

*1. Administrative Details*

**Proposal Name: Modified Central City, Fort Worth, Texas**

**by Agency: Tarrant Regional Water District**

**Locations: TX**

**Date Submitted: 08/11/2015**

**Confirmation Number: 74546174-a672-4e41-bad5-f2cad25fdd8**

*Supporting Documents*

<b>File Name</b>	<b>Date Uploaded</b>
Enclosure 7 - Estimated Economic Benefits of the Modified Central City Project (Trinity River Vision) in Fort Worth, Texas.pdf	08/11/2015
Letter of Support - City of Fort Worth - WRRDA 2015.pdf	08/11/2015
Enclosure 1 - Reference 2d - 20080905 PPA FINAL Signed 9-05-08.pdf	08/11/2015
Enclosure 2a - FWCC-ModifiedProjectRpt-Final(April2008) w Appendices.pdf	08/11/2015
Letter of Support - Tarrant County - WRRDA 2015.pdf	08/11/2015
Letter of Support - FW Hispanic Chamber of Commerce - WRRDA.pdf	08/11/2015
20150802 Section 7001 Modified Central City Letter of Support from TRWD Jim Oliver.pdf	08/11/2015
Enclosure 2b - FSEIS-FortWorthCentralCity(Mar08) w Appendices.pdf	08/11/2015
Letter of Support - FW Chamber of Commerce - WRRDA 2015.pdf	08/11/2015
Letter of Support - FW Metropolitan Black Chamber of Commerce - WRRDA 2015.PDF	08/11/2015
Enclosure 1 - 20080905 PPA FINAL Signed 9-05-08.pdf	08/11/2015
Enclosure 4 - 20030529 Letter from USACE to the Secretary of the Army Re Riverside Oxbow Upper Trinity River Project.pdf	08/11/2015
Enclosure 3 - 20080521 Memo for DCGCW-Prgm-ROD-21May08-V.pdf	08/11/2015
Enclosure 5 - 20030522 Executed - FONSI 22 May 2003.pdf	08/11/2015
Letter of Support - Streams and Valleys - WRRDA 2015.PDF	08/11/2015
Enclosure 6 - Summary of Project Costs.pdf	08/11/2015

**2. Provide the name of the primary sponsor and all non-Federal interests that have contributed or are expected to contribute toward the non-Federal share of the proposed feasibility study or modification.**

Sponsor	Letter of Support
Tarrant Regional Water District(Primary)	Tarrant Regional Water District will serve as the non-Federal sponsor for the modified project. TRWD remains unequivocally committed to completing the modified project, and has received support from both the City of Fort Worth and Tarrant County, financially and politically.
City of Fort Worth	The City of Fort Worth fully supports the proposed modifications to the Central City Project as described in the modified Central City Project.
Tarrant County	Tarrant County fully supports the proposed modification to the Central City Project as described in the modified Central City Project and stands ready to do its part in making the plan a reality.

**3. State if this proposal is for a feasibility study, a modification to an authorized USACE feasibility study or a modification to an authorized USACE project. If it is a proposal for a modification, provide the authorized water resources development feasibility study or project name.**

[x] Modification to an Authorized USACE Project : Upper Trinity River, Central City, Fort Worth, Texas

***4. Clearly articulate the specific project purpose(s) of the proposed study or modification. Demonstrate that the proposal is related to USACE mission and authorities and specifically address why additional or new authorization is needed.***

Project Purposes: As is demonstrated in the USACE report on the modified Central City Project (uploaded herewith as an additional file), the project will provide benefits in the categories of flood control (Flood Risk Management), Environmental Restoration and associated recreation.

**Mission & Authorities:**

Flood Risk Management and Environmental Restoration are primary missions and authorities of the Corps of Engineers. Further, the Corps is authorized to provide recreation in support of primary missions when there is a direct relationship with primary mission outputs, which is the case for this project.

**Additional Authorization:**

The proposed Central City modification significantly expands the scope of the original project by incorporating most features of the proposed (but unauthorized) Riverside Oxbow project, enlarging the footprint of the original project, making certain improvements to the originally authorized project, changing the previously authorized project cost sharing percentages to the Corps standard contained in Section 103 of WRDA 86 (as amended), and updating the project cost estimate to reflect these changes. Accordingly, this proposal exceeds the limits of the Chief's, and the Secretary's, discretionary authorities to make changes to separately authorized projects and will therefore require Congressional authorization. The modified Central City Project, as proposed herein, has not been Congressionally authorized. Although this proposal was submitted for the first annual report under Section 7001, it was not accepted nor included in the report. All aspects of the proposal described herein can be carried out by the Corps. In fact, the proposal is simply an extension of work already underway by the Corps and TRWD under an existing project partnership agreement.

*5. To the extent practicable, provide an estimate of the total cost, and the Federal and non-Federal share of those costs, of the proposed study and, separately, an estimate of the cost of construction or modification.*

	<b>Federal</b>	<b>Non-Federal</b>	<b>Total</b>
<b>Study</b>	\$0	\$0	\$0
<b>Construction</b>	\$520,207,000	\$289,793,000	\$810,000,000

**Explanation (if necessary)**

The current project cost estimate has been prepared in accordance with USACE requirements. The original Federal cost was \$110,000,000. The original non-Federal cost was \$110,000,000. The original total cost was \$220,000,000. Therefore, the additional cost for Federal participation is \$410,207,000, with a combined Federal and non-Federal authorization increase of \$590,000,000.

***6. To the extent practicable, describe the anticipated monetary and nonmonetary benefits of the proposal including benefits to the protection of human life and property; improvement to transportation; the national economy; the environment; or the national security interests of the United States.***

The University of North Texas Center for Economic Development and Research was retained to conduct a study of the modified project's monetary and non-monetary benefits. This report, entitled "Estimated Economic Benefits of the Modified Central City Project (Trinity River Vision), Fort Worth, Texas," concludes that the modified Central City Project yields a benefit to cost ratio of 1.99 to 1. Total regional and national economic impacts from the project's construction and the subsequent build-out of developable land are estimated to generate \$7.9 billion, of which \$3.4 billion are national impacts outside of the region. The implementation of this project will protect human life and property along the Trinity River and generate economic benefits to the nation and the region. Spending on the TRV plan will be approximately \$742 million through the year 2026, not including payments for land acquisition and business relocation assistance. Nationally, this spending will generate more than \$2 billion in economic activity and support over 14,000 person-years of employment.

The spending from the project's construction and the subsequent build-out of developable land will result in an estimated \$7.9 billion of regional and national economic impacts, of which \$3.4 billion are national impacts that occur outside of the Tarrant County region. The businesses that will occupy these spaces at the projected 40-year build-out are estimated to employ more than 29,600 full time workers and contribute over \$3.7 billion in annual economic activity. The economic analysis for the proposed plan indicates that it will provide annual benefits of \$75.3 million that, when compared to the annual cost of the plan of \$37.8 million, yields a benefit to cost ratio of 1.99 to 1 with \$37.5 million in net excess benefits annually.

**7. Does local support exist? If ‘Yes’, describe the local support for the proposal.**

Yes

### **Local Support Description**

As with the original Central City Project, the Tarrant Regional Water District (TRWD) will serve as the non-Federal sponsor for the modified project. TRWD remains unequivocally committed to completing the modified project, and has received support from both the City of Fort Worth and Tarrant County, financially and politically. TRWD along with the City of Fort Worth and Tarrant County, additionally, put a Tax Increment Reinvestment Zone (also known as a Tax Increment Financing District or “TIF”) in place that is dedicated for the sole purpose of contributing to this project. This TIF is expected to contribute \$320,000,000 to the project and has contributed \$127,432,191 thus far. The TIF is backstopped by oil and gas earnings from TRWD should the need arise.

As a further indication of the extent of TRWD’s support for the project, it has created a separate subordinate entity called the Trinity River Vision Authority (TRVA). The TRVA is responsible for the implementation of the Trinity River Vision – a master plan for the Trinity River in Fort Worth, of which the Central City Project forms an essential part. The master plan for the Trinity River is a concept literally decades in the making. Encouraged by community volunteers in the 1980s, developed by urban designers and specialty consultants in the 1990s, and adopted by Fort Worth’s City Council in 2003, the Trinity River Vision Master Plan encompasses 88 miles of the Trinity River and its greenbelts and tributaries throughout the Fort Worth area. The Federal project, Central City, is an essential component of this plan. In addition to TRWD’s sponsorship and support, letters of support are included from the City of Fort Worth, Tarrant County, Fort Worth Chamber of Commerce, Fort Worth Metropolitan Black Chamber of Commerce, Fort Worth Hispanic Chamber of Commerce, and Streams and Valleys, Inc.

**8. Does the primary sponsor named in (2.) above have the financial ability to provide for the required cost share?**

Yes

# Primary Sponsor Letter of Support

(As uploaded)

**20150802 Section 7001 Modified Central City Letter of Support  
from TRWD Jim Oliver.pdf**



**CENTRAL CITY PROJECT  
IS FIRST CIVIL WORKS  
PROJECT TO RECEIVE  
U.S. ARMY CORPS  
OF ENGINEERS GOOD  
NEIGHBOR AWARD**



In 2011, the Trinity River Vision Central City Project Delivery Team was presented the "Good Neighbor Award" at the USACE Summer Leaders Conference for their exemplary application of the Corps' new strategy to promote sustainability and improve livability through successful community partnerships.

Brig. Gen. Thomas W. Kula, commander of the Corps' Southwestern Division said, "Central City is a great project that demonstrates partnership, strong team work and a commitment to improving the City of Fort Worth and providing important services to its citizens."

307 West 7th Street,  
Suite 100  
Fort Worth, Texas 76102  
Phone: (817) 698-0700  
Fax: (817) 878-5782  
trinityrivervision.org

August 2, 2015

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army (Civil Works)  
108 Army Pentagon  
Washington, DC 20310-0108

Subject: Letter of Support

Dear Assistant Secretary Darcy:

1. Pursuant to the provisions of references a and b in paragraph 2 below, I hereby request that the project for Central City, Fort Worth, Texas, initially authorized by reference 2c, be modified in accordance with the recommended changes contained in references 2e and f and that the Secretary be authorized to proceed directly to construction of the modified project without further study or analysis. I further request that the components of the Federal project, as modified, include all of the features identified in the Record of Decision referenced in subparagraph 2f below and construction of those features be cost shared in accordance with section 103 of Public Law 99-662, as modified (33 U.S.C. 2213). As detailed in paragraphs 5 and 6 below and in letters of support from other local entities, local support for this request is wide-spread and firm. The Tarrant Regional Water District (TRWD) will serve as the local sponsor for the modified project and has the means in place to fulfill local responsibilities.
2. References.
  - a. Section 7001 of the Water Resources and Reform and Development Act of 2014 (Public Law 113-121).
  - b. Federal Register notice, Vol. 80, No. 100, Tuesday, May 26, 2015, pages 30061-30063.
  - c. Consolidated Appropriations Act of 2005, Division C, Title I, Section 116, Central City, Fort Worth, Texas.
  - d. Project Partnership Agreement between the Department of the Army and the Tarrant Regional Water District for construction of the Central City project, Fort Worth, Texas, September 5, 2008.
  - e. Upper Trinity River, Central City, Fort Worth, Texas, Modified Project Report and Supplement No. 1 to the Final Environmental Impact Statement, April 2008.
  - f. Record of Decision, Upper Trinity River, Central City, Fort Worth, Texas - Modified Central City Project Report and Supplement No. 1 to the Final Environmental Impact Statement, May 21, 2008.
  - g. Report of the Chief of Engineers, Riverside Oxbow, Upper Trinity River, Fort Worth, Texas, May 29, 2003.
  - h. Finding of No Significant Impact, Riverside Oxbow, Upper

## CENTRAL CITY PROJECT AWARDS

**Sustainability Good Neighbor Award**  
2011 US Army Corps of Engineers

**Excellence on the Waterfront Top Honor Project**  
2005 The Waterfront Center

**Merit Award Landscape Analysis and Planning**  
2005 Boston Society of Landscape Architects

**Citation of Honor**  
2005 Texas Society of Architects

**Current Planning Award**  
2007 Texas Chapter of the American Planning Association

**CLIDE Award**  
2011 North Central Texas Council of Governments Center of Developmental Excellence

**Public Policy and Planning Award**  
2007 North Central Texas Council of Governments Center of Developmental Excellence

**Celebrating Leadership in Development Excellence Award**  
2003 North Central Texas Council of Governments Center of Developmental Excellence

**Current Projects Award**  
2006 Midwest Section of the Texas Chapter of the American Planning Association

**Community Award**  
2009 Fort Worth Chapter of American Institute of Architects

**M/WBE Excellence Award**  
2009 Fort Worth Metropolitan Black Chamber of Commerce

**Chairman's Award**  
2007 Fort Worth Hispanic Chamber of Commerce

- Trinity River, Fort Worth, Texas, May 22, 2003.
    - i. Summary of Project Costs, Modified Central City Project, Fort Worth, Texas, November 13, 2014.
    - j. Estimated Economic Benefits of the Modified Central City Project ("Trinity River Vision"), Fort Worth, Texas, November 2014.
  3. **Background.** The Central City project, Fort Worth, Texas, was initially authorized by reference 2c above to restore needed flood control benefits to an existing Federal project, the Fort Worth Floodway, that have been lost over the past 40 to 50 years, to provide substantial high-value urban ecosystem restoration and recreation benefits, and to potentially enable transformation of the Trinity River through the City of Fort Worth. Moreover, the project is a model for comprehensive, collaborative, multi-agency problem solving as one component of a more comprehensive effort involving not only the U.S Army Corps of Engineers and the Tarrant Regional Water District (the non-Federal sponsor) but also the City of Fort Worth, Tarrant County, the Texas Department of Transportation, the Federal Highway Administration, the Department of Housing and Urban Development, Texas Commission on Environmental Quality, and Streams and Valleys, which is a local natural resource conversation group.

