



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 30, 2006

Ordinance 15486

Proposed No. 2006-0244.1

Sponsors Constantine

1 AN ORDINANCE authorizing the county executive to
2 enter into a project cooperative agreement with the United
3 States Army Corps of Engineers and the State of
4 Washington Department of Natural Resources for the
5 construction of North Wind's Weir, also known as
6 Duwamish Site 1, Ecosystem Restoration Project.

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8

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. Findings:

11 A. The Duwamish/Green river watershed ("watershed") in King County is
12 an invaluable natural resource that is home to many fish and wildlife species,
13 including Chinook salmon and bull trout, recently listed as threatened under the
14 Endangered Species Act. Degradation of the watershed, due to urbanization,
15 physical alterations, and other factors, is of concern to citizens, interest groups
16 and governments sharing jurisdiction in or with a major interest in the watershed.

17 B. In recent years, governments with jurisdiction or interests in the

18 watershed, with input and participation from other interested parties, have
19 initiated significant cooperative efforts to evaluate habitat restoration needs in the
20 watershed. In 2000, through an interlocal agreement, seventeen jurisdictions of
21 Water Resources Inventory Area (WRIA) 9 formalized their cooperative efforts
22 by forming the WRIA 9 Forum in order to jointly fund, plan, prioritize, and
23 conduct watershed planning and protection over a five-year period.

24 C. Previously, in 1997, Duwamish/Green watershed jurisdictions had
25 executed an interlocal agreement to share local sponsorship responsibilities for the
26 feasibility phase of the Duwamish/Green Ecosystem Restoration Project, (D/G
27 ERP). The D/G ERP is a large-scale, multiphase project conducted jointly with
28 the United States Army Corps of Engineers ("USACE") to restore the ecosystem
29 of the watershed through planning and construction of significant habitat
30 restoration projects. Under a federal requirement, the feasibility phase was cost
31 shared equally, between the federal and non-federal sponsor.

32 D. The Green/Duwamish Ecosystem Restoration Feasibility Report
33 ("Feasibility Report") was completed in October 2000. It recommended forty-
34 five sites in the watershed for habitat restoration; twenty-seven of which were
35 identified for local sponsorship by King County.

36 E. An environmental impact statement, completed in 2000, addressed
37 potential effects of implementing the D/G ERP and determined that "*the*
38 *proposed restoration program would have beneficial cumulative effects with other*
39 *habitat conservation enhancement projects, and would incrementally offset*

40 *adverse impacts on habitat and related natural resources from past, present, and*
41 *future development projects.”*

42 F. The USACE submitted the report to the United States Congress
43 (Congress), and requested and received congressional authorization, through
44 Section 101(b) (26) of the Water Resource Development Act of 2000, Public Law
45 106-541, to construct the forty-five restoration sites as recommended in the
46 Feasibility Report. This authorization enabled, but did not obligate, Congress to
47 appropriate through its annual budget appropriations funding for the
48 preconstruction, engineering and design (PED) phase of the D/G ERP and for
49 construction, which is the fourth and final phase.

50 G. Federal funding for the D/G ERP PED phase to prepare designs and
51 environmental documents for the restoration sites was appropriated by Congress
52 in 2001, 2002, and 2003. During the PED phase, costs were shared seventy-five
53 percent (75%) by the federal sponsor and twenty-five percent (25%) by the non-
54 federal sponsor.

55 H. During 2003 and 2004 the jurisdictions of the WRIA 9 Forum shared
56 local sponsorship responsibilities and provided funding for the PED phase
57 through the watershed planning inter-local agreement executed in 2000. Under
58 council authorization, King County acted as the regional representative for the
59 non-federal sponsors under the terms of the PED agreement. Grant funds from
60 the King Conservation District to the WRIA 9 Forum were also used to help meet
61 non-federal cost share responsibilities.

62 I. In August 2005, work of the WRIA 9 Forum culminated in the
63 completion of the WRIA 9 Salmon Habitat Plan (“Plan”), which was ratified by
64 the participating jurisdictions as of January 2006. The Plan recommends specific
65 actions to recover, protect and restore habitat for Chinook salmon and bull trout,
66 including nearly all of the restoration projects listed in Feasibility Report. Those
67 sites in the Feasibility Report that emphasized habitat restoration needs of species
68 other than Chinook salmon and bull trout were not included as recommendations
69 in the Habitat Plan.

70 J. North Wind’s Weir (“NWW”) Intertidal Restoration Project (formerly
71 called “Duwamish/ Site 1”), located on the Duwamish River at approximately
72 river mile 6.3 in Tukwila, was included as one of the priority projects in both the
73 Corps Feasibility Report and the WRIA 9 Habitat Plan. The NWW project would
74 create over two acres of restored intertidal estuary, including a backwater slough
75 and marsh areas, as off-channel habitat. Such habitat is critical to juvenile fish for
76 growth and strength prior to their ocean migration. The site would also include
77 interpretive signage, a trail to the Duwamish River, and a small boat hand-
78 launching area.

79 K. In 2001, the county took a regional leadership role in pursuing initial
80 Salmon Recovery Funding Board grants and other regional support to complete
81 acquisition of the 2.6 acres required for the construction of North Wind’s Weir for
82 \$1,854,866.55. The Washington State Salmon Recovery Funding Board and the
83 Aquatic Lands Enhancement Account each awarded grants of \$500,000. The
84 Elliott Bay/Duwamish Restoration Program Panel, which is responsible for

85 administering the distribution of the Elliott Bay/Duwamish Consent Decree funds,
86 approved \$611,822 for the acquisition. In addition, the balance was paid in equal
87 amounts by King County, the city of Tukwila, and the City of Seattle.

88 L. In 2003, the county and USACE renamed the Duwamish/Site 1 as
89 North Wind's Weir to provide a more descriptive name for the site and
90 cooperatively initiated design on the site as the first of the county-sponsored sites.

91 M. In 2004, the county completed an estimated seventy-five percent
92 (75%) of the remediation of hazardous materials found at the site in preparation
93 for construction. Cost of disposal of hazardous materials has been and remains
94 the sole responsibility of the local sponsor.

95 N. April 20, 2006 the USACE completed the necessary environmental
96 permitting for the Construction of NWW.

97 O. A Project Cooperation Agreement (PCA) between the USACE and
98 non-federal sponsors must be executed before any federal funds may be expended
99 for construction of the NWW project. The proposed PCA for NWW defines
100 estimated total project costs, including cost estimates for construction,
101 monitoring, and adaptive management. The PCA allocates costs shares for
102 restoration features at sixty-five percent (65%) for the Corps and thirty-five
103 percent (35%) for the county. Recreation feature costs are divided 50% - 50% for
104 each.

105 P. The PCA for construction of the North Wind's Weir site is the first of a
106 number of agreements anticipated to be signed by the county and the Corps for
107 construction at the remaining 26 D/GERP sites for which the county would be the

108 nonfederal sponsor. The total project cost for all 27 county sites estimated in
109 2000 dollars in the Feasibility Report was \$61,192,998.

110 Q. This ordinance is being adopted as an emergency measure in order to
111 secure federal Corps funding that could otherwise be assigned to other non-King
112 County projects if immediate action is not taken.

