

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION & RECREATION
FOR
DESIGN AND CONSTRUCTION
OF THE
NANTASKET BEACH, DCR RESERVATION, HULL, MA
HURRICANE AND STORM DAMAGE REDUCTION PROJECT

THIS AGREEMENT is entered into this 8th day of April, 2016, by and between the Department of the Army (hereinafter the "Government"), represented by the Director of Civil Works of the U.S. Army Corps of Engineers (hereinafter the "Director of Civil Works") and the Commonwealth of Massachusetts, Department of Conservation & Recreation (hereinafter the "Non-Federal Sponsor"), represented by the Commissioner.

WITNESSETH, THAT:

WHEREAS, design and construction of the Nantasket Beach, DCR Reservation project for hurricane and storm damage reduction (hereinafter the "Project", as defined in Article I.A.) at DCR Reservation in Hull, MA was approved by the North Atlantic Division on February 10, 2015, pursuant to the authority contained in Section 3 of Public Law 79-727, as amended (33 U.S.C. 426g; hereinafter "Section 103");

WHEREAS, pursuant to Section 103, the Government's financial participation in the planning, design, and construction of the Project shall not exceed \$5,000,000;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the Project;

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

WHEREAS, the project will not include any beach improvements with exclusively private benefits; 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.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the 2,100 foot long stone revetment as generally described in the Nantasket Beach, DCR Reservation, Hull, Massachusetts Coastal Storm Damage Reduction Report, dated December 2014 and approved by the Commander for the North Atlantic Division on February 10, 2015 (hereinafter the "Decision Document").

B. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government's preconstruction engineering and design costs; the Government's costs of preparation of environmental compliance documentation; the Government's engineering and design costs during construction; the Non-Federal Sponsor's creditable costs and the Government's costs of investigations to identify the existence and extent of hazardous substances; the costs of historic preservation activities except for data recovery for archaeological remains; the Government's supervision and administration costs; the Government's costs of monitoring; and the value of the Non-Federal Sponsor's creditable costs for providing real property interests, disposal area improvements, and relocations. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; any costs of dispute resolution; any costs for betterments; any costs for additional work; any costs for participation in the Project Coordination Team; any costs for audit; or the Non-Federal Sponsor's cost of negotiating this Agreement.

C. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material disposal areas. Acquisition of real property interests may require the performance of relocations.

D. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required 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.

E. The term "disposal area improvements" means the improvements required on real property interests to enable the ancillary disposal of material that has been dredged or excavated 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.

F. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the U.S. Army Engineer, New England District (hereinafter the "District Engineer"), although the remainder of the Project is not yet complete.

G. The term "betterment" means a difference in the construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element.

H. 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.

I. The term "Federal Participation Limit" means the \$5,000,000 statutory limitation on the Government's financial participation in the planning, design, and construction of the Project as specified in Section 3 of Public Law 79-727, as amended (33 U.S.C. 426g).

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

1. The Non-Federal Sponsor shall contribute 35 percent of the construction costs allocated by the Government to hurricane and storm damage reduction. In accordance with the provisions of Article III and IV, the Non-Federal Sponsor shall provide the real property interests, disposal area improvements, relocations, and investigations for hazardous substances required for construction, operation, and maintenance of the Project. After considering the estimated amount of credit the Government expects to afford to the Non-Federal Sponsor in accordance with Article V.C. for such real property interests, disposal area improvements, relocations, and investigations for hazardous substances, the Government shall determine the estimated funds required for the Non-Federal Sponsor to meet its share of construction costs allocated to hurricane and storm damage reduction and the Non-Federal Sponsor shall provide its required funds contribution during construction of the Project in accordance with Article VII.B.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the Project in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347; hereinafter "NEPA"). However, the Government shall not issue the solicitation for the first construction contract for the Project or commence construction of the Project using its own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. When the District Engineer determines that the construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

B. To the extent practicable and in accordance with Federal law and regulations, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders, prior to contract modification or if not possible as soon thereafter as possible; and all 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.

C. In accordance with Section 103, the Government's total financial obligations for planning, design, and construction of the Project (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with paragraph P. of this Article) shall not exceed the Federal Participation Limit of \$5,000,000. Notwithstanding any other provision of this Agreement and subject to Article XVII, the Non-Federal Sponsor shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article VII.B.

D. The Government, as it determines necessary, shall undertake the identification, survey, or evaluation of historic properties and other actions associated with historic preservation. All costs incurred by the Government for such work shall be included in construction costs and shared in accordance with the provisions of this Agreement except that in the unlikely event that there are costs associated with data recovery of archaeological remains, such costs shall be borne entirely by the Government.

E. At least annually and after storm events, the Non-Federal Sponsor, at no cost to the Government, shall perform surveillance of the Project to determine losses of material and provide results of such surveillance to the Government.

F. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

G. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

H. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this

Agreement and shall implement such plan not later than one year after completion of construction of the Project. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and storm damage risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

J. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of protection the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. For those shores, other than Federal shores, protected pursuant to this Agreement using Federal funds, the Non-Federal Sponsor shall ensure the continued public use of such shores compatible with the authorized purpose of the Project.

L. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas, and other associated public use facilities, open and available to all on equal terms, as described in the Decision Document.

M. 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.

N. Except as provided in Article V, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

O. 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: Title VI 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.

P. The Non-Federal Sponsor may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and approval by the Division Engineer for the North Atlantic

Division. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VII.C., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

ARTICLE III - REAL PROPERTY INTERESTS, DISPOSAL AREA
IMPROVEMENTS, 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 and, if applicable, any additional real property interests needed for betterments or additional work. 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 disposal area improvements 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 improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. 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.

D. 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, disposal area improvements, 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, construct the necessary disposal area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal

Sponsor, in accordance with Article VII.C., must provide funds sufficient to cover the costs of the acquisitions, disposal area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the disposal area improvements, 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, constructing disposal area improvements, 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 clean up and response related thereto.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring real property interests for construction, operation, and maintenance of the Project and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

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 Engineer 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. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, DISPOSAL AREA IMPROVEMENTS, RELOCATIONS, AND INVESTIGATIONS FOR HAZARDOUS SUBSTANCES

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of any real property interests determined by the Government to be required for construction, operation, and maintenance of the Project; the value of any disposal area improvements determined by the Government to be required for construction, operation, and maintenance of the Project; the value of any relocations determined by the Government to be required for construction, operation, and maintenance of the Project; and the costs to perform any investigation for hazardous substances determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1.a. through

C.1.c. of this Article. For incidental costs associated with the acquisition of real property interests, for the value of disposal area improvements constructed by the Non-Federal Sponsor, for the value of relocations performed by the Non-Federal Sponsor, and for costs associated with investigations for hazardous substances, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided in accordance with paragraphs C.1.d., C.2., C.3., C.4., and C.5. of this Article no less frequently than on a biannual basis, to the maximum extent practicable. The Government shall provide the Non-Federal Sponsor with a list of the documents and any specific requirements necessary for credit.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions, as well as additional guidelines to be developed and mutually agreed upon by the Government and the Non-Federal Sponsor. Such costs shall be subject to audit in accordance with Article XII.C. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest 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. In the case of interests in lands subject to shore erosion, appraisals prepared for credit purposes must consider special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (2000).

(1) Date of Valuation. The fair market value of real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If after coordination and consultation with the Government, the Non-Federal Sponsor is unable

to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Except for interests in lands subject to shore erosion, where the amount paid by the Non-Federal Sponsor exceeds the approved appraised amount, 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 Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government.

(1) If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. Except as provided in paragraph C.1.b.(2) below, 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.

(2) For interests in lands subject to shore erosion acquired by eminent domain proceedings, fair market value for crediting purposes shall be the lesser of the amount of the court award for the real property interests taken (or the amount of any stipulated settlement, if applicable), or the amount determined by an appraisal considering special benefits in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (2000) that is approved by the Government.

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

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

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

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

2. Disposal Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of disposal area improvements required for construction, operation, and maintenance of the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any disposal area improvements required for construction, operation, and maintenance of the Project. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value, of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project.

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, street, or way, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the Commonwealth of

Massachusetts 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.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement for disposal area improvements or relocations for construction, operation, and maintenance of the Project 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). Notwithstanding any other provision of this Agreement, 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.

5. Investigations in accordance with Article IV. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in the performance of any investigations for hazardous substances that may exist in, on, or under real property interests directly related to construction, operation, and maintenance of the Project.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for value of or costs it incurs for any of the following:

1. for real property interests that were previously provided as an item of local cooperation for another Federal project; or
2. to provide any additional real property interests, disposal area improvements, relocations, or investigations in accordance with Article IV.A. that the Government determines are needed for betterments or additional work.

ARTICLE VI - PROJECT COORDINATION TEAM

To provide for consistent and effective communication, the parties shall establish a Project Coordination Team to discuss the progress of construction and significant issues or actions. The Project Coordination Team shall include the Government's Project Manager and the Non-Federal Sponsor's counterpart and one senior representative each

from the Government and Non-Federal Sponsor. The Government's costs for participation on the Project Coordination Team shall not be included in the construction costs, but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in the construction costs and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE VII - METHOD OF PAYMENT

A. As of the effective date of this Agreement, the construction costs are projected to be \$6,631,000, with the Government's share of such costs projected to be \$4,310,150, the Non-Federal Sponsor's share of such costs projected to be \$2,320,850, of which the estimated funds as determined pursuant to Article II.A.1. is projected to be \$2,320,850 ; the costs for betterments are projected to be \$0; and the costs for additional work are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. Payment of Funds for Design and Construction.