However, the original project was authorized based on preliminary information. Since that time, a new, more robust report has been completed by the Corps which contains a definitive recommendation for modification of the project. This new report, referenced in subparagraph 2e above, not only recommends substantial improvements to the original project but also incorporates into the Central City project many of the environmental restoration and recreation features and benefits of the proposed Riverside Oxbow project, which was recommended for authorization by the Chief of Engineers in his report of May 29, 2003 (reference 2g).

The Riverside Oxbow project was formulated separately from Central City simply because it was initiated separately and proceeded on a separate timeline, even though the two projects are contiguous, complementary and have the same non-Federal sponsor. In 2006, the City of Fort Worth asked the Corps to investigate the benefits of combining the two projects. In its resulting review, the Corps concluded there are significant benefits to such an action, including better opportunities for hydraulic mitigation, less disruption to fish and wildlife habitat with a corresponding reduction in the need for habitat mitigation, and a substantial cost savings if the two were implemented as one project. All-in-all, the Corps report was very positive about advantages and found no significant disadvantages to a combination.

This report received full NEPA compliance with a Record of Decision issues by the Assistant Secretary of the Army with review and approval from the Texas State Environmental Resource Agency and Texas Parks and Wildlife Department.

Construction on the originally authorized Central City project was initiated in 2009 and is ongoing. Financially, \$247,571,147 has been expended as of June 30, 2015 (\$28,752,000 Federal and \$218,819,147 non-Federal). Work is continuing with 34 Federal contracts issued to date, six of which are currently underway for design and construction services with three more construction contracts scheduled for award within the next year. The local sponsor has spent \$115,518,217 to date on Lands and Damages, (of which \$37,650,000 applies to the originally authorized project, and the local sponsor has received \$12,142,179.96 in LERRDS credit to date from the USACE with the remaining LERRDS waiting on certification), and \$18,909,626 in "cash match" towards construction of the originally authorized project.

Additionally, in accordance with the original authorization, this project requires the construction of three major bridges over the new flood control channel. With the partnership of the Federal Highway Administration, the Texas Department of Transportation, the City of Fort Worth, the North Texas Council of Governments and the Tarrant Regional Water District, all property acquisition, relocation, demolition and environmental remediation has been completed and the local share for construction (\$24,997,613) has been remitted to Texas DOT. Texas DOT has awarded a contract for \$65.4 million for all three bridges and construction is underway. Total cost for the three bridges including LERRDS is estimated at \$110,062,583. The Federal share is \$33,033,453 (30%), the state/regional share is \$16,573,851 (15%) and the local share is \$60,455,279 (55%).

The original Central City authorization requires the local sponsor to relocate all utilities necessary for construction of the project. Accordingly, the local partners have undertaken the relocation of both public and franchise utilities. As of this date, 18% of the public utilities (\$14,912,604) have been relocated and 36% of the franchise utilities (\$7,696,679) have been relocated.

Nearly all of the rights-of-way required for the originally authorized Central City Project have been acquired and a substantial portion of those needed for the modified project are also available. As of this date, 79% of the total property required for this project has been acquired. Of the property required for the By-Pass Channel component of the project, 89% has been acquired. Work toward acquiring the remaining property is ongoing. Of the property already acquired, 87% of the relocations of existing property owners are complete and 57% of the property has undergone demolition of the surface structures (\$5,139,032). Environmental Remediation (HTRW) has begun with cleanup of 15 properties underway (\$11,692,814).

4. Eligibility Criteria. Section 7001(c)(1)(A) of WRRDA 14 contains five specific criteria for inclusion of proposals in the annual report of the Secretary under the provisions of Section 7001. Those criteria are restated here followed by a summary statement demonstrating how this proposal complies with each criterion.

"(A) CRITERIA FOR INCLUSION IN REPORT.-The Secretary shall include in the annual report only those feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources development projects and feasibility studies that-

- (i) are related to the missions and authorities of the Corps of Engineers;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;

- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Corps of Engineers.”

**Compliance Criteria:**

(i) The Modified Central City project will provide benefits in the categories of flood control (flood risk management), environmental restoration and associated recreation. All of these are missions and authorities of the Corps of Engineers.

(ii) The proposed Central City modification significantly expands the scope and project purposes of the original project by incorporating most features of the proposed (but unauthorized) Riverside Oxbow project, enlarging the footprint of the original project, making certain improvements to the originally authorized project, changing the previously authorized project cost sharing percentages to the Corps standard contained in Section 103 of WRDA 86 (as amended), and updating the project cost estimate to reflect these changes. Accordingly, this proposal exceeds the limits of the Chief’s, and the Secretary’s, discretionary authorities to make changes to separately authorized projects and will therefore require Congressional authorization.

(iii) The modified Central City project, as proposed herein, has not been Congressionally authorized.

(iv) Although this proposal was submitted for the first annual report under Section 7001, it was not accepted and included in the report (it was instead included in the appendix to the report.

(v) All aspects of the proposal described herein can be carried out by the Corps. In fact, the proposal is simply an extension of work already underway by the Corps and TRWD under an existing project partnership agreement.

5. Local Sponsorship and Ability to Provide Local Share. As with the original Central City project, the Tarrant Regional Water District will serve as the non-Federal sponsor for the modified project. TRWD remains unequivocally committed to completing the modified project, and has received support from both the City of Fort Worth and Tarrant County, financially and politically. TRWD along with the City of Fort Worth and Tarrant County, additionally, put a Tax Increment Reinvestment Zone (also known as a Tax Increment Financing District or “TIF”) in place that is dedicated for the sole purpose of contributing to this project. This TIF is expected to contribute \$320,000,000 to the project and has contributed \$127,432,191 thus far. The TIF is backstopped by oil and gas earnings from TRWD should the need arise.

As a further indication of the extent of TRWD’s support for the project, it has created a separate subordinate entity called the Trinity River Vision Authority (TRVA). The TRVA is responsible for the implementation of the Trinity River Vision (TRV) – a master plan for the Trinity River in Fort Worth, of which the Central City Project forms an essential part. The master plan for the Trinity River is a concept literally decades in the making. Encouraged by community volunteers in the 1980’s, developed by urban designers and specialty consultants in the 1990’s, and adopted by Fort Worth’s City Council in 2003, the Trinity River Vision Master Plan encompasses 88 miles of the Trinity River and its greenbelts and tributaries throughout the Fort Worth area. The “vision” has always been to advocate for this natural resource, keeping the river beautiful, accessible, enjoyable, and productive thus insuring it remains a valuable asset for the entire community. The Federal project, Central City, is an essential component of this plan.

6. Other Local Support. In addition to TRWD’s sponsorship and support, local support for the project remains high as well. Letters from the City of Fort Worth, Tarrant County, Fort Worth Chamber of Commerce, Fort Worth Metropolitan Black Chamber of

Commerce, Fort Worth Hispanic Chamber of Commerce, and Streams and Valleys, Inc. are attached to the submittal form as additional documents.

7. Project Benefits. The University of North Texas (UNT) Center for Economic Development and Research was retained to conduct a study of the modified project's monetary and non-monetary benefits. The results of this study (reference j above) are contained in an update of UNT's original report on this project entitled "Economic and Fiscal Impacts of the Corps of Engineers' Trinity River Vision Project in Tarrant County, Texas," prepared in February 2005.

This update, entitled "Estimated Economic Benefits of the Modified Central City Project (Trinity River Vision), Fort Worth, Texas," concludes that the Modified Central City project yields a benefit to cost ratio of 1.99 to 1. Total regional and national economic impacts from the project's construction and the subsequent build-out of developable land are estimated to generate \$7.9 billion, of which \$3.4 billion are national impacts outside of the region. The modified project is also estimated to result in employment of more than 29,600 full-time persons when the project is fully built out.

Additional environmental benefits have been identified with the development of this project. Within the footprint of this project is an old industrial part of the downtown city area. Because of this project, 127 acres of contaminated soil will be cleaned up to residential standards. This is the largest single environmental cleanup ever undertaken within the City of Fort Worth.

The ecosystem restoration component of this project will provide for over 80,000 native trees to be planted in an area that will create a large natural area within the central core of the city. The Trinity River was channelized and straightened back in the 1960's. This project will re-connect a portion of the old river channel and one major stream that was cut off from water flow when the new channel was created. Upon completion, this project will provide a continuous flow of water to over 2 miles of river channel and streams that are dry today.

8. Revised Cost Estimate. An updated project cost estimate has been completed consistent with Corps policies and procedures showing a revised total project cost of \$810,000,000, with an estimated Federal cost of \$520,207,000 and an estimated non-Federal cost of \$289,793,000.

Sincerely,



James M. Oliver  
General Manager

# Other Non-Federal Sponsors Letter(s) of Support

(This is as uploaded, a blank page will show if nothing was submitted)

**Letter of Support - City of Fort Worth - WRRDA 2015.pdf**



August 7, 2015

Mr. Jim Oliver  
Tarrant Regional Water District  
800 E. North Side Drive  
Fort Worth, Texas 76102

Dear Mr. Oliver:

Thank you for your continued efforts in leading the local role on this project. The City of Fort Worth strongly supports the proposed modifications to the Trinity River Vision (TRV) – Central City Project as described in the Upper Trinity River, Central City, Fort Worth, Texas, Modified Project Report and Supplement No. 1 to the Final Environmental Impact Statement, April 2008.

Over the last 10 years Fort Worth has experienced a massive population boom of over 250,000 people and the infrastructure in place is no longer adequate in many places. The Modified Central City Project combines flood protection with the community's desire to make the Trinity River a more integral part of Fort Worth, one of the fastest-growing large cities in the nation. The public improvements, including flood risk reduction, are expected to foster a more walkable, higher-density, mixed-use neighborhood. They provide for public access, a river promenade and the opportunity for development in a flood-challenged area that would not develop to its potential without this project.

The City of Fort Worth continues to perform local construction tasks necessary for construction of the major flood control infrastructure including utility relocation and transportation improvements. We are very excited to announce that the three vehicular bridges associated with the overall TRV Central City project are now under construction by the Texas Department of Transportation. We continue to play an active role in facilitating construction and management of tasks to keep the project on schedule. To date, we have contributed \$26.6 million towards relocation of city utilities and local street improvements.

We fully support the proposed modifications to the Central City Project as described in the Modified Central City Project Plan. Please let me know if there is any assistance that I can provide.

Sincerely,

Betsy Price  
Mayor

**BETSY PRICE, MAYOR**

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CITY OF FORT WORTH ★ 1000 THROCKMORTON STREET ★ FORT WORTH, TEXAS 76102  
(817) 392-6118 ★ FAX (817) 392-6187

# Other Non-Federal Sponsors Letter(s) of Support

(This is as uploaded, a blank page will show if nothing was submitted)

**Letter of Support - Tarrant County - WRRDA 2015.pdf**



## TARRANT COUNTY COMMISSIONERS COURT

G. K. MAENIUS  
COUNTY ADMINISTRATOR

August 4, 2015

Jim Oliver  
Tarrant Regional Water District  
800 E. North Side Drive  
Fort Worth, Texas 76102

Dear Mr. Oliver:

On behalf of Tarrant County, I am writing to express our steadfast support for the Central City Project commonly called Fort Worth's Trinity River Vision and, particularly, for the proposed modifications to that project as described in the Upper Trinity River, Central City, Fort Worth, Texas, Modified Project Report and Supplement No. 1 to the Final Environmental Impact Statement, April 2008. We believe this project is of paramount importance to the greater Fort Worth and Tarrant County communities.