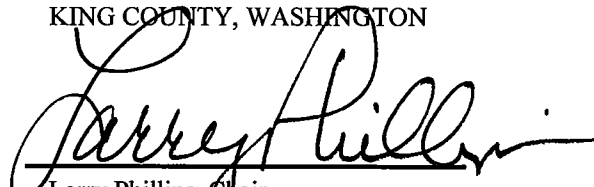
113 SECTION 2. The King County executive is hereby authorized to negotiate a final
114 version of, and to enter into, a project cooperation agreement on behalf of King County
115 with the U.S. Department of the Army, the state of Washington Department of Natural
116 Resources and King County, in substantially the same form as Attachment A to this
117 ordinance, for the design and construction of North Wind's Weir Project, as such project

118 is more fully described in the "Project Management Plan for the Duwamish/Site 1
119 (North Wind's Weir) Habitat Restoration Project" dated May 2, 2006, Attachment B to
120 this ordinance.
121


Ordinance 15486 was introduced on 5/22/2006 and passed by the Metropolitan King
County Council on 5/30/2006, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Ms. Lambert, Mr. Dunn, Mr.
Ferguson, Mr. Gossett, Ms. Hague, Ms. Patterson and Mr. Constantine
No: 0
Excused: 0

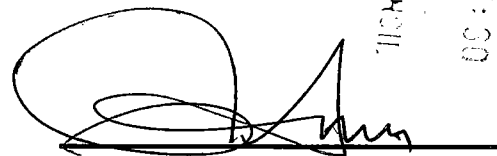
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 1 day of June, 2006.


Ron Sims, County Executive

RECEIVED
2006 JUN -5 PM 1:30
CLERK
KING COUNTY COUNCIL

Attachments A. Project Cooperation Agreement between the Department of the Army and King
County, Washington and State of Washington Department of Natural Resources for
Construction of the Duwamish Site 1 Ecosystem Restoration Project, B. Project
Management Plan for the Duwamish Site 1 (North Wind's Weir) Habitat Restoration
Project

15486

ATTACHMENT A

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
KING COUNTY, WASHINGTON
AND
STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES
FOR CONSTRUCTION OF THE
DUWAMISH SITE 1 ECOSYSTEM RESTORATION PROJECT

THIS AGREEMENT is entered into this ___ day of _____, 20___, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and King County, Washington (hereinafter the "Non-Federal Sponsor"), represented by the Director of the Water and Land Resources Division of the King County Department of Natural Resources and Parks; and the State of Washington, Department of Natural Resources (hereinafter "State of Washington DNR"), represented by the Commissioner of Public Lands.

WITNESSETH, THAT:

WHEREAS, construction of the Duwamish/Green River Ecosystem Restoration Project (hereinafter the "Authorized Project") at King County, Washington was authorized by Section 101(b) (26) of the Water Resources Development Act of 2000, Public Law 106-541;

WHEREAS, the Government was authorized to perform *monitoring* and *adaptive management* (as defined in Article I.Q. and Article I.R. of this Agreement, respectively) as part of the Authorized Project;

WHEREAS, the Government, the Non-Federal Sponsor, and the State of Washington DNR desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the Duwamish/Site 1 ecosystem restoration project (a separable element of the Authorized Project and hereinafter the "*Project*" as defined in Article I.A. of this Agreement);

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, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. Section 2280), establishes the maximum amount of costs for the Authorized Project and sets forth procedures for adjusting such maximum amount;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, where the State of Washington DNR is the holder of fee title and public trust interests on parts of the *Project*, the State of Washington DNR desires to make this State of Washington DNR parcel of land ("*Parcel*" or "*State of Washington DNR Parcel*"), as hereinafter described, available on the terms and conditions set forth herein; and

WHEREAS, the State of Washington DNR desires to limit its role in and responsibility for the *Project* to contributing the *Parcel*, as further detailed in Article III.A., Article III.D., and Article VIII.C. of this Agreement; and

WHEREAS, the Government, the Non-Federal Sponsor, and State of Washington DNR recognize that no construction can begin until all applicable environmental laws and regulations have been complied with; and

WHEREAS, the Government acknowledges that the *State of Washington DNR Parcel* is held as sovereign lands in trust for the people of Washington State, and that under the Constitution of the State of Washington and various State statutes the ability to convey that *Parcel* is restricted; and

WHEREAS, the State of Washington DNR acknowledges that the *Project* is an important public trust use of the *Parcel* and agrees that the *Parcel* may be used for the *Project* as generally described in Article I.B and I.C. of this Agreement; and

WHEREAS, from the date of execution of this Agreement and for so long as the *Project* remains authorized, the State of Washington DNR agrees to permit no other use of the *Parcel* inconsistent with those purposes; and

WHEREAS, the Non-Federal Sponsor agrees to cooperate with the State of Washington DNR and the Government as necessary to ensure that use of the *Parcel* is pursuant to the provisions of this Agreement, and to accomplish all its responsibilities in execution of the *Project* with respect to the *Parcel* as detailed throughout this Agreement;

WHEREAS, the parties agree that State of Washington DNR shall not be assigned any responsibilities for *Project* implementation or funding under this Agreement except as detailed in Article III.A., Article III.D., and Article VIII.C. of this Agreement;

WHEREAS, the Government, the Non-Federal Sponsor, and the State of Washington DNR have the full authority and capability to perform as hereinafter set forth

and intend to cooperate in cost-sharing and financing of the construction of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government, the Non-Federal Sponsor, and the State of Washington DNR, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government, the Non-Federal Sponsor, and the State of Washington DNR 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, the Non-Federal Sponsor, and the State of Washington DNR, and facilitate the successful implementation of the *Project*;

NOW, THEREFORE, the Government, the Non-Federal Sponsor, and the State of Washington DNR agree as follows:

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

A. The term "*Project*" shall mean the *ecosystem restoration features* and the *recreation features* at Duwamish/Site 1 (a separable element of the Authorized Project) as generally described in the final report of the Chief of Engineers dated December 29, 2000, and "Green/Duwamish River Basin Ecosystem Restoration Study, Final Feasibility Report," dated October 2000 and approved by the District Engineer, U.S. Army Corps of Engineers, Seattle District, on October 30, 2000.

B. The term "*ecosystem restoration features*" shall mean estuary/tidal habitat construction, stream and river rehabilitation, large woody debris placement, water quality enhancement, and drainage system upgrade/enhancement, as generally described in the final report of the Chief of Engineers dated December 29, 2000, and "Green/Duwamish River Basin Ecosystem Restoration Study, Final Feasibility Report," dated October 2000 and approved by the District Engineer, U.S. Army Corps of Engineers, Seattle District, on October 30, 2000:

C. The term "*recreational features*" shall mean trail, interpretive signage/displays, and hand-carried boat access, as generally described in the final report of the Chief of Engineers dated December 29, 2000, and "Green/Duwamish River Basin Ecosystem Restoration Study, Final Feasibility Report," dated October 2000 and approved by the District Engineer, U.S. Army Corps of Engineers, Seattle District, on October 30, 2000:

D. The term "*total project 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 construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: preconstruction engineering and design costs; the Government's engineering and design costs during construction; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the

Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's costs of *monitoring* in accordance with Article II.J. and Article II.K. of this Agreement; the Government's costs of *adaptive management* in accordance with Article II.L. and Article II.M. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.C.3. or Article II.D.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation of the *Project*; any costs of *betterments* under Article II.I.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

E. The term "*total ecosystem restoration costs*" shall mean that portion of the *total project costs* allocated to the *ecosystem restoration features*.

F. The term "*total recreation costs*" shall mean that portion of the *total project costs* allocated to *recreation features*.