1. During design and construction of the Project, 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, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, relocations, and investigations for hazardous substances, and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year, which begins on October 1st of the then-current year and ends on September 30th of the following year.

2. After considering the estimated amount of credit for real property interests, relocations, and investigations for hazardous substances, the Government shall determine the estimated total amount of funds required from the Non-Federal Sponsor for design and construction of the Project. No later than 60 calendar days prior to the beginning of a fiscal year in which the Government will be incurring costs for design and construction, the Government shall notify the Non-Federal Sponsor in writing of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than 30 calendar days prior to the beginning of that fiscal year, 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, New England District (E6)" 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.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the non-Federal share of costs as those costs are incurred. If the Government determines at any time that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of the construction costs, the Government shall notify the Non-Federal Sponsor in writing 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 through any of the payment mechanisms specified in paragraph B.2. of this Article.

4. Upon conclusion of design and construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for such design and construction and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, New England District (E6)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting.

C. Payment of Costs for Beach Improvements with Exclusively Private Benefits; and Costs for Real Property Interests, Disposal Area Improvements, Relocations, Betterments, and Additional Work Provided On Behalf of the Non-Federal Sponsor.

1. No later than 30 calendar days of receiving written notice of the amount of funds required to cover any such costs, as applicable, 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, New England District (E6)" to the District Engineer, 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 any such costs, as applicable, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VIII - 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 design and construction of the

Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for design and construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow design and construction to resume.

C. 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.

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

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

ARTICLE IX - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT

A. The Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto. Nothing in this paragraph is intended to affect eligibility under Public Law 84-99 (33 U.S.C. 701n).

B. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and

the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

ARTICLE X - HOLD AND SAVE

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

ARTICLE XI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 XII - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for maintaining books, records, documents, or other evidence pertaining to Project costs and expenses in accordance with 33 C.F.R. 33.20 for a minimum of three years after the final accounting. To the extent permitted under applicable Federal laws and regulations, the parties shall each allow the other to inspect such books, records, documents, or other evidence.

B. The Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). 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 non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. Pursuant to 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. The Government's costs of audits for design and construction of the Project shall not be included in construction costs, but shall be included in calculating the Federal Participation Limit.

ARTICLE XIII - 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 XIV - 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 first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Department of Conservation and Recreation
Attn: Commissioner
251 Causeway Street, Suite 600
Boston MA, 02114

With a copy to:

Department of Conservation and Recreation
Attn: Chief Engineer
251 Causeway Street, Suite 600
Boston, MA 02114

And:

Department of Conservation and Recreation
Attn: General Counsel
251 Causeway Street, Suite 600
Boston, MA 02114

If to the Government:

District Engineer, CENAE
U.S. Army Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

B. 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. 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 XV - 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 XVI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

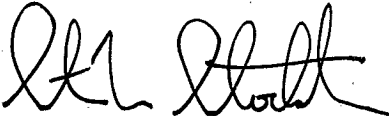
ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

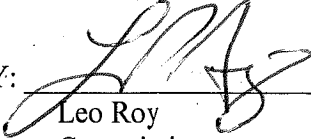
The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the Commonwealth of Massachusetts, where creating such an obligation would be inconsistent with Massachusetts General Law c.7C, s. 41 and c. 29, s. 26, and Amended Article 62 of the Massachusetts Constitution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Director of Civil Works.

DEPARTMENT OF THE ARMY

COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
CONSERVATION AND RECREATION

BY: 
Steven L. Stockton, P.E.
Director of Civil Works

BY: 
Leo Roy
Commissioner


DATE: 4/8/16

DATE: 3/23/16

CERTIFICATE OF AUTHORITY

I, Douglas Rice, do hereby certify that I am the principal legal officer of the Commonwealth of Massachusetts Department of Conservation and Recreation, that the Commonwealth of Massachusetts Department of Conservation and Recreation 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 Commonwealth of Massachusetts Department of Conservation and Recreation in connection with the Nantasket Beach, DCR Reservation, Hull MA project for hurricane and storm damage reduction, 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 the Flood Control Act of 1970, 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 Commonwealth of Massachusetts Department of Conservation and Recreation have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
23rd day of March 2016.



Douglas Rice
General Counsel
Department of Conservation and Recreation

CERTIFICATION REGARDING LOBBYING

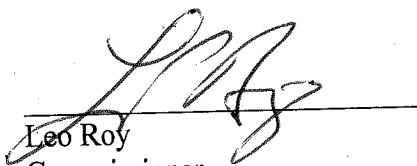
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Leo Roy
Commissioner
Department of Conservation and Recreation

DATE: _____

3/23/16