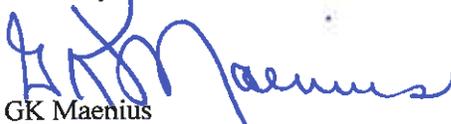
This is a very exciting time for our region. The Central City Project is under construction and proceeding as planned. The local partners are aggressively performing necessary construction tasks including demolition, utility relocation and environmental remediation in preparation for the construction of the major flood control infrastructure. The Texas Department of Transportation has begun construction of three vehicular bridges that are critical components to the overall plan.

Our community is very proud of this initiative because not only does it address critical flood control and transportation needs but it transforms a historically underutilized industrial area into a vibrant waterfront neighborhood. Through enhanced flood control, smart growth planning, and critical infrastructure improvements we are fostering a walkable, high-density, mixed use neighborhood in our central city, a viable, sustainable alternative to suburban sprawl.

A cooperative partnership of the City of Fort Worth, Tarrant Regional Water District, Trinity River Vision Authority, Tarrant County, Texas Department of transportation and the US Army Corps of Engineers is committed to bringing this project to fruition.

Again, Tarrant County fully supports the proposed modification to the Central City Projects as described in the Modified Central City Project Plan and stands ready to do its part in making the plan a reality. To date, the county has contributed \$11 M for roads and bridges associated with county infrastructure impacted by the project. The modified plan addresses the community's desires and critical needs. Thank you for your continued efforts in leading the local role on the project.

Sincerely,



GK Maenius  
County Administrator

# Additional Proposal Information

(This is as uploaded, a blank page will show if nothing was submitted)

**Enclosure 1 - 20080905 PPA FINAL Signed 9-05-08.pdf**

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
TARRANT REGIONAL WATER DISTRICT  
FOR  
CONSTRUCTION  
OF THE  
CENTRAL CITY, FORT WORTH, TEXAS PROJECT

THIS AGREEMENT is entered into this 5th day of Sept., 2008 by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Tarrant Regional Water District (hereinafter the "Non-Federal Sponsor"), represented by the General Manager.

WITNESSETH, THAT:

WHEREAS, the Central City, Fort Worth, Texas project for flood control at Fort Worth, Texas authorized by the River and Harbor Act of 1965, Public Law 89-298, as amended, was modified by Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447 to authorize the Secretary to undertake the Central City River Project as generally described in the Trinity River Master Plan, dated April 2003, as amended, (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at a total cost not to exceed \$220,000,000, at a Federal cost of \$110,000,000 and a non-Federal cost of \$110,000,000, if the Secretary determines the work is technically sound and environmentally acceptable;

WHEREAS, on May 21, 2008 the Assistant Secretary of the Army for Civil Works determined that the *Project* was technically sound and environmentally acceptable;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the *Project*;

WHEREAS, the Non-Federal Sponsor shall perform certain work (hereinafter the "*Base Conditions*" as defined in Article I.L. of this Agreement), prior to or concurrent with construction of the *Project*, at no cost to the Government;

WHEREAS, the Non-Federal Sponsor may offer in writing to accelerate provision to the Government of all or a portion of its required contribution of funds for immediate use by the Government for construction of the *Project*;

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement, dated March 20, 2006, for engineering and design of the *Project* (hereinafter the "Design Agreement"), under the terms of which the Non-Federal Sponsor contributed a portion of the costs for engineering and design;

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 interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

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

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

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

#### ARTICLE I – DEFINITIONS

A. The term “*Project*” shall mean the bypass channel approximately 8,400 feet long by 300 feet wide; approximately 5,250 acre feet of valley storage; the Clear Fork isolation gate; and the TRWD isolation gate all as generally described in the Modified Central City Project Report dated April, 2008 and approved by the Assistant Secretary of the Army (Civil Works) on May 21, 2008 (hereinafter the “Decision Document”). The term does not include the *Base Conditions* described in paragraph L. of this Article or any of the other features of the Modified Central City Project as generally described in the Decision Document.

B. 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: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during construction; 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., Article XVII.B.1., and Article XVII.B.3. of

this Agreement; the Government's actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; 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, 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; 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, rehabilitation, or replacement of the *Project* or *Base Conditions*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of providing or performing the *Base Conditions* under Article II.N. of this Agreement; any costs to obtain all water rights and provide all quantities of water under Article II.Q. 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. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. 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 of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. 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, and rights-of-way, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement to *financial obligations for construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), 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 demolition of the affected facility or part thereof.

H. 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, Fort Worth District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

I. 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 included in the *Project* as defined in paragraph A. of this Article.

J. 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.

K. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

L. The term “*Base Conditions*” shall mean certain features or activities that will be provided or performed by the Non-Federal Sponsor at no cost to the Government and that are required to be provided or performed prior to or concurrent with construction of the applicable increment or segment of the *Project*. These shall include construction of the North Main Street and Henderson Street Bridges; construction of the Samuels Avenue Dam and Trinity Point Gate; investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601 9675) and the Resource Conservation and Recovery Act, as amended (hereinafter “RCRA”) (42 USC 6901 *et seq.*), except for any investigations performed by the Government in accordance with Article XIV.A. of this Agreement; the cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination under CERCLA or RCRA cleanup of lands, easements, or rights-of-way required for the *Project*; performance of all demolitions required for the *Project*; performance of all *relocations* necessary for construction, operation, and maintenance of the *Project* and the Base Conditions; performance of all activities associated with performance of the other Base Conditions; and all lands, easements, rights-of-way, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that are required for construction, operation, and maintenance of the Base Conditions. The term does not include modification or removal of any levee included in the Fort Worth Floodway Levee Project, except for those levees that must be modified or removed for the construction of the *Project*.

M. The term “*lands, easements, and rights-of-way provided by the Non-Federal Sponsor at no cost to the Project*” shall mean: 1) those identified as tracts 20, 164 and 35

shown in Figure 2, Appendix B of the Decision Document required for the construction, operation, and maintenance of the bypass channel feature of the *Project*; and 2) all lands, easements, and rights-of-way that the Non-Federal Sponsor shall provide or otherwise make available for the construction, operation, and maintenance of the valley storage feature of the *Project*.

N. The term “*Central City Federal Participation Limit*” shall mean the \$110,000,000 statutory limitation on the Government’s financial participation in the design and construction of the *Project* as specified in Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447.

O. The term “*authorization for entry*” shall mean written notification by the Non-Federal Sponsor to the Government that a parcel of land is available for access by the Government and its agents and contractors for construction of any required *Project* component.

P. The term “*Authorized Project Cost*” shall mean the \$220,000,000 statutory limitation on the cost of the *Project* as specified in Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall construct the *Project* (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto) applying those procedures usually applied to Federal projects, in accordance with 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 proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations,

award of contracts or commencement of construction using the Government's own forces, 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.

B. The collective value of the Non-Federal Sponsor's contributions toward *total project cost* shall be \$110,000,000 and shall be provided 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 *Project*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V and Article X of this Agreement.

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

1. As of the effective date of this Agreement, \$15,952,000 of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for 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*.

2. 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. of this Agreement that the Government

projects will 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 by the Government shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

3. In accordance with Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447, the Government's total financial obligations for the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with II.H. of this Agreement) shall not exceed the *Central City Federal Participation Limit*. In addition, the Non-Federal Sponsor's total financial obligations for the *Project* may not exceed \$110,000,000.

4. Notwithstanding any other provision of this Agreement, the sum of *total project costs* plus the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement shall not exceed the *Authorized Project Cost*. If the Government determines that the award of any contract for construction of the *Project*, or continuation of construction of the *Project* using the Government's own forces, would result in *total project costs* and the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement exceeding the *Authorized Project Cost*, the Government shall notify the Non-Federal Sponsor in writing of such determination and of the date the Government projects that *total project costs* and the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement would exceed the *Authorized Project Cost*. Upon this determination by the Government, the parties shall terminate this Agreement and proceed in accordance with Article XIII.D. of this Agreement.

D. When the District Engineer determines that 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.

E. Upon notification from the District Engineer in accordance with paragraph D. 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.

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

G. 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.

H. 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 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; 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, 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*. The Government will provide written notice to the Non-Federal Sponsor identifying all features of the *Project* it classifies as including *betterments* prior to the completion of final design work so that the Non-Federal Sponsor may timely elect whether to maintain such *betterments*. 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*.

I. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *Project*.

J. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

K. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

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

M. 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 level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

N. The Non-Federal Sponsor shall ensure that any recreation features, access roads, parking areas, and other associated public use facilities located on lands, easements, and rights-of-way required pursuant to Article III of this Agreement for the *Project*, are open and available to all on equal terms.

O. The Non-Federal Sponsor shall provide or perform the *Base Conditions* that the Government determines the Non-Federal Sponsor must provide or perform for the upcoming increment or segment of the *Project*, as required by the Government, either prior to or concurrent with the issuance of the solicitation for the upcoming Government contract for construction of the *Project*, or prior to or concurrent with the Government incurring the first *financial obligations for construction* of such portion of the *Project* using the Government's own forces.

P. The Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Samuels Avenue Dam and Trinity Point Gate compatible with the *Project*.

Q. The Non-Federal Sponsor shall obtain all water rights and provide, at no cost to the Government, all quantities of water the Government determines are necessary for construction, operation, and maintenance of the *Project*.

R. The Non-Federal Sponsor may offer in writing to accelerate provision to the Government of all or a portion of its contribution of funds required by paragraph B.2. of this Article for immediate use by the Government for construction of the *Project*. Upon receipt of any such offer from the Non-Federal Sponsor, the Government shall seek the approval and acknowledgement required to accept and use the accelerated funds. Upon receipt of such approval and acknowledgement, the Government shall notify the Non-Federal Sponsor in writing of receipt of such approval and acknowledgement. Upon receipt of such accelerated funds, the Government shall use such funds for construction of the *Project*. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the Non-Federal Sponsor's contribution of funds required by paragraph B.2. of this Article minus any funds previously contributed by the Non-Federal Sponsor as of the date the Government accepts the offered funds.

S. As Federal appropriations are made available to pay the Federal share of *total project costs*, the Government shall afford credit for the funds provided in accordance with paragraph R. of this Article toward the Non-Federal Sponsor's contribution of funds required by paragraph B.2. of this Article.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS,  
DISPOSAL AREA IMPROVEMENTS, AND  
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for 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 with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, 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 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 shall provide the Government with *authorization for entry* 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. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* that were provided by the Non-Federal Sponsor for the *Project* are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, 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* 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 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. 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 construction, operation, and maintenance of the *Project*, including those required 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, 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 project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide for the *Project* pursuant to Article III.A. of this Agreement 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 for the *Project* pursuant to Article III.C. of this Agreement. 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, 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, 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. Finally, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for: 1) the value of the lands, easements, and rights-of-way, *relocations*, or 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 for the *Base Conditions*; 2) the value of *relocations* that the Non-Federal Sponsor must provide pursuant to Article III.B. of this Agreement for the *Project*; and 3) the value of the *lands, easements, and rights-of-way provided by the Non-Federal Sponsor at no cost to the Project*.

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. 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 F. of this Article, the

value of lands, easements, and rights-of-way, including those required for 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 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 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 likewise 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.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, with respect to lands, easements, or rights-of-way for which the Non-Federal Sponsor seeks credit, 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 such 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 such 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 such 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. 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 such 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, as determined by the Government.

E. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of 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, after written notice to the Non-Federal Sponsor and reasonable opportunity to cure any such failure.

F. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H. of this Agreement, acquires lands, easements, or rights-of-way, 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.H. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such 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 calendar 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 matters 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 improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence 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; the performance of and scheduling for the *Base Conditions*, final inspection of the entire *Project* or functional portions of the *Project*; preparation of the proposed

OMRR&R Manual; 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 and 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. Any conflicts or disagreements that may arise will be reviewed by the District Engineer, representing the Government, and the General Manager, representing the Non-Federal Sponsor in order to try to resolve any disagreement between the Project Coordination Team. However, the Government, having the legal authority and responsibility for construction of the *Project*, has the ultimate 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 such 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.