G. The term "*period of construction*" shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Project* or commences construction of the *Project* using the Government's own forces, whichever is earlier, to the date that construction, *monitoring*, and, if necessary, *adaptive management* of the *Project* are complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

H. The term "*financial obligations for construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

I. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.C.2., Article II.D.2., and Article II.D.4. of this Agreement to total *financial obligations for construction*, as projected by the Government.

J. The term "*highway*" shall mean any public highway, roadway, street, or way, including any bridge thereof.

K. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

L. The term "*functional portion of the Project*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U. S. Army Engineer, Seattle District (hereinafter the "District Engineer") in writing, although the remainder of the *Project* is not complete.

M. The term "*betterment*" shall mean 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 construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

N. 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.

O. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 20.

P. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on January 1 and ending on December 31.

Q. The term "*monitoring*" shall mean activities, including the collection and analysis of data, that are necessary to determine if predicted outputs of the *ecosystem restoration features* are being achieved and to determine if *adaptive management* is necessary.

R. The term "*adaptive management*" shall mean measures taken to adjust the *ecosystem restoration features* in response to the *monitoring* results so that the predicted outputs of the *ecosystem restoration features* are achieved following its construction. The term includes, but is not necessarily limited to, modifications or structures or adjustments to operation or management, of the *ecosystem restoration features*.

S. The term "*State of Washington DNR Parcel*" or "*Parcel*" shall mean that real property interest held by the State of Washington and administered by the State of Washington DNR that in coordination with the State of Washington DNR is to be made available to the *Project*. This has been identified by a legal description summary for Duwamish/Site 1, and has been previously provided to the State of Washington DNR by the Government, and by this reference is fully incorporated herein as fully set forth.

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, shall expeditiously construct the *Project*, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. 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. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, 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, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time 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 *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. Notwithstanding paragraph A.2. of this Article, if the award of any contract for construction, *monitoring*, or *adaptive management* of the *Project*, or

continuation of construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces, would result in *total project costs* exceeding \$ _____, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for construction, *monitoring*, or *adaptive management* of the *Project*, and continuation of construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Project* or the continuation of construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces, but in no event shall the award of contracts or the continuation of construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces be deferred for more than three years.

Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with construction, *monitoring*, or *adaptive management* of the *Project* using the Government's own forces.

5. As of the effective date of this Agreement, \$3,982,588 _____ of Federal funds have been provided by Congress for the Authorized Project of which \$774,000 _____ is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the Authorized Project or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. The Government shall allocate *total project costs* between *total ecosystem restoration costs* and *total recreation costs*.

C. The Non-Federal Sponsor shall contribute 35 percent of *total ecosystem restoration costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *ecosystem restoration features*.

2. The Non-Federal Sponsor shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 35 percent of *total ecosystem restoration costs* if the Government projects at any time that the collective value of the following contributions that

are determined by the Government to be attributable to the *ecosystem restoration features* will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph C.1. of this Article, as determined in accordance with Article IV of this Agreement; and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total ecosystem restoration costs* if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *ecosystem restoration features* has exceeded 35 percent of *total ecosystem restoration costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph C.2. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph C.1. of this Article, as determined in accordance with Article IV of this Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *ecosystem restoration features*, perform any remaining *relocations* necessary for the *ecosystem restoration features*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *ecosystem restoration features* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

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

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *recreation features*.

2. The Non-Federal Sponsor shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 50 percent of *total recreation costs* if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *recreation features* will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article, as determined in accordance with Article IV of this Agreement; and (b) the value

of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by paragraph D.4. of this Article, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total recreation costs* if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *recreation features* has exceeded 50 percent of *total recreation costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph D.2. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article, as determined in accordance with Article IV of this Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *recreation features*, perform any remaining *relocations* necessary for the *recreation features*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *recreation features* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

4. Notwithstanding any other provision of this paragraph, the Government's share of *total recreation costs* shall not exceed an amount equal to 10 percent of the Government's share of *total ecosystem restoration costs*. The Non-Federal Sponsor shall be responsible for all *total recreation costs* in excess of this amount and shall pay any such costs in accordance with Article VI.B. of this Agreement.

E. When the District Engineer determines that, except for *monitoring* and *adaptive management*, the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable

completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

F. Upon notification from the District Engineer in accordance with paragraph E. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement. Concurrent with the Non-Federal Sponsor's performance of operation, maintenance, repair, rehabilitation, and replacement for the completed *Project* or such completed portion, the Government shall perform *monitoring* and, if necessary, *adaptive management* in accordance with the provisions of this Agreement.

G. Upon the District Engineer's determination that, except for *monitoring* and *adaptive management*, the entire *Project* is complete, the Government shall conduct an interim accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of construction* the Government shall amend the interim accounting to complete the final accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

H. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

I. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor,

for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

J. Prior to initiation of construction of a *functional portion of the Project* related to the *ecosystem restoration features*, the Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall finalize the plan for *monitoring* the *ecosystem restoration features*. The *monitoring* plan shall describe the specific parameters to be monitored; how these parameters relate to achieving the desired outcomes and to ascertaining whether *adaptive management* measures for the *ecosystem restoration features* will be necessary; methods for measuring those parameters; frequency and duration of *monitoring* of the *ecosystem restoration features*; criteria for measuring the success of the *ecosystem restoration features*; preparation and distribution of *monitoring* reports and other coordination requirements; and estimated *monitoring* costs. As of the effective date of this Agreement, the costs of *monitoring* of the *ecosystem restoration features* for the Authorized Project are estimated to be \$30,000 _____.

K. Upon providing notification to the Non-Federal Sponsor that the *ecosystem restoration features* are complete in accordance with paragraph E. of this Article, the Government shall perform *monitoring* of the *ecosystem restoration features* in accordance with the *monitoring* plan for years 2, 4 and 5 from the date of such notification. However, the *monitoring* of the *ecosystem restoration features* by the Government shall end prior to the expiration of such period upon the occurrence of either of the following events: (1) the award of the next contract for *monitoring* of the *ecosystem restoration features*, or continuation of *monitoring* of the *ecosystem restoration features* using the Government's own forces, would result in the costs incurred for *monitoring* of all the features for ecosystem restoration features in the Authorized Project exceeding 1 percent of the amount equal to total ecosystem restoration costs of the Project plus the costs for all other ecosystem restoration separable elements of the Authorized Project minus the costs for monitoring and adaptive management of all the features for ecosystem restoration in the Authorized Project; or (2) the District Engineer determines that continued *monitoring* of the *ecosystem restoration features* is not necessary.

L. Applying the criteria specified in the *monitoring* plan, the Government shall determine whether *adaptive management* of the *ecosystem restoration features* is necessary. The Government may make such a determination at any time during the *monitoring* period described in paragraph K. of this Article. Further, within 120 calendar days after the expiration or termination of such *monitoring* period, the Government shall make a final determination whether *adaptive management* of the *ecosystem restoration features* is necessary. In making such determinations, the Government shall consult with the Non-Federal Sponsor and, as appropriate, with other concerned agencies. Upon any

determination by the Government that *adaptive management* of the *ecosystem restoration features* is necessary, the Government shall notify the Non-Federal Sponsor in writing of its determination and expeditiously shall perform such *adaptive management* in accordance with paragraph M. of this Article. If, after the expiration or termination of the *monitoring* period, the Government determines that *adaptive management* of the *ecosystem restoration features* is not necessary, the Government shall notify the Non-Federal Sponsor in writing of its determination and shall conduct a final accounting in accordance with paragraph G. of this Article.

