, to be initially federally funded up to $100,000, and during this federally funded portion the Government determined that the costs of the feasibility study would exceed $100,000;

WHEREAS, the Government and the New Jersey Department of Environmental Protection desire to enter into an agreement (hereinafter the "Agreement") to complete the feasibility study (hereinafter the "*Study*" as defined in Article I.A. of this Agreement) and to share equally the costs of the *Study* that exceed $100,000;

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

WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the "*non-Federal in-kind contributions*" as defined in Article I.I. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions

toward the amount of its required contribution for the *Study*;

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

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Study* in accordance with the terms of this Agreement; and

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

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

ARTICLE I – DEFINITIONS

A. The term "*Study*" shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management along the Delaware Bay in Downe Township, Cumberland County, New Jersey. The term includes the *non-Federal in-kind contributions* described in paragraph I. of this Article.

B. The term "*total study costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study* plus the costs of the *Study* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government's costs of preparation of the decision document for the *Study*; the costs of *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the Government's costs of Agency Technical Review and other review processes required by the Government; the Government's costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VI.B and Article VI.C of this Agreement. The term does not include the first $100,000 incurred by the Government for the *Study*; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies under any other agreement or program; the Non-Federal Sponsor's costs of negotiating this Agreement; or any costs of negotiating a project

cooperation agreement for design and construction of a project or separable element thereof.

C. The term "*period of study*" shall mean the time from the effective date of this Agreement to the date that the decision document for the study is duly approved by the Government or the date that this Agreement is terminated in accordance with Article IX of this Agreement.

D. The term "*financial obligations for the study*" shall mean the financial obligations of the Government and the costs for the *non-Federal in-kind contributions*, as determined by the Government that result or would result in costs that are or would be included in *total study costs*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the sum of the costs included in *total study costs* for the *non-Federal in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b of this Agreement to *financial obligations for the study*, as projected by the Government.

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

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

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

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

J. The term "*Section 205 Annual Program Limit*" shall mean the statutory limitation on the Government's annual allotment for planning, design, and construction of all projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s). As of the effective date of this Agreement, such limitation is $55,000,000.

K. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on 1 July and ending on 30 June.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United

States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

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

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

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

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

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

consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

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

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

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

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than the Non-Federal Sponsor's required share of 50 percent of *total study costs*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share without considering the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph B.4 of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Non-Federal Sponsor's required share of 50 percent of *total study costs* the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph B.5. of this Article and the *Section 205 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total study costs* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *total study costs*: (a) the Non-Federal Sponsor's contribution of funds required by paragraph B.1.b. of this Article; (b) the amount of credit to be afforded for *in-kind contributions* pursuant to paragraph B.4 of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement

3. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the

Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *in-kind contributions*.

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

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

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

d. The Government shall not include in *total study costs* any costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

e. The Government shall not include in *total study costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government. In addition, the Government shall not include in *total study costs* any costs for *in-kind contributions* that were obtained at no cost to the Non-Federal Sponsor.

4. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.1.a of this Article for the costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph B.1.a of this Article; the costs of *in-kind contributions* determined in accordance with paragraph B.3 of this Article; or 50 percent of *total study costs*.

5. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article and included in *total study costs* that exceed the amount of credit afforded for *in-kind contributions* determined in accordance with paragraph B.4 of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Study* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C of this Agreement.

2. If the Government determines that the total amount of Federal funds provided by Congress for all studies and projects implemented pursuant to Section 205 has reached the *Section 205 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Study* within the *Section 205 Annual Program Limit* will not be sufficient to meet the Federal share of *total study costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study* within the *Section 205 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C of this Agreement.

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

E. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

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

ARTICLE III - STUDY COORDINATION TEAM

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

Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Study Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Study Coordination Team informed of the progress of the *Study* and of significant pending issues and actions, and shall seek the views of the Study Coordination Team on matters that the Study Coordination Team generally oversees.

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

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations.

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

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3 of this Agreement, and the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4 of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be $640,000; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be $10,000; the amount of funds determined in

accordance with Article II.B.1.a of this Agreement is projected to be $310,000; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3 of this Agreement are projected to be $10,000; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4 of this Agreement is projected to be $10,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b of this Agreement is projected to be $300,000; and the *non-Federal proportionate share* is projected to be 49.21 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By March 2016 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3 of this Agreement; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4 of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; and the *non-Federal proportionate share*.

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

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.1.b. of this Agreement. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Philadelphia District EROC 5" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement, to cover: (a) the *non-Federal proportionate share* of *financial obligations for the study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share* of *financial obligations for the study* as *financial obligations for the study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional

funds required and provide an explanation of why additional funds are required. Within 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 through any of the payment mechanisms specified in paragraph B.1 of this Article.

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

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *total study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Philadelphia District EROC 5" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total study costs* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.B.5 of this Agreement and the *Section 205 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

ARTICLE V - DISPUTE RESOLUTION

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

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI 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); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

ARTICLE VIII - RELATIONSHIP OF PARTIES

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

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

ARTICLE IX - TERMINATION OR SUSPENSION

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

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other nonfederal interests in connection with the *Study*.

C. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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

E. Any termination of this Agreement or suspension of future performance under this

Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE X - NOTICES

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

If to the Non-Federal Sponsor:

Assistant Commissioner
New Jersey Department of Environmental Protection
401 E. State Street
7th Floor East Wing
P.O. Box 402
Trenton, New Jersey 08625-0402

If to the Government:

District Engineer
U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building – 100 Penn Square East
Philadelphia, PA 19107-3390

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.

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

ARTICLE XI - CONFIDENTIALITY

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

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of New Jersey, where creating such an obligation would be inconsistent with New Jersey Constitution Article 8, Section 2, Paragraph 3, N.J.S.A. 59:13-1 *et seq.*, and N.J.S.A. 59:1-1 *et seq.* of the State of New Jersey.

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U. S. Army Corps of Engineers, Philadelphia District.

DEPARTMENT OF THE ARMY

BY: _____
MICHAEL A. BLISS, P.E.
Lieutenant Colonel, Corps of Engineers
District Engineer
Philadelphia District

DATE: 20 MAY 15

THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
RICH BOORNAZIAN
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of
Environmental Protection

DATE: 5/8/15

CERTIFICATE OF AUTHORITY

I, DAVID C. APY, do hereby certify that I am the principal legal officer of the State of New Jersey Department of Environmental Protection, that the State of New Jersey Department of Environmental Protection 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 Department of Environmental Protection of the State of New Jersey in connection with the feasibility study for flood risk management at Downe Township, Cumberland County, New Jersey, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Department of Environmental Protection of the State of New Jersey have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 11TH day of MAY 2015.

John Jay Hoffman
Acting Attorney General
State of New Jersey
BY: DAVID C. APY
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.

RICH BOORNAZIAN
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental Protection

DATE: 5/8/15