## 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 lands, easements, rights-of-way, 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* for this project may not exceed \$220,000,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$72,350,000; the value included in *total project costs* for lands, easements, rights-of-way, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* determined in accordance with Article IV of this Agreement is projected to be \$37,650,000; the value of the Non-Federal Sponsor's contributions under Article V and Article X of this Agreement is projected to be \$100,000; and the Government's 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.H. of this Agreement are projected to be \$0. These amounts 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 December 1, 2008 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*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the *non-Federal proportionate share*; the total contribution of funds required from the Non-Federal Sponsor for the upcoming *fiscal year*; the value included in *total project costs* for lands, easements, rights-of-way, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* determined in accordance with Article IV of this Agreement; the credit to be afforded pursuant to Article II.S. 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.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 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, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; and (b) the *non-Federal proportionate share of financial obligations for construction* 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 projected *non-Federal proportionate share of financial obligations for construction* through the first quarter. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Fort Worth District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such 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 of the funds the Government

determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make *financial obligations for construction* of the *Project*, 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 such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* for that quarter for such continuing contract. No later than 30 calendar days prior to the beginning of that quarter the Non-Federal Sponsor shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract for the *Project* where the Government will not use a continuing contract to make *financial obligations for construction*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make *financial obligations for construction* of the *Project* using the Government's own forces, 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 such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* using the Government's own forces 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 such 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, after consideration of

any contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement, 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) to the extent funds that are offered and accepted in accordance with Article II.R. of this Agreement, any other *financial obligations for construction* in excess of the *non-Federal proportionate share* as they are incurred during the *period of construction*. If at any time the Government determines after consideration of the credit the Government affords pursuant to Article II.S. of this Agreement, 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 such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals 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*. In addition 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 required share of *total project costs* exceeds the Non-Federal Sponsor's total contribution 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, Fort Worth," 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 contribution provided by the Non-Federal Sponsor for *total project costs* exceeds the Non-Federal Sponsor's required share thereof, the Government, subject to the availability of funds and as limited by the *Central City Federal Participation Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a

refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. However, if the final accounting is conducted prior to the end of the *period of construction* due to termination of the Agreement pursuant to Article XIII.D. of this Agreement, and the Non-Federal Sponsor accelerated provision of its required contribution of funds in accordance with Article II.R. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of any such accelerated funds that were not obligated by the Government for work on the *Project*, subject to the availability of funds.

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

1. Not less than 60 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 such 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, Fort Worth" 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.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. 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.

#### ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and *Base Conditions*, except for damages due to the fault or negligence of the Government or its 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 with 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 applicable provisions of 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. Any costs allocated to the *Base Conditions* shall be borne entirely by the Non-Federal Sponsor and shall not be included in *total project costs*.

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 and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

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

### ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, after written notice to the Non-Federal Sponsor and reasonable opportunity to cure any such failure, 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 future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement the Government projects will 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 II.C. 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.B.2. 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.

#### 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, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project* and 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 borne entirely by the Non-Federal Sponsor and shall not be included in *total project 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. In such event, if the Government elects pursuant to paragraph C. of this Article to terminate this Agreement for the convenience of the Government, provides written notice thereof to the Non-Federal Sponsor and the Non-Federal Sponsor proceeds with acquisition of such real property interests, the Non-Federal Sponsor shall not be entitled to any credit for or reimbursement of the value of any such real property interests acquired after the date of such written notice.

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 mailed by registered or certified mail, as follows:

If to the Non-Federal Sponsor: Tarrant Regional Water District  
Attn: General Manager  
800 E. Northside Dr.  
Fort Worth, Texas 76102

If to the Government: United States Army Corps of Engineers,  
Fort Worth District  
District Engineer  
819 Taylor Street  
Fort Worth, TX 76102-0300

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 with specific reference to this Agreement.

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 *Authorized Project Cost*.

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 C.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)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall be included in *total project costs* and shall be shared in accordance with the provisions of this Agreement.

C. If, during its 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 in accordance with this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with 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 - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, director, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Non-Federal Sponsor, where creating such an obligation would be inconsistent with the laws of the State of Texas.

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

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

DEPARTMENT OF THE ARMY

TARRANT REGIONAL WATER DISTRICT

BY: John Paul Woodley, Jr.

BY: 

John P. Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

James M. Oliver  
General Manager

DATE: 9/05/08

DATE: 9/05/08

CERTIFICATE OF AUTHORITY

I, Lee F. Christie, do hereby certify that I am the principal legal officer of the Tarrant Regional Water District and that the Tarrant Regional Water District 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 Tarrant Regional Water District in connection with the Central City, Fort Worth, Texas Project and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Tarrant Regional Water District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
5th day of September 2008.



Mr. Lee F. Christie  
General Counsel

## CERTIFICATION REGARDING LOBBYING

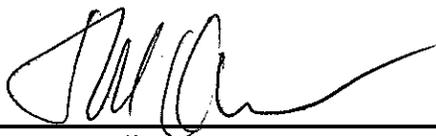
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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



\_\_\_\_\_  
James M. Oliver  
General Manager

DATE: 9/05/08

# Additional Proposal Information

(This is as uploaded, a blank page will show if nothing was submitted)

**Enclosure 1 - Reference 2d - 20080905 PPA FINAL Signed  
9-05-08.pdf**

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
TARRANT REGIONAL WATER DISTRICT  
FOR  
CONSTRUCTION  
OF THE  
CENTRAL CITY, FORT WORTH, TEXAS PROJECT

THIS AGREEMENT is entered into this 5th day of Sept. 2008 by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Tarrant Regional Water District (hereinafter the "Non-Federal Sponsor"), represented by the General Manager.

WITNESSETH, THAT:

WHEREAS, the Central City, Fort Worth, Texas project for flood control at Fort Worth, Texas authorized by the River and Harbor Act of 1965, Public Law 89-298, as amended, was modified by Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447 to authorize the Secretary to undertake the Central City River Project as generally described in the Trinity River Master Plan, dated April 2003, as amended, (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at a total cost not to exceed \$220,000,000, at a Federal cost of \$110,000,000 and a non-Federal cost of \$110,000,000, if the Secretary determines the work is technically sound and environmentally acceptable;

WHEREAS, on May 21, 2008 the Assistant Secretary of the Army for Civil Works determined that the *Project* was technically sound and environmentally acceptable;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the *Project*;

WHEREAS, the Non-Federal Sponsor shall perform certain work (hereinafter the "*Base Conditions*" as defined in Article I.L. of this Agreement), prior to or concurrent with construction of the *Project*, at no cost to the Government;

WHEREAS, the Non-Federal Sponsor may offer in writing to accelerate provision to the Government of all or a portion of its required contribution of funds for immediate use by the Government for construction of the *Project*;

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement, dated March 20, 2006, for engineering and design of the *Project* (hereinafter the "Design Agreement"), under the terms of which the Non-Federal Sponsor contributed a portion of the costs for engineering and design;

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 interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

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

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

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

#### ARTICLE I – DEFINITIONS

A. The term “*Project*” shall mean the bypass channel approximately 8,400 feet long by 300 feet wide; approximately 5,250 acre feet of valley storage; the Clear Fork isolation gate; and the TRWD isolation gate all as generally described in the Modified Central City Project Report dated April, 2008 and approved by the Assistant Secretary of the Army (Civil Works) on May 21, 2008 (hereinafter the “Decision Document”). The term does not include the *Base Conditions* described in paragraph L. of this Article or any of the other features of the Modified Central City Project as generally described in the Decision Document.

B. 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: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during construction; 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., Article XVII.B.1., and Article XVII.B.3. of

this Agreement; the Government's actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; 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, 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; 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, rehabilitation, or replacement of the *Project* or *Base Conditions*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of providing or performing the *Base Conditions* under Article II.N. of this Agreement; any costs to obtain all water rights and provide all quantities of water under Article II.Q. 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. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. 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 of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article II.C. or Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. 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, and rights-of-way, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement to *financial obligations for construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), 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 demolition of the affected facility or part thereof.

H. 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, Fort Worth District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

I. 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 included in the *Project* as defined in paragraph A. of this Article.

J. 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.

K. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

L. The term “*Base Conditions*” shall mean certain features or activities that will be provided or performed by the Non-Federal Sponsor at no cost to the Government and that are required to be provided or performed prior to or concurrent with construction of the applicable increment or segment of the *Project*. These shall include construction of the North Main Street and Henderson Street Bridges; construction of the Samuels Avenue Dam and Trinity Point Gate; investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601 9675) and the Resource Conservation and Recovery Act, as amended (hereinafter “RCRA”) (42 USC 6901 *et seq.*), except for any investigations performed by the Government in accordance with Article XIV.A. of this Agreement; the cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination under CERCLA or RCRA cleanup of lands, easements, or rights-of-way required for the *Project*; performance of all demolitions required for the *Project*; performance of all *relocations* necessary for construction, operation, and maintenance of the *Project* and the Base Conditions; performance of all activities associated with performance of the other Base Conditions; and all lands, easements, rights-of-way, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that are required for construction, operation, and maintenance of the Base Conditions. The term does not include modification or removal of any levee included in the Fort Worth Floodway Levee Project, except for those levees that must be modified or removed for the construction of the *Project*.

M. The term “*lands, easements, and rights-of-way provided by the Non-Federal Sponsor at no cost to the Project*” shall mean: 1) those identified as tracts 20, 164 and 35

shown in Figure 2, Appendix B of the Decision Document required for the construction, operation, and maintenance of the bypass channel feature of the *Project*; and 2) all lands, easements, and rights-of-way that the Non-Federal Sponsor shall provide or otherwise make available for the construction, operation, and maintenance of the valley storage feature of the *Project*.

N. The term “*Central City Federal Participation Limit*” shall mean the \$110,000,000 statutory limitation on the Government’s financial participation in the design and construction of the *Project* as specified in Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447.

O. The term “*authorization for entry*” shall mean written notification by the Non-Federal Sponsor to the Government that a parcel of land is available for access by the Government and its agents and contractors for construction of any required *Project* component.

P. The term “*Authorized Project Cost*” shall mean the \$220,000,000 statutory limitation on the cost of the *Project* as specified in Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall construct the *Project* (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto) applying those procedures usually applied to Federal projects, in accordance with 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 proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations,

award of contracts or commencement of construction using the Government's own forces, 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.

B. The collective value of the Non-Federal Sponsor's contributions toward *total project cost* shall be \$110,000,000 and shall be provided 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 *Project*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article V and Article X of this Agreement.

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

1. As of the effective date of this Agreement, \$15,952,000 of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for 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*.

2. 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. of this Agreement that the Government

projects will 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 by the Government shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

3. In accordance with Section 116 of the Energy and Water Development Appropriations Act, 2005, Division C of Public Law 108-447, the Government's total financial obligations for the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with II.H. of this Agreement) shall not exceed the *Central City Federal Participation Limit*. In addition, the Non-Federal Sponsor's total financial obligations for the *Project* may not exceed \$110,000,000.

4. Notwithstanding any other provision of this Agreement, the sum of *total project costs* plus the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement shall not exceed the *Authorized Project Cost*. If the Government determines that the award of any contract for construction of the *Project*, or continuation of construction of the *Project* using the Government's own forces, would result in *total project costs* and the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement exceeding the *Authorized Project Cost*, the Government shall notify the Non-Federal Sponsor in writing of such determination and of the date the Government projects that *total project costs* and the costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement would exceed the *Authorized Project Cost*. Upon this determination by the Government, the parties shall terminate this Agreement and proceed in accordance with Article XIII.D. of this Agreement.

D. When the District Engineer determines that 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.

E. Upon notification from the District Engineer in accordance with paragraph D. 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.

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

G. 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.

H. 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 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; 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, 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*. The Government will provide written notice to the Non-Federal Sponsor identifying all features of the *Project* it classifies as including *betterments* prior to the completion of final design work so that the Non-Federal Sponsor may timely elect whether to maintain such *betterments*. 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*.

I. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *Project*.

J. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

K. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

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

M. 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 level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

N. The Non-Federal Sponsor shall ensure that any recreation features, access roads, parking areas, and other associated public use facilities located on lands, easements, and rights-of-way required pursuant to Article III of this Agreement for the *Project*, are open and available to all on equal terms.

O. The Non-Federal Sponsor shall provide or perform the *Base Conditions* that the Government determines the Non-Federal Sponsor must provide or perform for the upcoming increment or segment of the *Project*, as required by the Government, either prior to or concurrent with the issuance of the solicitation for the upcoming Government contract for construction of the *Project*, or prior to or concurrent with the Government incurring the first *financial obligations for construction* of such portion of the *Project* using the Government's own forces.

P. The Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Samuels Avenue Dam and Trinity Point Gate compatible with the *Project*.

Q. The Non-Federal Sponsor shall obtain all water rights and provide, at no cost to the Government, all quantities of water the Government determines are necessary for construction, operation, and maintenance of the *Project*.

R. The Non-Federal Sponsor may offer in writing to accelerate provision to the Government of all or a portion of its contribution of funds required by paragraph B.2. of this Article for immediate use by the Government for construction of the *Project*. Upon receipt of any such offer from the Non-Federal Sponsor, the Government shall seek the approval and acknowledgement required to accept and use the accelerated funds. Upon receipt of such approval and acknowledgement, the Government shall notify the Non-Federal Sponsor in writing of receipt of such approval and acknowledgement. Upon receipt of such accelerated funds, the Government shall use such funds for construction of the *Project*. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the Non-Federal Sponsor's contribution of funds required by paragraph B.2. of this Article minus any funds previously contributed by the Non-Federal Sponsor as of the date the Government accepts the offered funds.