M. If the Government determines, pursuant to paragraph L. of this Article, that *adaptive management* of the *ecosystem restoration features* is necessary, the Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall perform *adaptive management* of the *ecosystem restoration features* in accordance with the provisions of this paragraph and paragraph A. of this Article.

1. In no event shall the award of any contract for *adaptive management* of the *ecosystem restoration features*, or continuation of *adaptive management* of the *ecosystem restoration features* using the Government's own forces, result in the costs incurred for *adaptive management* of all the features for ecosystem restoration of the Authorized Project exceeding 3 percent of the amount equal to *total ecosystem restoration costs* of the *Project* plus the costs for all other ecosystem restoration separable elements of the Authorized Project minus the costs for *monitoring* and *adaptive management* of all the features for ecosystem restoration in the entire Authorized Project.

2. When the District Engineer determines that *adaptive management* of the *ecosystem restoration features* is complete, or that the costs therefor have or will exceed the 3 percent amount determined in accordance with sub-paragraph 1. of this paragraph, the District Engineer shall: a) notify the Non-Federal Sponsor in writing of such completion; b) furnish the Non-Federal Sponsor with an amended OMRR&R Manual that reflects any modifications to structures or adjustments to operation or management methods; c) furnish the Non-Federal Sponsor with a copy of any new or revised as-built drawings for the *ecosystem restoration features*; and d) within 30 calendar days after such notice and in consultation with the Non-Federal Sponsor, determine whether to continue *monitoring* of the *ecosystem restoration features*, subject to the limits in paragraph K. of this Article, or to conduct a final accounting in accordance with paragraph G. of this Article.

3. Upon notification from the District Engineer in accordance with sub-paragraph 2. of this paragraph, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project* in accordance with Article VIII of this Agreement.

N. The Non-Federal Sponsor shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the *ecosystem*

restoration features, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

O. The Non-Federal Sponsor shall not use the *ecosystem restoration features*, or lands, easements, and rights-of-way required pursuant to Article III of this Agreement for such features, as a wetlands bank or mitigation credit for any other project.

P. The Non-Federal Sponsor shall keep the *recreation features*, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor and the State of Washington DNR, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor and the State of Washington DNR with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor and the State of Washington DNR must provide, respectively, for the *ecosystem restoration features* and for the *recreation features*, in detail sufficient to enable the Non-Federal Sponsor and the State of Washington DNR to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work, and the Non-Federal Sponsor and the State of Washington DNR shall provide the Government with authorization for entry onto all lands, easements, and rights-of-way the Government determines must be provided for that work thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. Likewise, prior to the end of the *period of construction*, the State of Washington DNR shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the State of Washington DNR must provide for the *Project*. The Non-Federal Sponsor and the State of Washington DNR shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor and the State of Washington DNR are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* that are necessary, respectively, for the *ecosystem restoration features* and for the *recreation features* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements that are required, respectively, for the *ecosystem restoration features* and for the *recreation features* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

D. Except as detailed in this Article and in Article VIII.C of this Agreement, the State of Washington DNR shall not be assigned any other responsibilities for the *Project* implementation or funding under this Agreement.

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 lands, easements, and rights-of-way required for the construction, operation, and maintenance of the *Project*, including those necessary for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total ecosystem restoration costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor and the State of Washington DNR must provide pursuant to Article III.A. of this Agreement for the *ecosystem restoration features*; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the *ecosystem restoration features*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the *ecosystem restoration features*. The Government also shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total recreation costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for the *recreation features*; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the *recreation features*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the *recreation features*. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.

B. 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 value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total*

project costs and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The date of valuation shall be calculated as follows:

a. Except as provided in paragraphs C.1.b and C.2.b. of this Article, the fair market value of lands, easements, or rights-of-way 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 or the State of Washington DNR provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way 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.

b. The Government and the Non-Federal Sponsor have stipulated that notwithstanding any of the other provisions of Article IV., the value of the lands, easements and rights of way owned by the Non-Federal Sponsor on the effective date of this Agreement and provided for the Project in accordance with Article III.A., Article III.B., or Article III.C., including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be One Million Two Hundred Thirty-Nine Thousand and 00/100 Dollars (\$1,239,000.00). It is further agreed that such value may be increased to include the Non-Federal Sponsor's documented incidental costs in accordance with Article IV.C.4. of this Agreement.

c. The fair market value of lands, easements, or rights-of-way 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. General Valuation Procedure. Except as provided in paragraph C.1., paragraph C.3., or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest.

The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, 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 amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an

appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, 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 in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. 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.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Washington would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, 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 shall 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. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. 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.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement 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.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.I.1. of this Agreement, acquires lands, easements, or rights-of-way, performs

relocations, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.I.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

ARTICLE V - PROJECT COORDINATION TEAM

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

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

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including issues related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existences and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII. of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project* including issuance of permits; preparation of the proposed OMRR&R Manual; finalization of the *monitoring* plan; performance of *monitoring* and *adaptive management*; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation and replacement of the *Project* including

issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

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

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement. The State of Washington DNR shall be given the opportunity to serve on the Project Coordination Team, but shall not be required to do so. If the State of Washington DNR chooses to participate in the Project Coordination Team, its costs in doing so shall be borne separately by the State of Washington DNR.

ARTICLE VI - 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, contributions provided by the parties, and the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$4,017,245 _____; *total ecosystem restoration costs* are projected to be \$4,007,245 _____; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$63,536 _____; *total recreation costs* are projected to be \$10,000 _____; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. and Article II.D.4. of this Agreement is projected to be \$5,000 _____; the *non-Federal proportionate share* is projected to be 50 _____ percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0 _____; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$1,399,000 _____ for the *ecosystem restoration features* and \$0 _____ for the

recreation features; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.I. of this Agreement are projected to be \$0 _____. 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 _____ and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, 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 project costs*; *total ecosystem restoration costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.C.2. of this Agreement; *total recreation costs*; the Non-Federal Sponsor's total contribution of funds required by Article II.D.2. and Article II.D.4. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.D. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the forthcoming *fiscal year*; the maximum amount determined in accordance with Article XIX of this Agreement; the value included in *total project costs* for the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.I. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.C.2., Article II.D.2., Article II.D.4., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *Project* or commencement of construction of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the projected *non-Federal proportionate share of financial obligations for construction* through the first quarter; and (c) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred in the first quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations and policies, the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement through the first quarter. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Seattle District" to the District Engineer, or verifying

to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of the *Project* is complete, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make *financial obligations for construction* of the *Project* or financial obligations for data recovery activities pursuant to Article XVII.B.3. of this Agreement, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred in that quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for construction* for that quarter and (b) the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred in that quarter; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the Non-Federal Sponsor's share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsor shall make the full amount of the required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the *non-Federal proportionate share of financial obligations for construction* as *financial obligations for construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations 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 in the current quarter, 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 the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon the District Engineer's determination that, except for *monitoring* and *adaptive management*, the entire *Project* is complete and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct an interim

accounting and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall amend the previous interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such amended interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings 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 project costs*, *total ecosystem restoration costs*, *total recreation costs*, and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine 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 shares of *total ecosystem restoration costs*, *total recreation costs*, and the costs of any data recovery activities associated with historic preservation exceed 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, Seattle District" to the District Engineer or by 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 ecosystem restoration costs*, *total recreation costs*, and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by Article II.D.4. of this Agreement, 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.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.I. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs

of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, 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 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, 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, Seattle District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund 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 and funds are not available to refund the excess amount

to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - 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 VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.E. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.F. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