S. As Federal appropriations are made available to pay the Federal share of *total project costs*, the Government shall afford credit for the funds provided in accordance with paragraph R. of this Article toward the Non-Federal Sponsor's contribution of funds required by paragraph B.2. of this Article.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS,  
DISPOSAL AREA IMPROVEMENTS, AND  
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for 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 with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, 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 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 shall provide the Government with *authorization for entry* 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. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* that were provided by the Non-Federal Sponsor for the *Project* are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, 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* 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 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. 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 construction, operation, and maintenance of the *Project*, including those required 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, 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 project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide for the *Project* pursuant to Article III.A. of this Agreement 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 for the *Project* pursuant to Article III.C. of this Agreement. 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, 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, 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. Finally, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for: 1) the value of the lands, easements, and rights-of-way, *relocations*, or 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 for the *Base Conditions*; 2) the value of *relocations* that the Non-Federal Sponsor must provide pursuant to Article III.B. of this Agreement for the *Project*; and 3) the value of the *lands, easements, and rights-of-way provided by the Non-Federal Sponsor at no cost to the Project*.

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. 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 F. of this Article, the

value of lands, easements, and rights-of-way, including those required for 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 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 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 likewise 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.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, with respect to lands, easements, or rights-of-way for which the Non-Federal Sponsor seeks credit, 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 such 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 such 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 such 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. 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 such 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, as determined by the Government.

E. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of 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, after written notice to the Non-Federal Sponsor and reasonable opportunity to cure any such failure.

F. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H. of this Agreement, acquires lands, easements, or rights-of-way, 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.H. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such 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 calendar 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 matters 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 improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence 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; the performance of and scheduling for the *Base Conditions*, final inspection of the entire *Project* or functional portions of the *Project*; preparation of the proposed

OMRR&R Manual; 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 and 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. Any conflicts or disagreements that may arise will be reviewed by the District Engineer, representing the Government, and the General Manager, representing the Non-Federal Sponsor in order to try to resolve any disagreement between the Project Coordination Team. However, the Government, having the legal authority and responsibility for construction of the *Project*, has the ultimate 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 such 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.

## 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 lands, easements, rights-of-way, 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* for this project may not exceed \$220,000,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$72,350,000; the value included in *total project costs* for lands, easements, rights-of-way, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* determined in accordance with Article IV of this Agreement is projected to be \$37,650,000; the value of the Non-Federal Sponsor's contributions under Article V and Article X of this Agreement is projected to be \$100,000; and the Government's 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.H. of this Agreement are projected to be \$0. These amounts 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 December 1, 2008 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*; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the *non-Federal proportionate share*; the total contribution of funds required from the Non-Federal Sponsor for the upcoming *fiscal year*; the value included in *total project costs* for lands, easements, rights-of-way, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* determined in accordance with Article IV of this Agreement; the credit to be afforded pursuant to Article II.S. 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.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 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, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; and (b) the *non-Federal proportionate share of financial obligations for construction* 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 projected *non-Federal proportionate share of financial obligations for construction* through the first quarter. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Fort Worth District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such 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 of the funds the Government

determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make *financial obligations for construction* of the *Project*, 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 such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* for that quarter for such continuing contract. No later than 30 calendar days prior to the beginning of that quarter the Non-Federal Sponsor shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract for the *Project* where the Government will not use a continuing contract to make *financial obligations for construction*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make *financial obligations for construction* of the *Project* using the Government's own forces, 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 such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any cash contribution provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement and any credit the Government affords pursuant to Article II.S. of this Agreement, to meet the projected *non-Federal proportionate share of financial obligations for construction* using the Government's own forces 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 such 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, after consideration of

any contributions provided by the Non-Federal Sponsor pursuant to the terms of the Design Agreement, 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) to the extent funds that are offered and accepted in accordance with Article II.R. of this Agreement, any other *financial obligations for construction* in excess of the *non-Federal proportionate share* as they are incurred during the *period of construction*. If at any time the Government determines after consideration of the credit the Government affords pursuant to Article II.S. of this Agreement, 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 such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals 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*. In addition 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 required share of *total project costs* exceeds the Non-Federal Sponsor's total contribution 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, Fort Worth," 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 contribution provided by the Non-Federal Sponsor for *total project costs* exceeds the Non-Federal Sponsor's required share thereof, the Government, subject to the availability of funds and as limited by the *Central City Federal Participation Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a

refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. However, if the final accounting is conducted prior to the end of the *period of construction* due to termination of the Agreement pursuant to Article XIII.D. of this Agreement, and the Non-Federal Sponsor accelerated provision of its required contribution of funds in accordance with Article II.R. of this Agreement, the Government shall refund to the Non-Federal Sponsor only that portion of any such accelerated funds that were not obligated by the Government for work on the *Project*, subject to the availability of funds.

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

1. Not less than 60 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 such 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, Fort Worth" 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.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. 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.

#### ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and *Base Conditions*, except for damages due to the fault or negligence of the Government or its 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 with 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 applicable provisions of 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. Any costs allocated to the *Base Conditions* shall be borne entirely by the Non-Federal Sponsor and shall not be included in *total project costs*.

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 and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

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

### ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, after written notice to the Non-Federal Sponsor and reasonable opportunity to cure any such failure, 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 future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. of this Agreement the Government projects will 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 II.C. 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.B.2. 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.

#### 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, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project* and 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 borne entirely by the Non-Federal Sponsor and shall not be included in *total project 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. In such event, if the Government elects pursuant to paragraph C. of this Article to terminate this Agreement for the convenience of the Government, provides written notice thereof to the Non-Federal Sponsor and the Non-Federal Sponsor proceeds with acquisition of such real property interests, the Non-Federal Sponsor shall not be entitled to any credit for or reimbursement of the value of any such real property interests acquired after the date of such written notice.

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 mailed by registered or certified mail, as follows:

If to the Non-Federal Sponsor: Tarrant Regional Water District  
Attn: General Manager  
800 E. Northside Dr.  
Fort Worth, Texas 76102

If to the Government: United States Army Corps of Engineers,  
Fort Worth District  
District Engineer  
819 Taylor Street  
Fort Worth, TX 76102-0300

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 with specific reference to this Agreement.

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 *Authorized Project Cost*.

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 C.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)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall be included in *total project costs* and shall be shared in accordance with the provisions of this Agreement.

C. If, during its 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 in accordance with this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with 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 - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, director, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Non-Federal Sponsor, where creating such an obligation would be inconsistent with the laws of the State of Texas.

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

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

DEPARTMENT OF THE ARMY

TARRANT REGIONAL WATER DISTRICT

BY: John Paul Woodley, Jr.

BY: 

John P. Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

James M. Oliver  
General Manager

DATE: 9/05/08

DATE: 9/05/08

CERTIFICATE OF AUTHORITY

I, Lee F. Christie, do hereby certify that I am the principal legal officer of the Tarrant Regional Water District and that the Tarrant Regional Water District 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 Tarrant Regional Water District in connection with the Central City, Fort Worth, Texas Project and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Tarrant Regional Water District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
5th day of September 2008.



Mr. Lee F. Christie  
General Counsel

## CERTIFICATION REGARDING LOBBYING

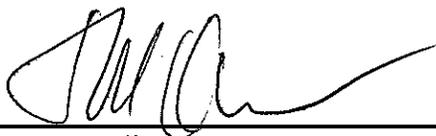
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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



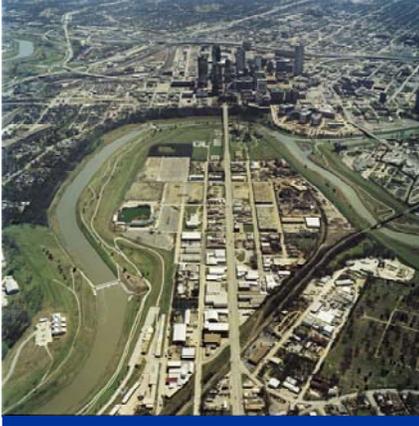
\_\_\_\_\_  
James M. Oliver  
General Manager

DATE: 9/05/08

# Additional Proposal Information

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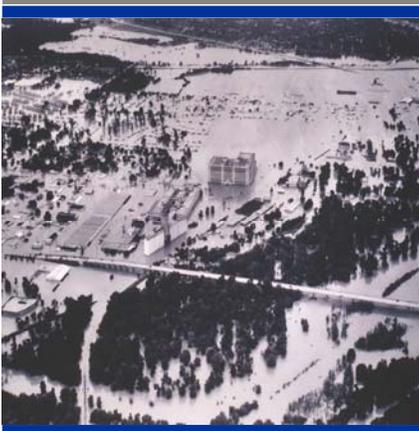
**Enclosure 2a - FWCC\\_\_ModifiedProjectRpt\\_\_Final(April2008)  
w Appendices.pdf**



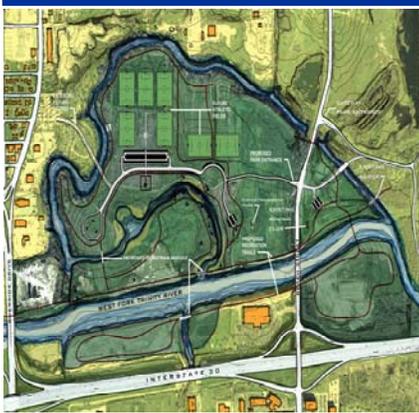
# Upper Trinity River Central City Fort Worth, Texas



## Modified Project Report



Prepared by:  
U.S. Army Corps of Engineers  
Fort Worth District



APRIL 2008



Rendering Image courtesy of CDM



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## EXECUTIVE SUMMARY

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This Modified Project Report provides information for the determination by the Assistant Secretary of the Army for Civil Works (ASA(CW)) as to whether modifying the Approved Central City Project to include alternative hydraulic mitigation sites within the Riverside Oxbow project area, and to incorporate features of the proposed Riverside Oxbow project is technically sound and environmentally acceptable. These two projects are located adjacent to one another along the West Fork of the Trinity River within the City of Fort Worth, Texas. Both projects have undergone independent review under the National Environmental Policy Act and both projects have been approved by higher Corps and/or Department of the Army authority for implementation.

The Central City project has been authorized for construction on the basis of the locally-prepared master plan entitled Trinity River Vision. The Upper Trinity River Basin study authority was modified by Section 116 of Public Law 108-447, dated 8 December 2004, which authorized Corps of Engineers' participation in construction of the Central City Project. Within this specific authorization, a subset which can be constructed by the Corps and the local sponsor, identified as the Corps of Engineers' Project, was defined at \$110,000,000 Federal Cost and a \$220,000,000 total project cost. A Final Environmental Impact Statement (FEIS) was completed for the Central City Project in January 2006 and the Project Report was completed in March 2006. The Record of Decision (ROD) was signed, and the Project Report recommending the Community-Based Alternative was endorsed as being technically sound and environmentally acceptable, by the Assistant Secretary Army for Civil Works (ASA (CW) on 7 April 2006.

An Interim Feasibility Report and Integrated Environmental Assessment were completed in April 2003 for the Riverside Oxbow Project and a Finding of No Significant Impact (FONSI) was signed for the Riverside Oxbow Project on 22 May 2003. The Recommended Plan for the Riverside Oxbow was approved on 29 May 2003 by the Chief of Engineers. An addendum, dated April 2005, to the Riverside Oxbow Project Report changed the extent of the various habitat types to be restored. The Interim Feasibility Report recommends implementation of the Locally Preferred Plan (LPP), which consists of the National Ecosystem Restoration (NER) Plan along with additional local features. The project has not been submitted to Congress for authorization due to a determination by the Office of Management and Budget (OMB) that the environmental resources being restored were not of national or regional significance.

The Trinity Vision Master Plan, which is the plan referenced in PL 108-447, dated 8 December 2004, includes the West Fork East segment, which incorporates the Riverside Oxbow project area and improvements. Therefore, USACE has determined the original authorization allows the inclusion of Riverside Oxbow area into the Modified Central City Project.

### **Overview of Modifications to the Central City Project**

By letter dated 22 June 2006, the City of Fort Worth requested that the Corps of Engineers conduct an evaluation to consider the potential benefits of modifying the Central City Project to incorporate features of the Riverside Oxbow Project. The Memorandum for Record, dated 14 November 2006, gave Corps Headquarters staff approval for the Fort Worth District to proceed forward during Preliminary Engineering and Design for the Central City project (cost shared under the existing Design Agreement) to investigate and seek opportunities to improve hydraulic mitigation sites pursuant to the City's request.

The Fort Worth District formulated a Modified Central City Project Alternative with the initial focus placed on reducing use of eminent domain by minimizing acquisition of private lands and considering publicly owned land within the Riverside Oxbow area for hydraulic mitigation. Following this, the potential for habitat development within these hydraulic mitigation areas was

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evaluated. Emphasis was placed on producing as many (or more) habitat outputs and retaining as many of the features of the Riverside Oxbow project as possible. The Modified Central City includes ecosystem improvements similar in nature to those approved by the Secretary of the Army for the Riverside Oxbow project.