C. The State of Washington DNR hereby gives the Government, the Non-Federal Sponsor, and any assignee of the Non-Federal Sponsor's responsibilities for operation, maintenance, repair, replacement and rehabilitation of the *Project*, a right to enter, at reasonable times and in a reasonable manner, upon state-owned aquatic lands that the State of Washington DNR owns or controls for access to the *Project* for the purpose of inspection, implementing, monitoring, maintaining and operating for so long as the *Project* remains authorized. If additional construction, completion, repairing, replacing or rehabilitation of the *Project* is required, the Government and the Non-Federal Sponsor (including any assignee of the Non-Federal Sponsor's operation, maintenance, repair, replacement and rehabilitation responsibilities) shall notify the State of Washington DNR. The State of Washington DNR shall provide authorization as described in Article III.A., above. Except in the case of an emergency, the State of Washington DNR shall be provided written notice of any construction or other significant activity on the *Parcel* at least thirty (30) days in advance. However, in cases of emergency, the State of Washington DNR will be notified of any construction or other significant activity no later than five (5) days after such activity commences. Significant activity means any activity that might interfere with any allowable uses not inconsistent with the project needs by the State of Washington DNR or publics' use or enjoyment of the *Parcel* and surrounding state-owned aquatic lands or the waters. The right to enter to carry out construction or significant activity shall be exercised through a written authorization issued by the State of Washington DNR.

ARTICLE IX – HOLD AND SAVE

Subject to the provisions of Article XX of this Agreement, the Non-Federal Sponsor shall hold and save the Government and the State of Washington DNR free from all damages arising from the construction, *monitoring*, *adaptive management*, operation, maintenance, repair, replacement, and rehabilitation of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government, the State of Washington DNR, or their contractors.

ARTICLE X - 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 Office of Management and Budget (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 *Project* shall be included in *total project 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 project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government, the Non-Federal Sponsor, and the State of Washington DNR each act in an

independent capacity, and neither is to be considered the officer, agent, or employee of the others.

B. In the exercise of their rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights the other parties may have to seek relief or redress against that contractor either pursuant to any cause of action that the other parties may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. 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 he determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. 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 project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement 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.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-

Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.C.2., Article II.D.2., Article II.D.4., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.C. of this Agreement 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.

F. Upon termination in accordance with this Article or Article XV, the State of Washington DNR shall be released of any further obligations under this Agreement.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary 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 lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way 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.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, 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 the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, 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 not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or 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 paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of 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 XV - 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:

Director, Water and Land Resources Division
King County Department of Natural Resources and Parks
201 South Jackson Street
Seattle, WA 98104-3855

If to the State of Washington DNR:

Aquatic Land Manager,
Washington State Department of Natural Resources
South Puget Sound Region
950 Farman Ave. N.
Enumclaw, WA 99022-9282

If to the Government:

Chief, Planning Branch, PPM
Seattle District, Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

B. A party may change the 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 XVI - 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 XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the Project, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c (a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit, and the Secretary of the Interior has concurred in the waiver, in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)).

a. Any costs of data recovery activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the *ecosystem restoration features* shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for ecosystem restoration, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

b. Any costs of data recovery activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the *recreation features* shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost

sharing requirements for recreation, as follows: 50 percent will be borne by the Non-Federal Sponsor and 50 percent will be borne by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - 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 XIX - SECTION 902 MAXIMUM COST OF PROJECT

A. The Non-Federal Sponsor understands that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of total costs for the Authorized Project, of which the *Project* is a separable element. On the effective date of this Agreement, the maximum amount of total costs for the Authorized Project, which is the sum of *total project costs* for the *Project* and the costs for all other separable elements of the Authorized Project, is estimated to be \$ _____, as calculated in accordance with Engineer Regulation 1105-2-100, using October 1, 20__ price levels, and including allowances for projected future inflation. The Government shall adjust such maximum amount of total costs for the Authorized Project, in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), when necessary.

B. Notwithstanding any other provision of this Agreement, the Government shall not incur a new financial obligation or expenditure for the *Project*, or include in *total project costs* for the *Project* any additional contribution provided by the Non-Federal Sponsor, if such obligation, expenditure or additional contribution would cause the sum of cumulative project costs for the *Project* and the cumulative costs for all other separable elements of the Authorized Project to exceed such maximum total costs for the Authorized Project, unless otherwise authorized by law.

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by King County of the State of Washington, where creating such an obligation would be inconsistent with Article IV of the King County Charter for King County, Washington, or the Constitution of the State of Washington.

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each biennium, and will use all reasonable and lawful means to secure the appropriations for that biennium sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, 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 Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

KING COUNTY, WASHINGTON:

BY: _____

BY: _____

Assistant Secretary of the Army,
Civil Works

Pam Bissonnette, Director
King County Department of Natural
Resources and Parks

DATE: _____

DATE: _____

WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES:

BY: _____

Doug Sutherland
Commissioner of Public Lands

DATE: _____

CERTIFICATE OF AUTHORITY

I, Joseph B. Rochelle, Senior Deputy Prosecuting Attorney, do hereby certify that I am an attorney representing King County, Washington, that King County, Washington 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 King County in connection with the Duwamish/Site 1 Ecosystem Restoration Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of King County have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 20__.

Joseph B. Rochelle
Senior Deputy Prosecuting Attorney

CERTIFICATE OF AUTHORITY

I, Christa Thompson, do hereby certify that I am the Assistant Attorney General representing the State of Washington, Department of Natural Resources; that the Washington State Department of Natural Resources 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 King County in connection with the Duwamish/Site 1 Ecosystem Restoration Project, and to pay damages (consistent with State legislative appropriation) in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b); and that the persons who have executed this Agreement on behalf of the State of Washington Department of Natural Resources have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 20__.

Christa L. Thompson
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 Section 1352, Title 31, U.S. Code. 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.

KING COUNTY, WASHINGTON

Pam Bissonette, Director
King County Department of Natural Resources and Parks

DATE: _____

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 Section 1352, Title 31, U.S. Code. 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.

STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES

Doug Sutherland
Commissioner of Public Lands

DATE: _____

CERTIFICATE OF LEGAL REVIEW

The Draft Project Cooperation Agreement for Construction of the Duwamish/Site 1 Ecosystem Restoration Project at King County, Washington, part of the Duwamish/Green River Basin Ecosystem Restoration Project, was fully reviewed by the Office of Counsel, USAED, Seattle District, Seattle, Washington.

Date: _____

Assistant District Counsel

Project Management Plan

For the

Duwamish/Site 1 (North Wind's Weir) Habitat Restoration Project

A Cooperative Project by:



King County

Department of Natural Resources and Parks
Water and Land Resources Division

May 2, 2006

Project Management Plan
Duwamish/Site 1 (North Wind's Weir)
Habitat Restoration Project

May 2, 2006

1. Purpose

The Project Management Plan (PMP) is a roadmap for quality project delivery. The PMP helps the Project Delivery Team (PDT) maintain a constant focus toward project delivery and King County's, needs, wants and expectations. The PMP is an agreement between CORPS and King County (the County), that defines the project partners' roles and desired outcomes. The Corps Project Manager, in cooperation with the County, has developed this PMP and will maintain it. The signatures at the end of this document show that the project partners endorse the contents of the PMP.

To be an effective management and communication tool, the plan must be a living document that is updated as conditions change; however, the basic structure of the partnership must be fixed as agreed. In order to accomplish this, the PMP, except for the attachments, is intended to be a static document. The attachments present the latest information on scope changes, staff assignments, schedule, and budget. The attachments will be updated as needed. At least quarterly, and as major milestones are achieved, the Corps and County Program Managers will review and compare the status of the project scope, schedule, and budget with the PMP. Major milestones include, but are not limited to, signing the PCA, certification of lands, notice to proceed, etc. The schedule is dependent on the dates of these milestones. The PMs will use these reviews to assess the need for and potential impacts of any changes in scope, schedule, or budget. Changes to the plan will be made following the process described in section 3 - Decision Making Process of this plan.

2. Definitions

PCA: Project Cooperation Agreement. The PCA is the formal agreement between the Corps and the County for construction of the project. The PCA defines roles and responsibilities of the two agencies. The PCA identifies the County and the Washington State Department of Natural Resources (DNR) as the sole local sponsors. The vast majority of roles and responsibilities of local sponsorship will be the responsibility of King County, with DNR's role limited to land owner of a portion of the lands provided for the project.

Program: The King County Duwamish/Green Ecosystem Restoration Program is a partnership between the Corps of Engineers and King County (County) for implementation of 27 of 45 sites authorized in the Duwamish/Green River Ecosystem Restoration Project by Congress in October 2000. These governmental entities are funding the program, and each will realize benefits from the implementation of the program.

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Project. The North Wind's Weir project is described in the Green/Duwamish Ecosystem Restoration Study as Duwamish/Site 1.

Project Partners. The North Wind's Weir (NWW) project is a partnership among the Corps of Engineers, King County, and DNR. The County and Corps are funding the project, The County and DNR are providing lands for the project.

PgM: Program Manager: A PgM is appointed by each of the partner agencies. Each PgM is that agency's representative and point of contact for the entire Duwamish / Green River restoration program.

PM: Project Manager. A PM is appointed by each of the partner agencies. Each PM is that agency's representative and point of contact for the project.

PDT: Project Delivery Team. The project delivery team is the team that is empowered to complete the project, and includes whatever personnel are required to accomplish this. The PDT includes staff from the Corps and the County.

ITR: Independent Technical Review Team: Independent Technical Review Team: An independent review team composed of senior level personnel, specialists in each discipline, from within the Corps, the County or their contractors will perform an independent technical review of the designer's assumptions, analyses and calculations throughout the design process.

PCT: Project Coordination Team. The PCT is defined by language in the PCA, and discussed in Article V of the PCA. The PCT will generally oversee the implementation of the project, and will serve as a forum to coordinate the needs and desires of the partner agencies. This PMP provides further clarification intended to reinforce and add detail where needed, and does not modify the PCA.

3. Project Description and Scope

The project description and background material has been presented in detail in the "Green/Duwamish River Basin Ecosystem Restoration Study dated October 2000. The approved plan includes the following elements:

Element:	Description:	Lead Agency:
Tidal March Construction	Removal of Material from Left bank to construct approximately 2 acres of tidal march Planting of intertidal and upland area to promote fish and wildlife habitat.	Corps
Recreation Features	Construct a hand launch boat access on downstream end of trail that will connect to maintenance trail.	Corps

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Any feature not included in the approved plan is not in the scope. Changes to the approved plan are not anticipated.

The Project Coordination Team will determine scope changes. Scope changes must fit within the description of the approved plan, and relate to how the plan will be achieved. (See 5. Decision-making Process) Scope changes, their impacts to the project and their lead agencies will be recorded in Attachment A.

4. Project Management

Daily management of the project will be by consensus agreement between the project partner PMs. The PMs represent the partner agencies and may make decisions within the authority each agency gives its PM. When the authority of the PMs is insufficient, or when the PMs do not have consensus, decision making is elevated to the Project Coordination Team (PCT), which is described in more detail below.

The sponsor and the government shall appoint senior representatives to the PCT. The team will meet regularly as scheduled beginning after signing of the PCA until the end of construction. The Corps' and County's project managers will co-chair the PCT. The PCT will consist of each agency's PM and two additional members representing each agency, including the PgMs. Each of the parties will have discretion to appoint their representatives or to revise those appointments, and will advise the other parties when such appointments are made.

The PCT has additional project management authority beyond that of the PMs. However, to the maximum extent possible, it is anticipated that the PMs will manage the project. The PCT is intended to exercise authority beyond that of the PMs, and to function as a means to resolve issues on which there is not consensus between the PMs.

The project managers shall keep the PCT informed of construction progress and of significant pending issues and actions, and shall seek the views of the PCT on matters that the PCT generally oversees. Paragraph C of Article V states that the PCT generally oversees the project and lists many different types of issues that could come up in the course of the project. The PCT will address such items as unexpected site conditions, change orders, or cost overruns that may require a deviation from the construction contract. See Section 9 Change Management. The PCT will not manage the construction contract; this is the job of the Corps Construction Branch, represented on-site by the Quality Assurance Representative (QAR). However, the PCT role is to oversee the entire construction process. To the extent that the PCT acts to guide construction, that guidance will be given through the QAR rather than directly to the contractor.

The PCT will set its own meeting schedule. In addition to regularly-scheduled meetings, the PCT may occasionally need to meet on short notice. The intent of the PCT is not to multiply unnecessary meetings but to make certain that the interests of the Corps and County are fully considered throughout the duration of the project. As such, quick informal meetings or even telephone calls with Corps reps, such as the construction manager or Corps and County, PMs

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and/or PgMs to discuss matters of concern, are encouraged. The PCT can conduct business whenever a quorum exists and, for this purpose, a quorum exists whenever each of the two parties is represented by the PM and at least one other PCT member. The costs of participation in the PCT shall be included in total project costs and cost shared in accordance with the provisions of the PCA. At present, the Corps estimates that participation in the PCT will be approximately \$10,000, of which \$6,700 will go to the sponsor.

5. On-Site Contractor Coordination

All coordination with the contractor will be through the Corps on-site Quality Assurance Representative (QAR). The project partners anticipate that the PMs will be on-site as needed, and will participate in construction decisions on-site. The PMs recognize that communications with the contractor involving changes or instructions must be through the QAR, or at a minimum, the QAR should be present for such discussions with the contractor. However, any member of the PDT who notices a significant safety issue is encouraged to seek an immediate halt to the unsafe practice and then report this unsafe condition to the Corps QAR.

The site will be open to visitors from the Corps and County. In addition, some personnel from other agencies may have business on site. Because of safety concerns, all visitors must sign in at the construction trailer, contact the QAR for admission to the site, and wear proper safety gear. All visitors will be subject to the safety requirements as determined by the QAR.

6. Decision Making Process

In general, the decision making process follows this path:

1. Project PMs decide by consensus, or
2. PCT decides by consensus, or
3. DE and County Director of Water and Land Resources Division

The PCT may make recommendations that it deems warranted to the District Engineer and to the County Director of Water and Land Resources Division, including suggestions to avoid potential disputes. The District Engineer and the County Director will evaluate the recommendations of the PCT and every effort will be made to implement the recommendations of the PCT. If the representatives of the Corps and County cannot fully implement the PCT recommendation, then as soon as possible a clear statement from them will be given to the PCT providing an explanation as to why the PCT recommendation cannot be met.