The Modified Central City Project has been evaluated for environmental acceptability and technical soundness. A Final Supplement No. 1 to the EIS for the Central City Project addressing the Modified Central City Project alternative was prepared and filed as the Final Supplement No. 1 to the Final Central City Environmental Impact Statement (FSEIS) on 21 March 2008. The comment period extended 30 days to April 21, 2008.

The major difference between the Modified Central City Project and approved Central City Project is in location of valley storage sites required to compensate for the required valley storage. The original project provides 5,250 acre-feet of valley storage in three general areas, along the West Fork of the Trinity River upstream of the project area primarily in the Riverbend site, along University Drive, and in the vicinity and slightly downstream of the Samuels Avenue Dam. This recommended modified plan for valley storage replaces the Riverbend and several smaller sites, which required private property acquisition, with the Riverside Oxbow Gateway and 3 additional publicly owned site locations. The University Drive and Samuels Avenue valley storage sites will be retained with the Modified Central City Project. The remainder of the recommended modified sites, with the exception of Rockwood Park West, are located downstream of the core of the Central City Project area in the Ham Branch, Riverside Park, but Riverside Oxbow/Gateway Park areas. This reduces the amount of private land acquisition and increases the amount of excavation required to attain the necessary valley storage. The Modified Central City Project would develop more stream habitat by also restoring Sycamore Creek in the Riverside Oxbow area and provides a mechanism to accelerate implementation of features of the City's Gateway Park Master Plan.

In addition to the modified valley storage sites, consideration was also given during the evaluation process to two other structural features of the project. Both Samuels Avenue Dam and the Marine Creek features were examined for potential modifications to reduce environmental impacts and mitigation requirements. Geotechnical investigations also prompted consideration of relocation of the Samuels Avenue Dam site. The location of the Samuels Avenue Dam was moved slightly upstream and a low water dam added to Marine Creek to lesson the overall impacts. Thus the extent of impacts to stream habitat is reduced with the Modified Central City Project due to less inundation of Marine Creek and no impact to Lebow Creek caused by the relocation of Samuels Avenue Dam. Additionally, all features of the original Riverside Oxbow project were evaluated for compatibility with the modified valley storage configuration and were included where possible.

The Modified Central City Project incorporates changes in three categories or features from the original Central City Project. These include the: location, size, and public versus private ownership of the valley storage sites; location and configuration of the Samuels Avenue Dam; and inclusion of the Marine Creek low water dam and boat channel/lock. All other design features of the Modified Project remain unchanged from the Central City Project as described in the Final EIS for that project.

The Modified Central City Project consists of a bypass channel, levee system, and associated improvements to divert flood flows around a segment of the existing Trinity River Floodway system adjacent to downtown Fort Worth. Improvements will include a variable level dam, three isolation gates, low water dam, hydraulic mitigation, ecosystem improvements, recreational trails and facilities, vehicular and pedestrian bridges, utility and roadway relocations, property and easements, and other associated site improvements as shown in the Final Supplement No 1 to the Final Environmental Impact Statement for the Central City Project, Upper Trinity River.

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The approved Central City Project cost in 2005 dollars was estimated at \$435,000,000. The Modified Central City Project in 2007 dollars is estimated at \$596,740,000. The increase from the FSEIS Modified Project cost of \$576,000,000 is based upon risk-adjusted cost projections approved during the ICR by the Walla Walla District. There are no differences in project scope or project components between these two estimates. Of the \$596,000,000, \$78,500,000 will be requested from the Federal Highways Administration for the Henderson and Main Street Bridges; thus, \$518,240,000 will be funded through the USACE and local sponsor. The fully funded Modified Project cost is estimated at \$673,450,000 escalated to the mid-point of construction. There are several fundamental differences in the basis and methodology of these estimates.

- Effective pricing data for the estimate was changed from January 1, 2005 to October 31, 2007.
- Escalation of the Total Project Cost to the mid-point of construction by major project feature and updating from MCACES to MII.
- Contingency development using a risk analysis as outlined in the draft guidance document, Cost and Schedule Risk Analysis Process, dated August 2007.

In addition to the cost methodology differences, the Modified Central City Project includes several project component changes incorporating the relocation of valley storage mitigation to publicly owned sites including the Riverside Oxbow, increases in the excavation and hauling volumes, relocation of the Samuels Ave Dam and a low water dam on Marine Creek.

Because of the cost increases it was necessary to change the Corps Project component of the Modified Central City project to maintain the \$220,000,000 project authorization. The primary change in the Corps Project component was the removal of the Samuels Avenue Dam and Trinity Point Gate which were designated as additional base condition elements.

## **Corps Project**

Public Law (P.L.) 108-447 authorizes the secretary to undertake the Central City River project "as generally described in the Trinity River Vision Master Plan, dated April 2003." However, the authorization further states that the undertaking is not to exceed a total cost of \$220,000,000. The project team identified a subset of the original Central City project which could be constructed by the Corps and the local sponsor within the fiscal constraint established by P.L. 108-447. The Corps of Engineers' Project emphasizes the flood control/hydraulic aspects of the Central City project. This emphasis is retained in the Modified Central City project.

Specifically, the Corps Project which is a subset of the Modified Central City Project includes the bypass channel, two isolation gates, associated real estate, business and property owner relocations, all hydraulic (Valley Storage) and ecosystem mitigation and soft costs associated with these features, and all cultural resources mitigation excepting mitigation of impacts to buried archeological resources that may be discovered in conjunction with project features other than those included in the Corps Project.

The Corps Project, subset of the Modified Central City Project, cost estimate is based on the updated MII Cost Estimate with escalation and contingencies. All major flood control functional features associated with the bypass channel and valley storage are included in the Corps Project. Because Section 116 includes language stating that the Corps Project is authorized at a cost "not to exceed \$220,000,000", cost increases under Section 902 do not apply. Accordingly, the project cost estimate includes an allowance for inflation and contingencies based upon the draft guidance for the "Application of Cost Risk Analysis Methods to Develop Contingencies". All project costs beyond the authorized Federal Project cost of \$220,000,000 would be the

responsibility of the local project sponsors. The new Modified Central City and Corps Project estimates, and risk analysis were reviewed by the Walla Walla District.

## **Policy Adjustments**

The original Project Report details where the Corps Project component of the recommended Central City Project is not consistent with policy, since the project was authorized by Congress based upon a local plan that was not evaluated for economic justification. As such, the Corps Project is not eligible for inclusion in the Army Civil Works annual budget requests and implementation will be limited to the work that can be accomplished within funds provided by Congress.

Because of the unique authorization and the implementation considerations resulting from the collaborative implementation of the project, a number of items related to the project require adjustments to standard Corps policies or procedures. These adjustments generally fall into two categories: those that are not the normal process or policy, but have been agreed to through development of implementation guidance for the project authorization; and those that were approved via the original Project Report. These policy adjustments are presented in Chapter 2 and were approved with the original Project Report.

The only additional requirements added by the Modified Project Report are two new base conditions due to the cost constraints of the authorizing language. These additional base conditions will be reflected in the Project Cooperation Agreement (PCA) or as referenced in 2007 WRDA, Project Partnership Agreement (PPA), and will require that the Samuels Avenue Dam and the Trinity Point Gate be constructed at local expense prior to any modification of the existing Fort Worth Floodway that compromises its integrity relative to passage of the Standard Project Flood.

## **Recommendation**

The overall project has been evaluated for technical soundness, in order to accommodate full consideration of the project's hydraulic performance and its potential to affect the flood protection afforded by the existing Fort Worth Floodway. The project design fully meets Corps of Engineers and regional criteria for projects in the Trinity River floodplain in terms of its hydraulic performance. Corps of Engineers criteria for geotechnical, civil and structural design elements was also employed. The Fort Worth District's extensive review of the design documents was augmented by an Independent Technical Review performed by the Tulsa District and an Independent Cost Review by the Walla Walla District. The project, as currently designed, meets the technical soundness and environmental acceptability requirements of Section 116.

The Modified Central City Project provides a number of significant benefits over the No Action Alternative and the Approved Central City Project. The reduction of private property acquisition by 397 acres for the No Action Alternative and 293 acres for the Approved Central City Project is achieved by revising the valley storage locations and is a major benefit to overall project implementation. Adverse environmental impacts are reduced by eliminating all impacts to Lebow Creek and reducing impacts to Marine Creek as a result of the Dam relocation. The environmental mitigation costs are reduced for either alternative by 86% at a change from approximately \$2.7 million to \$390,000 since the Riverside Oxbow Project had no environmental mitigation cost. Recreational enhancements also have been integrated with valley storage mitigation features to provide synergism of improvements. These enhancements over the No Action Alternative include:

- 5% increase in Concrete Trails
- 77% increase in Composite Trails

- 376% increase in Parking area

These same enhancements over the Approved Central City Project include:

- 44% increase in Concrete Trails
- 171% increase in Composite Trails
- No Parking area was proposed in this alternative

The Modified Central City Project also provides for extensive development of dense riparian forests that would not be included in the No Action Alternative or in the Approved Central City Project. There will be a total of 418 acres of Riparian Woodlands in the Modified Project, which is a 15% increase over the No Action Alternative and a 350% increase over the Approved Central City Project. The Modified Project also provides for the development and improvement of wetlands, and native grassland savannah. The abandoned Sycamore Creek and Riverside Oxbow channels will be restored, adding 5.8 acres of stream habitat that would not be developed in the No Action Alternative or the Approved Central City Project.

The net effect of the recommended changes that would result from the Modified Central City Project alternative is beneficial. The Modified Central City Project alternative would not add or delete any project purpose, nor would it require the acquisition of additional lands or waters specifically for mitigation of fish and wildlife values. The cumulative benefits identified go above and beyond both the Approved Central City Project and the No Action Alternative and result in a project that is not only technically sound and environmentally acceptable, but also creates more public benefits with less environmental cost.

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## CHAPTER 1 - BACKGROUND AND FORMULATION OF THE MODIFIED CENTRAL CITY PROJECT

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### Introduction

This Modified Project Report is the decision document providing information for the determination of whether modifying the Central City Project to incorporate features of the Riverside Oxbow Project is technically sound and environmentally acceptable, and for the decision to execute a PCA (PPA, WRDA 2007) for construction. A Feasibility Study/EA was prepared for the Riverside Oxbow Project and a Finding of No Significant Impact (FONSI) was signed for the Riverside Oxbow Project on 22 May 2003. The Recommended Plan for the Riverside Oxbow was approved on 29 May 2003 by the Chief of Engineers. An addendum, dated April 2005, to the Riverside Oxbow Project Report changed the extent of the various habitat types to be restored. A Draft and Final EIS were prepared in 2005/2006 for the Central City Project. The Project Report for the Central City Project recommending the Community-Based Alternative was endorsed as being technically sound and environmentally acceptable by the ASA (CW) and a Record of Decision was signed on 7 April 2006.

By letter dated 22 June 2006, the City of Fort Worth requested that the Corps of Engineers conduct an evaluation to consider the potential benefits of modifying the Central City Project to incorporate features of the Riverside Oxbow project. With Corps Headquarters' approval to conduct detailed evaluations of the City's proposal, the Fort Worth District formulated a Modified Central City Project Alternative, which has been found to be technically sound and environmentally acceptable. A Final Supplement No. 1 to the EIS for the Central City Project addressing the Modified Central City Project alternative was filed in the Federal Register on 21 March 2008.

This Modified Project Report summarizes information from these documents that is relevant to technical, environmental and PCA (PPA, WRDA 2007) decisions. Within this Modified Project Report, Chapter 1 contains general project information, formulation considerations, recommendations, Chapter 2 addresses implementation of the Modified Central City Project recommendations including the Real Estate Plan, Chapter 3 presents information on technical soundness, and Chapter 4 summarizes environmental acceptability information.

### Authorization

#### Existing Fort Worth Floodway System

The original Fort Worth Floodway levees were constructed by local interests in 1910. These levees were overtopped by the flood of 1922, and were increased in height by repairs made shortly thereafter. Further work on the levees was completed in 1936 with Works Progress Administration (WPA) funds. Additional modifications were made by local interests in 1942. The Fort Worth Floodway, as a Federal project, was authorized by Section 2 of Public Law No. 14, 79th Congress, 2nd Session approved 2 March 1945. The Federal project was initiated in 1950 and completed in September 1957. The Flood Control Act of 1960 provided for an extension upstream of the completed Fort Worth Floodway Project along the West Fork of the Trinity River. The Clear Fork Extension Project, authorized by the Flood Control Act dated 23 October 1962, is located along the Clear Fork of the Trinity River. All of these past improvements are described in the Project Report for the Central City Project dated March 2006 and are not repeated here in order to reduce paperwork.