In the event that one or more of the project partners feels that the process described in this plan does not address their concerns, or that the project is not proceeding in a timely and efficient manner, and the PCT is unable to resolve the problem, then the dispute shall be elevated to a higher level for negotiation. The project team anticipates that disputes of this nature will be elevated directly to the District Engineer, the County Director of Water and Land Resources Division.

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7. Change Management

The construction contractor, Construction Branch, or the other project partners are the usual initiators of changes during construction. Any team member or stakeholder may suggest a change for consideration, as well. The PMs and QAR will assess the proposed change.

If in the judgment of the PMs and QAR the proposed change does not affect design, scope, schedule, or budget, the PMs and QAR will decide whether or not to implement the change. The PMs will inform the PCT of their decision and document the proposed change.

For issues such as unexpected site conditions and change orders, if in the judgment of the PMs and QAR the proposed change affects the project design, the QAR and / or PM will discuss the proposed change with the Engineer of Record (EOR). Changes affecting design will include changes to materials, bank protection or stabilization measures, the size or finish elevations of pipes or other structures, width of soil prism or finish elevation along the site perimeter, and phasing. If the EOR accepts the proposed change, the PM will inform the QAR. If the EOR does not accept the proposed change, the PMs will work with the PDT to develop an acceptable alternative.

If the change does not affect scope, schedule, or budget, the PMs will forward the formal design change to the QAR, inform the PCT, and document the change.

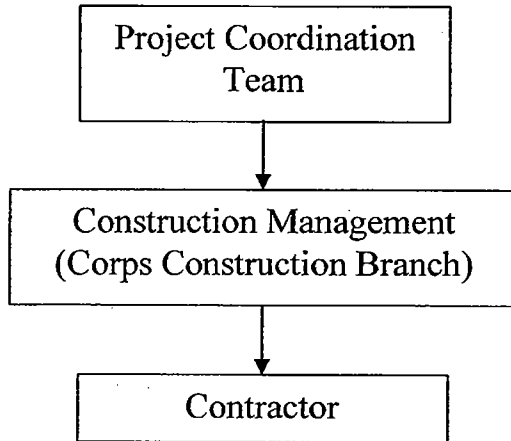
For issues that affect scope, schedule, or budget:

1. The PMs will immediately inform the PCT.
2. PMs gathers sufficient info to analyze change and present to PCT
3. The PCT will discuss by phone or meet as soon as possible to discuss the matter and formulate a recommendation.
4. PCT makes its recommendation, or seeks input from other decision makers
5. The PCT consults with appropriate decision makers if the recommendation requires approval by others,
6. Increases in the project budget must receive individual approval from each of the funding partners.
7. Decision is made
8. If decision differs from PCT recommendation, return to step 2
9. The PMs communicate decision and impacts to appropriate team members
10. The change is documented in PMP attachments, if it affects project scope, schedule, or budget

The Corps PM and County PM will coordinate implementation of any approved changes that are to be cost-shared, or that involve the Corps construction contractor. The PCT will document the change and forward the recommendation to the PM and QAR.

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The chain of command for the construction contract is:



If these avenues prove unsatisfactory to the PCT, then the recommendation should go to the Corps District Engineer and County Director of the Water and Land Resources Division.

8. Agency Coordination

The partners wish to quickly resolve any questions or concerns that the various permit agencies may pose during construction. In addition, the partners wish to assure compliance with conditions imposed by these agencies, and to have interactions occur appropriately with in the context of the overall project and program context. In order to accomplish this, the partners will appoint a single point of contact to deal with each agency. If it should happen that agencies contact other representative of the parties, the contacted representative shall notify the appointed representative, the PMs, and the PCT as soon as possible. Any correspondence with any outside agency is to be copied to the PMs.

The following table identifies various agencies expected to be involved in the project and the corresponding partner that is responsible for interactions with that agency. To the extent practical, all agency communication will be routed through that point of contact. When that does not occur, any communication will be promptly reported to the point of contact. In turn, the point of contact shall provide thorough reports to the PMs and PCT on project interactions with each agency.

Responsible Partner	Outside Agencies
U.S. Army Corps of Engineers	➤ Muckleshoot Tribe
	➤ National Marine Fisheries Service
	➤ United States Fish and Wildlife Service
	➤ Washington State Department of Ecology
King County	➤ Washington State Department of Fish and Wildlife
	➤ City of Tukwila

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9. Communication Plan

Communication during the construction phase will include regular meetings and regular written updates. At a minimum:

1. Construction Branch will schedule weekly construction meetings with the contractor. Project team members are invited so that the team has the most current information on daily construction activities such as fish windows and hydraulic issues.
2. In addition to the weekly construction meetings, additional meetings will be scheduled as needed to prepare for and coordinate upcoming construction work.
3. The Corps PM in coordination with the County PM will weekly distribute via email to the PDT and PCT a copy of the Memo for Record (MFR) for the weekly on-site construction meeting. The email will include information on current construction activities and recent accomplishments.
4. The Project Coordination Team will meet regularly as decided by the PCT. Monthly meetings are anticipated in the early phases of construction, but subsequent meetings may be more or less frequent as the situation requires. The County will provide a staff member to prepare and distribute draft meeting notes for comments, followed by final notes.
5. The County or the Corps may issue press releases that involve the project. Before release, any such materials will be circulated to the PCT and to the Public Affairs contact people for all parties, giving a reasonable time for review and comment.

10. O&M manual

The Corps PM will oversee preparation of the O&M manual for the project. The O&M manual will include requirements for maintaining the restoration function of the project and also as-built from the construction contractor. The PCT will review and approve the manual. In general, the Corps considers the project construction to be complete on approval of the O&M manual by the PCT, and will perform interim final accounting of the project at that time. Final accounting will be performed upon completion of all monitoring and adaptive management.

11. Independent Technical Review.

This task involves technical review of the 95% design drawings by the Independent Technical Review (ITR) Team. The Independent Technical Review Team, which is independent of the technical production of the design team efforts that produce the 95% design drawings will perform technical review of the design drawings and specifications. The review will verify that the recommended design (1) satisfies engineering, biological, and functional criteria; (2) meets the County's needs consistent with law and existing public policy, (3) has correct design assumptions and calculations; and (4) has a sufficient level and quality of engineering to allow the project to go forward to construction. Review comments will be submitted by reviewers utilizing Dr. Checks, a computer aided review system. Response by reviewers will be collected by the ITR coordinator and distributed to the PDT and PMs. A review meeting will take place between the ITR and the PDT and the PMs to

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address all comments. The ITR coordinator will back check the revised plans submitted by the PDT to ensure all comments have been either incorporated or resolved.

11. Monitoring and Adaptive Management.

The Corps and County PDT will cooperatively develop a 5 year monitoring a plan designed to assess how well the project is meeting the project objectives over a 5 year period. The PCT will review and endorse the plan. During the monitoring period either the Corps or the County may propose actions to improve project effectiveness in meeting project objectives. The PCT will consider, if approving, and endorse proposed modifications. PgMs will obtain necessary Corps and County agency approvals and funding commitments prior to implementing project modifications.