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## Current Activities

Current USACE investigations into water resources problems and opportunities in the Upper Trinity River Basin were authorized by the United States Senate Committee on Environment and Public Works Resolution, dated 22 April 1988. On 29 August 1990, the USACE and the North Central Texas Council of Governments (NCTCOG) executed a Feasibility Study Cost Sharing agreement to conduct such investigations jointly. This agreement provides the operating framework for a number of site-specific investigations throughout the region. Planning investigations for both the Central City Project and the Riverside Oxbow Project have been conducted under the authority of the 22 April 1988 Resolution and the local cost-sharing agreement as described below. Consideration of combining features of the two projects have been conducted under the PED agreement for the Central City project signed between the Corps and the Tarrant Regional Water District on 20 March 2006.

## Central City Project

The initial study effort leading to the Central City Project was an Interim Feasibility study of the Clear Fork and West Fork of the Upper Trinity River Basin, Fort Worth, Texas. The study area for that broader investigation generally included the 100-year floodplain of the Clear Fork and West Fork of the Trinity River from Interstate Highway (IH) 820 in east Fort Worth to the Lake Worth Dam on the West Fork and the Lake Benbrook Dam on the Clear Fork. A description of the initial Central City Feasibility Study and the concurrent local Master Planning Process is contained in the original Project Report.

Well into the study process, the Corps' study authority was modified by Public Law 108-447, dated 8 December 2004, which authorized Corps of Engineers' participation for construction as follows:

- ♦ "Sec. 116. CENTRAL CITY, FORT WORTH, TEXAS. The project for flood control and other purposes on the Trinity River and Tributaries, Texas, authorized by the River and Harbor Act of 1965 (Public Law 89-298), as modified, is further modified (Public Law 108-447, Section 116) to authorize the Secretary to undertake the Central City River Project, as generally described in the Trinity River Vision Master Plan, dated April 2003, as amended, at a total cost not to exceed \$220,000,000, at a Federal cost of \$110,000,000, and a non-Federal cost of \$110,000,000, if the Secretary determines the work is technically sound and environmentally acceptable. The cost of the work undertaken by the non-Federal interests before the date of execution of a project cooperation agreement shall be credited against the non-Federal share of the project costs if the Secretary determines that the work is integral to the project."

This project authority provided the basis for the Draft and Final EIS, the Project Report and Record of Decision finalized in April 2006.

The currently approved Central City project consists of a bypass channel, levee system, and associated improvements to divert flood flows around a segment of the existing Floodway system adjacent to downtown Fort Worth. Water levels in the bypass channel and adjacent waterways would be controlled by a dam (Samuels Avenue Dam) with crest gates. The dam would be located on the West Fork of the Trinity River just east of Samuels Avenue with three isolation gates to protect the interior area east of the bypass channel from flood flows during large events. Two miles of the existing West Fork would function as a controlled, quiescent watercourse with a water feature or urban lake approximately 900-feet long in the interior area. Land acquisition and excavation would be required at several sites to provide valley storage mitigation in the Riverbend

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area along the West Fork just west of downtown, and existing levees would be modified to provide hydraulic mitigation for the downtown features. Six bridges, four vehicular and two pedestrian, are proposed for the project. Pertinent features of the Approved Central City Project are displayed in Figure 1-1.

### **Riverside Oxbow Project**

During early investigations under the Interim Feasibility study of the Clear Fork and West Fork of the Upper Trinity River Basin, the Tarrant Regional Water District (TRWD) and the City of Fort Worth expressed an interest in moving into plan formulation for the Riverside Oxbow area. This study was initiated at the request of the TRWD at a meeting of the Upper Trinity River Feasibility Study Flood Management Task Force on 20 September 1999, and with approval for modification of the Upper Trinity River Feasibility Cost Sharing Agreement (FCSA) during a meeting of the Upper Trinity River Feasibility Study Flood Management Executive Committee on 24 September 1999. An Interim Feasibility Report with an Integrated Environmental Assessment was completed for the Riverside Oxbow Project in April 2003. A Finding of No Significant Impact (FONSI) was signed by the Acting Fort Worth District Commander on 22 May 2003. The Interim Feasibility Report recommended implementation of the Locally Preferred Plan (LPP), which consists of the National Ecosystem Restoration (NER) Plan along with additional local features. On 29 May 2003 the recommended Plan for the Riverside Oxbow was approved by the Chief of Engineers. An Addendum to the Riverside Oxbow Interim Feasibility Report, dated April 2005, changed the extent of the various habitat types to be restored. The Addendum to the Riverside Oxbow report further refines certain features of the Riverside Oxbow Project. The project has not been submitted to Congress for authorization due to a determination by the Office of Management and Budget (OMB) that the environmental resources being restored were not of national or regional significance.

The Riverside Oxbow Project, like the Central City Project, includes the Tarrant Regional Water District as the non-Federal sponsor with the City of Fort Worth as a local partner. The Riverside Oxbow project area just east of downtown Fort Worth, Texas, on the West Fork of the Trinity River and extends to the East 1<sup>st</sup> Street Bridge crossing of the West Fork. The project includes a portion of the old natural channel of the West Fork, which was severed as a cut-off oxbow when the West Fork channel was realigned, Corps of Engineers participation in the Riverside Oxbow Project consists of reestablishment of low flows through the old river oxbow, including replacement of the Beach Street bridge; creation of emergent wetlands; riparian habitat improvement and buffer (native grassland), establishment of native grasses reforestation using a variety of native hard and soft mast trees and shrubs; and preservation and habitat improvement of native floodplain grasslands. Corps participation also includes linear recreation of concrete trail, crushed aggregate trail, wood mulch equestrian trail as well as associated access points, and parking and restroom facilities. The Riverside Oxbow project is shown on Figure 1-2.

### **Modified Central City Project**

The City of Fort Worth's letter dated 22 June 2006 requested that the Corps of Engineers conduct an evaluation to consider the potential benefits of merging the Central City Project with the Riverside Oxbow Ecosystem Restoration project. The City's request recognized that each of these projects are moving forward as individual projects and that they are located adjacent to one another. The City and the Tarrant Regional Water District indicated that based on their adjacency; there might be merit in combining the two projects. In their letter, the City of Fort Worth identified potential benefits of combining the projects that would not be achieved if they were to continue to proceed as individual projects as follows:

- A greater opportunity for valley storage for both the Central City project and the Riverside Oxbow project by adding the Riverside Oxbow restoration area to the Central City Project.

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- Improved sediment control and erosion protection for both projects as they would occur in the same timeline.
  - Opportunity to increase the area of restoration and provide more habitat units upriver of the Riverside Bridge.
  - Increased opportunities for grassland and riparian improvements in the oxbow area.
  - Greater opportunities for wetland restoration due to lower elevations needed for an enhanced valley storage component in the Riverside Oxbow area.
  - The opportunity to enhance the speed of completion of the Riverside Oxbow improvements so that they align with the ability of the local sponsors to leverage State of Texas funds.
  - The potential to realize significant cost savings in land acquisition associated with combining the Riverside Oxbow and the available valley storage with the Central City Project that requires valley storage. Land in the Riverside Oxbow area is less expensive and already slated for acquisition as part of that project thus reducing the need to acquire other lands for Central City valley storage.

In response to the City of Fort Worth's 22 June 2006 letter request, the Fort Worth District performed an initial evaluation and concluded there was merit in more detailed plan formulation relative to a combined project. The result of that initial evaluation led to preparation of a Preliminary Letter Report by the Fort Worth District dated 1 October 2006. By Memorandum for Record, dated 14 November 2006, Corps Headquarters staff approved the Fort Worth District proceeding forward during Preliminary Engineering and Design for the Central City project (cost shared under the existing Design Agreement) to investigate and seek opportunities to improve hydraulic mitigation sites for that project. Headquarters approval allowed that such improvements may include using valley storage sites within the proposed Riverside Oxbow project area, and may include identification of ecosystem restoration features. The results of those detailed evaluations were presented in Supplement No. 1 to the Final EIS for the Central City Project and in this Modified Project Report.

The Trinity Vision Master Plan, which is the plan referenced in PL 108-447, dated 8 December 2004, includes the West Fork East segment, which incorporates the Riverside Oxbow project area and improvements. Therefore, USACE has determined the original authorization allows the inclusion of Riverside Oxbow area into the Modified Central City Project.

### **Goals of Central City Project Modification**

Initial evaluation of the Central City Project identified four general categories of problems and opportunities as Flood Protection, Ecosystem Improvement, Urban Revitalization, and Recreation. The goal identified during planning of the Riverside Oxbow Project is Ecosystem Restoration with a secondary goal of Recreation. Those goals and objectives identified during initial formulation remain valid in this current evaluation.

The goals and objectives originally established for Flood Protection were (and remain) to restore the design level of protection (SPF+4 feet) where it exists throughout the system and to maintain or improve flood protection associated with interior drainage to the floodway system. The goals for Ecosystem Improvement are to restore, improve, and diversify aquatic habitat associated with the Clear and West Forks of the Trinity River for native aquatic organisms, to improve and increase quantity of emergent wetland habitat for migratory birds of ecological importance, to establish continuity and connectivity within and between regionally and nationally

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significant ecosystems, and to protect and improve existing pockets of high quality bottomland hardwoods adjacent to the river system.

Urban Revitalization objectives of the project sponsors are to provide aesthetic and recreational focal points for the Central City, encourage a higher density of people living, working, playing, and learning in the Central City, orient mixed use development directed toward the river, create an interior water feature or focal point, provide a higher normal water level, eliminate or modify levees where feasible while maintaining the design level of flood protection, create new and enhance existing linkages to neighborhoods and districts, and to enhance redevelopment potential of Central City lands. Recreation objectives are to provide extensive and direct public access to the river and waterfront, facilitate a water-based system of linkages between Downtown, the Stockyards, and the Cultural District, provide recreational and open space amenities, provide a continuity of urban trails through Downtown consistent with the Trinity Trails system, and to create additional trail linkages with neighborhoods and cultural amenities.

While the goals and objectives of original projects remain in effect, this Modified Project Report analyzes the effects of modifying the Central City project to incorporate features of the Riverside Oxbow project. Specific planning objectives for the reformulation effort included:

- Ensure continued compliance of the overall project(s) with regional requirements for hydraulic mitigation (valley storage)
- Reduce the acquisition of private property
- Reduce environmental mitigation requirements for the Central City project
- Maintain or increase the ecosystem restoration outputs and recreational features of the separate projects

## **Formulation of Alternatives**

### **No Action Alternative**

The “No Action” Alternative would be to continue with implementation of both the Central City project and the Riverside Oxbow project as they are currently authorized and approved, and as they are described in their respective project reports. The Corps portion of the overall Central City project is authorized and funded for construction by Section 116 of Public Law 108-447. Although the Riverside Oxbow project is not currently authorized for implementation, it is assumed for planning purposes that it ultimately will be based upon the fact that the Riverside Oxbow project has strong local support, is considered to be non-controversial, and was planned and approved consistent with current policies.

For the “No Action” alternative, Corps of Engineers participation in the Central City project is limited by law to a Federal Cost of \$110,000,000 with a total cost of the features in which the Corps may participate limited to \$220,000,000. Costs for the recommended Riverside Oxbow project were estimated in October 2002 to be \$22,198,000 with the Federal share of the recommended plan estimated at \$9,178,500. The Addendum to the Riverside Oxbow Project Interim Feasibility Report, approved in April 2005 (still based on 2002 price levels) modifies those costs to be \$20,797,000 for the total project (including alternative local features of the Locally Preferred Plan) with a Federal cost of \$8,280,300. Updated to 2005 dollars, those costs become \$23,625,413 and \$9,426,540, respectively. Therefore, costs of the “No Action” alternative future, which assumes that both Corps of Engineers projects will be implemented independently, are estimated at a total cost of \$243,625,413 and a Corps cost of \$119,426,540 based on 2005 dollars.

The approved Central City project, as part of the No Action condition, requires hydraulic mitigation to compensate for the shortened channel length and the resultant drawdown in water surface elevations. Valley storage sites are located on the West Fork and include primarily the Riverbend site and in smaller areas near University Drive, Samuels Avenue, and upstream of Riverside Park. With these valley storage sites, construction of the Central City Project as part of the No Action condition would attain an SPF +4 level of protection throughout the project area. Likewise, the approved Riverside Oxbow project was formulated specifically to avoid increasing the flood stages at the downstream edge of the project and associated downstream impacts. The No Action condition, which assumes both projects to be implemented independently, would provide 100% of the required valley storage and would be in full compliance with the criteria established by the Trinity Regional EIS Record of Decision and the NCTCOG's Corridor Development Certificate program.