12. Budget Tracking.

The budget will be tracked to the level of detail shown Attachment E and budget status updates will show this same level of detail. The basic budget MCR estimates will be added to Attachment E upon completion of 95% designs and established / set when the work order cost negotiations are complete. The budget will be tracked against that basic budget to show growth. Changes that do not increase the budget can be approved by the PCT. Changes that increase the budget must have the approval of each of the funding agencies. The contingency funding is intended to provide PCT leeway in decision-making.

13. Good Faith Commitment.

The terms of this Project Management Plan represent a good-faith commitment that all of the Parties shall abide by to the extent that they are able. Further, by signing this PMP, the representatives of each of the parties represent that all project staff shall follow not only the letter of this PMP but also the cooperative spirit in which it is adopted.

Signatures:

Noel Gilbrough, Corps of Engineers	Jon Hansen, King County
Linda Smith	Kathy Wright, King County
Les Soule, Corps of Engineers	Sandy Kilroy, King County

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EXHIBIT A
Scope Changes
Updated Wednesday, May 17, 2006

Any changes to the scope will be noted here.

EXHIBIT B
Project Delivery Team.
 Updated May 17, 2006

Position	Name	Phone
<i>County Project Management:</i>		
PM, PCT member, Ecologist	Jon Hansen	(206) 296-1966
PgM, PCT member	Kathy Wright	(206) 296-8388
PCT member	Sandy Kilroy	(206) 296-8047
Fiscal Manager	Steve Oien	(206) 296-8371
<i>County Technical Staff</i>		
Real Estate	Linda Holecek	(206) 296-7814
Attorney	Joe Rochelle	(206) 296-0430
Engineer of Record	Don Althausser	(206) 296-8385
Media Relations	Logan Harris	(206) 263-6550
<i>County Management</i>		
Executive	Ron Sims	(206) 296-4040
Department of Natural Resources and Parks	Pam Bissonnette	(206) 296-6500
Water and Land Resources Director	Mark Isaacson	(206) 296-6587
<i>Agency Stakeholders</i>		
US Fish and Wildlife Service	Gwill Ging	360-753-6041
NMFS	Tom Sibley	206-526-4446
WDE	Jeannie Summerhays	425-649-7096
WDE	Alice Kelly	425-649-7145
WDF&W	Doug Hennick	425-379-2303
DNR	Sharon Holley	360-802-7070 ext 2606
<i>Muckleshoot Tribe</i>		
	Ian Kanair	425-333-6551
	Matt Matson	425-222-6900
<i>Corps Project Management:</i>		
PgM, PM, PCT member	Noel Gilbrough	(206) 764-3622
PCT member	Les Soule	(206) 764-3699
PCT member	TBD	

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Position	Name	Phone
Budget Analyst	Li-Shine Lin	(206) 764-3786
<i>Corps Technical Staff:</i>		
H&H	Zack Corum	(206) 764-6562
Civil	Monte Kaiser	(206) 764-6194
Geology	Suzanne Hess	(206) 764-3208
Environmental Coordinator	Mike Scuderi	(206) 764-7205
Real Estate Specialist	Wanda Gentry	(206) 764-3669
Real Estate attorney	Bruce Rohde	(206) 764-3797
Cost Estimating	Richard Pierce	(206) 764-3672
Office of Counsel	Ann Gerner	(206) 764-3733
Public Affairs	Ashlee Richie	(206) 764-3751
<i>Corps Contracting:</i>		
Contracting Supervisor	Sharon Gonzalez	(206) 764-6696
Contract Specialist	TBD	
Contracting Officer (CO)	Cheryl Anderson	(206) 764-6575
<i>Corps Construction:</i>		
Resident Engineer, COR	George Henry	(206) 764-3671
Project Engineer	Doug Parker	(253) 966-4387
Quality Assurance (QAR)	Doug Parker	(253) 966-4387
<i>Corps Management</i>		
Program Manager	Les Soule	(206) 764-3699
District Engineer	COL Debra Lewis	(206) 764-3690

EXHIBIT C
INDEPENDENT TECHNICAL REVIEW (ITR) TEAM
Updated May 17, 2006

TABLE 3

<u>Discipline</u>	<u>Reviewer</u>	<u>Office/Agency</u>
Review Team Leader	Christopher Pollock	Corps of Engineers
Hydraulic Design	Karl Erickson	Corps of Engineers
Soils – Geotechnical Engineer	Greg Seagle	Corps of Engineers
Cost Engineering	Steve Pierce	Corps of Engineers
Real Estate	Karen Brooks	Corps of Engineers
Cultural Resources	Lahr Salo	Corps of Engineers
Ecologist	Tom Nelson	King County
Geotechnical Engineer	TBD	King County

**EXHIBIT D
Schedule.**

Updated May 17, 2006

Task	Start	Finish	Original Schedule	Status/Notes
Plans and Specifications:				
◆ Geotechnical report received			5/1/06	
◆ 95% Plans to Corps from County			5/19/06	
◆ County Receives Corps comments			5/30/06	
◆ Meeting of ITR Team and County			6/1/06	
◆ 100% Plans to Corps from Corps			6/14/06	
Project Cooperation Agreement:				
◆ FONSI signed by DE			4/18/06	Complete
◆ PCA Package Sent to Corps Division				
◆ PCA Package Sent to Corps Headquarters			5/9/06	Complete
◆ KC Executive Transmittal to Council			5/18/06	
◆ KC Council Authorizing Ordinance Approved			6/12/06	
◆ HQ Redline Accepted by County & Corps			6/23/06	
◆ Final PCA signed by County & Corps			6/29/06	
Real Estate:				
◆ Corps Accepts County Certification			6/30/06	
Permits:				
◆ ESA Consultation Complete			8/4/07	Required for Phase 2
Construction:				
◆ Phase 1 – Notice to Proceed			7/14/06	
◆ Phase 1 – Construction Complete			9/15/06	
◆ Phase 2 – Notice to Proceed			8/5/07	
◆ Phase 2 – Construction Complete			11/5/07	

ATTACHMENT B

EXHIBIT E
Budget

Wednesday, May 17, 2006

Task	Total; Budget	FY06	FY07	FY08	FY09	FY10	FY11	FY12	Balance	Funded Work Item	Ordering Work Item	Work Category Code	Work Category Element
Plans & Specs													
P&S sub- totals													
Construction													
Federal Expenses:													
- Construction Contracts													WL000
- S&A													WK000
- Project Coordination Team													WK000
- PM													Z0000
- Environmental Coordination													WD000
- Real Estate													WC000
- Monitoring													WD000
- Offsite mitigation													WL000
- Contingency													

Task	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>Balance</u>	Funded Work Item	Ordering Work Item	Work Category Code	Work Category Element
Plans & Specs												
P&S sub-totals												
Construction												
<u>Federal Expenses:</u>												
- Construction Contracts											WL000	
- S&A											WK000	
- Project Coordination Team											WK000	
<u>Creditable local expenses:</u>												
- PCT												
- Downstream Mitigation Fund												
- Utility relocations												
- LERRD cost												
Construction sub-totals:												
<u>Total Project Cost</u>												

Task	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>Balance</u>	Funded Work Item	Ordering Work Item	Work Category Code	Work Category Element
Plans & Specs												
P&S sub-totals												
Construction												
<u>Federal Expenses:</u>												
- Construction Contracts											WL000	
- S&A											WK000	
- Project Coordination Team											WK000	
Local Cash Due to Corps												
Fed Cash Requirement												