### **Modified Central City Project Alternative**

The City of Fort Worth's request for the Corps to conduct an evaluation to consider the potential benefits of modifying the Central City Project to incorporate the Riverside Oxbow Project was the driving force in the formulation of alternatives. The two primary public concerns that had been identified during the original coordination of the Central City Project were the expenditure of public funds in general and the acquisition of private lands for public purposes. Keeping these factors in mind, the initial focus of formulation of a modified Central City Project alternative was placed on reducing use of eminent domain by minimizing acquisition of private lands and considering publicly owned land within the Riverside Oxbow area to replace the upstream Riverbend hydraulic mitigation area. Following this, the potential for habitat development within these hydraulic mitigation areas was evaluated.

### **Valley Storage**

During the first step in the process of identifying potential valley storage sites in the combined project area, an inventory was made of all areas potentially available. This inventory included sites that had previously been considered for the Central City project, lands within the footprint of the approved Riverside Oxbow project, several modified areas and a few additional areas not previously considered. A total of 47 potential valley storage sites were identified within the study area. Using the valley storage requirement of 5,250 acre-feet established through the hydraulic evaluation, a GIS map of environmentally sensitive areas, and a topographic layer within the GIS, hydraulic engineers selected areas from the initial valley storage analysis that could, with excavation or control structures accommodate valley storage. The team then worked in an iterative process to maximize opportunities to accommodate valley storage while avoiding or minimizing adverse effects to significant habitats. Opportunities were also identified to optimize the dual purposes of attaining valley storage and potential habitat development by identifying valley storage areas that are primarily grassland and disturbed. This process is described in detail in the Supplemental EIS, pages 3-6 through 3-9.

The Valley Storage Plan developed for the Modified Central City Project is presented in Figure 1-3 Recommended Valley Storage Plan, and in Table 1-1. It consists of 21 sites that were identified as preferred valley storage sites, along with 5 contingency valley storage sites. This configuration has four significant strengths. First, it provides flexibility in assuring that the required valley storage will be achieved as the design of the project is refined and developed during the PED phase. Second, it avoids most of the adverse impacts to habitat resources of significance. Third, this plan maximizes opportunities for riparian woodland development consistent with expressed public desires. And, finally, it accommodates public input by providing for compatible recreation development consistent with the City's Gateway Park Master Plan. This plan for valley storage creates an opportunity to restore flows through the old Sycamore Creek Oxbow in addition to the restoration of the cutoff Trinity River Oxbow which was a key feature of the Riverside Oxbow project.

It should be noted that even though the primary valley storage sites of the Recommended Plan shown on Table 1-1 are preliminarily estimated to provide substantially more valley storage than the required 5,250 acre feet, five additional sites were identified as “contingency” sites within the Recommended Plan. These contingency sites could be used to supplement additional valley storage requirements in the event that roughness coefficients of optimal riparian woodland development as refined during detailed design, or other design constraints, necessitate additional storage. If it is determined as the design of the project is refined and developed during the PED phase that additional valley storage might be required beyond what the primary sites could achieve, use of any contingency site would be on an “as needed” basis only.

Hydraulic modeling indicates that the roughness coefficients of the existing riparian forest within the Gateway Park East environmental study reach is appropriate to accomplish valley storage requirements. Based upon that analysis, this riparian forest was evaluated to determine vegetation components that contribute to that roughness. Those vegetation components were then incorporated into the excavated valley storage sites to provide the required roughness and riparian woodland development.

**Table 1-1  
Recommended Valley Storage Plan**

Site ID	Site Description	Environmental Study Reach	Approximate Cut Elevation	Acres	Est. Volume (acre-feet)	Habitat Impacts (AAHU's) <sup>(3)</sup>		
						Wetland	Riparian	Upland
<b>Primary Sites</b>								
2	Rockwood Park West	West Fork Rockwood (West)	Normal Pool @ 525 +1' (526 NGVD)	22.8	92	0	-0.05	0
3	University Drive	North Main	No Cut, gains by backwater	13.3	1275	0	0	-0.50
5a	Samuels Sites	West Fork North	Normal Pool @ 501 +1' (502 NGVD)	20.8	538	0	0	-0.20
5c		West Fork South		16.1		0	0	0
9	Ham Branch	West Fork South	No Cut, relocate levee	99.6	750	0	2.04	-0.98
10	Riverside Oxbow Sites	Oxbow North	500 to 506 NGVD	8.2	1373	0	0	-5.79
11		Oxbow South		16.4				
12		Oxbow Center		38.7				
13		Oxbow South		4.6				
14a		Oxbow Center		85.7				
14b		Oxbow Center		17.4				
15	Gateway Park Sites	Gateway South	Variable (new 2 yr elevation or greater) 492 to 500 NGVD	20.0	533	0	0	-5.79
16a		Gateway Beach		111.5				
16b		Gateway Beach						
18a		Gateway Beach						
18b		Gateway Beach						
17	Gateway Park/Gateway East	65.0	273					
20	Dam Relocation - drawdown reduction <sup>(1)</sup>	Several	No Cut			0	0	0
21	Riverside Park	West Fork North	504 to 510 NGVD	20.0	187	0	0	-0.17
23	Interior Storage Area	North Main	No Cut	412.6	140	0	0	0
24	Gateway Park Ball fields	Gateway Park	No Cut	25.8	270	0	0	0
Subtotal					<b>5431<sup>(2)</sup></b>	<b>0</b>	<b>1.99</b>	<b>-7.64</b>
<b>Contingency Sites<sup>(5)</sup></b>								
1	Riverbend Site	West Fork Riverbend (TRWD Owned)	2 yr @ 536 + 1' (537 NGVD)	32.1	246	-0.04	0	-2.68
7	I-35 Sites	West Fork North	Normal Pool @ 501 + 1' (502 NGVD)	26.1	671	0	-0.11	-0.03
8		West Fork North		18.0		0	0	0
6	Helipad / Delga Park	West Fork South		26.1	210	0	0	-0.16
22	Rockwood Park East	West Fork Rockwood (East)	2yr @ 529 + 1' (530 NGVD)	184.4	1050	0	-0.12	-1.42
Subtotal					2177	-0.04	-0.11	-4.29
<b>Total</b>					<b>7608</b>			

<sup>(1)</sup> Valley storage volume to be determined by hydraulic modeling and future design refinement.

<sup>(2)</sup> Estimated storage volume based on potential excavation volume. Volumes subject to change during more detailed hydraulic modeling.

<sup>(3)</sup> Habitat impacts represent those impacts due to construction that must be mitigated. The mitigation plan for Ham Branch for the original Central City Project, which would be implemented with the Modified Project, more than offsets riparian habitat losses of the primary sites.

<sup>(4)</sup> Cost shown include valley storage site preparation and excavation, habitat development, and other planning, engineering, and design costs.

<sup>(5)</sup> Use of any contingency site is not anticipated unless advanced planning, engineering, and design indicates a need for additional storage. In the event that contingency storage may be required, the smallest, least costly site(s) would be selected to meet the additional requirement.

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## Other Formulation Considerations

In addition to potential valley storage sites, consideration was also given during the reformulation process to two other structural features of the project. Both Samuels Avenue Dam and the Marine Creek features were examined for potential modifications to reduce mitigation requirements. Additionally, all features of the original Riverside Oxbow project were evaluated for compatibility with the modified valley storage configuration and were included where possible.

### A. Samuels Avenue Dam

The original Central City Project included an in-channel dam to achieve the urban design objective of maintaining water levels in the project interior at a relatively constant normal water surface elevation of approximately 525 NGVD. Any such dam also must have the capability to lower the crest elevation to allow passage of flood flows. Navigability throughout the Central City area to connect Downtown to the Stockyards, the Cultural District, and the Rockwood Park area for small boat traffic is an important project output. To meet this project objective of water connectivity and to create desired neighborhood linkages, dam site considerations were limited to locations near the confluence of Marine Creek in the West Fork of the Trinity River.

The original Central City EIS proposed to site the dam downstream from Samuels Avenue and the adjacent three railroad bridges, approximately 1,300 feet downstream from the confluence with Marine Creek. Several alternative configurations and types of gates for the dam were conducted as part of the original site evaluations. The selected location resulted in adverse impacts to Marine Creek due to both the high backwater elevation of 525 NGVD as well as additional operations when passing flood flows on the Marine Creek watershed. The original site contained asymmetrical geotechnical conditions and also impacted the lower segment of Lebow Creek by loss of habitat resulting from rerouting of the creek downstream of the dam.

During this re-evaluation, alternative sites for the dam were evaluated from a geotechnical standpoint on the West Fork upstream of the Marine Creek confluence, ranging from immediately at the confluence to just downstream of Northside Drive. Sites south of Northside Drive were eliminated due to impacts on Northside Drive, limited area, and conflicts with the bypass channel. Placing the dam too close to the confluence could introduce scour potential at the Samuels Avenue Bridge, while placing it further upstream towards Northside Drive reduced or eliminated options to maintain water connectivity with Marine Creek. In addition, any selected site must allow adequate area for construction and temporary diversions.

The selected site for the in-channel gated dam is proposed on the main stem of the West Fork of the Trinity River just upstream of the confluence with Marine Creek (Figure 1-4, Proposed Samuels Avenue Dam Location and Features). This dam site is still referred to as the Samuels Avenue dam due to its proximity to the Samuels Avenue Bridge. The proposed Samuels Avenue Dam site for this re-evaluation is located approximately 1,750 feet downstream of Northside Drive, immediately upstream from the confluence of Marine Creek.

The benefits of this dam site include reduced backwater impacts to Marine Creek as well as simplifying the operational demands of Samuels Avenue Dam by allowing Marine Creek flood flows to pass without affecting the urban lake pool elevation. A significant benefit to this dam site is the elimination of all impacts to stream aquatic and riparian habitat of Lebow Creek. Water connectivity is maintained, which satisfies project objectives.

### B. Marine Creek Low Water Dam

In association with the proposed new site and configuration for the Samuels Avenue Dam, a fixed low water dam is proposed on Marine Creek at the confluence with the main stem of the West Fork of the Trinity River to maintain water connectivity. Several alternatives were evaluated

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for the Marine Creek low water dam including both the use of a gated or fixed structure as well as varying the crest width and height. A fixed structure is recommended on Marine Creek as it is able to meet the design requirements of not increasing the existing 100-year water surface elevations on Marine Creek and reducing environmental impacts, while also reducing construction, operation, and maintenance costs. This fixed dam would also pass lower frequency storms without operation or controls, which was not possible under the previous Samuels Avenue Dam location downstream of the Marine Creek confluence. This structure will have a crest elevation of 516.5 NGVD and a crest length of 200 feet. The Marine Creek upper bank channel will need to be widened by approximately 50 feet near the dam site in order to accommodate the 200 feet of crest length needed to pass the 100-year flow without causing increases in water surface elevations upstream.

Widening of Marine Creek and construction of a small recreational boat turnaround basin is proposed just upstream of 23<sup>rd</sup> Street at the limits of the 516.5 NGVD pool elevation. Bank stabilization would be accomplished through the use of compacted concrete with rip-rap at appropriate locations. Maintenance access would be provided for trash and debris removal. The downstream or outfall of the low water dam would be sloped and appropriately rip-rapped to assure adequate re-aeration of both low and high flows.

This combination of structures meets the goals and objectives of the TRV Master Plan to enhance neighborhood linkages by impounding water to a point upstream on Marine Creek, thus providing a waterway within the combined Clear Fork and West Fork system to connect the Cultural District, Downtown, and the Rockwood Park area to the Stockyards area. This modified proposal also reduces adverse impacts to aquatic and riparian habitats of Marine Creek and eliminates adverse impacts to Lebow Creek.

### **C. Riverside Oxbow Features**

During the re-formulation of the Central City project, emphasis was placed on producing as many (or more) habitat outputs and retaining as many of the features of the Riverside Oxbow project as possible. As described in the SEIS, the Modified Central City includes ecosystem improvements similar in nature to those approved by the Secretary of the Army for the Riverside Oxbow project. Environmentally beneficial habitat construction or modification would take place in each identified study reach: Oxbow North, Oxbow Central, Oxbow South, Gateway Central, Gateway South, Gateway Beach, Gateway Park and Gateway East.

Primary features of the Riverside Oxbow project that are also components of the Modified Central City project include:

- Restoration of flow through the old Riverside Oxbow
- Establishment of riparian forested corridor along the old Riverside Oxbow
- Establishment of grassland buffer outside of riparian corridor along Riverside Oxbow
- Improvement of existing forests within Gateway East
- Development and/or improvement of wetlands in Gateway Beach, Gateway Park and Gateway East
- Development of grassland savannah (5 to 10 % tree cover within developed native grasslands)
- Provision of recreational trails and access that are compatible with ecosystem improvement activities

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The Modified Central City Project also provides for extensive development of dense riparian forests within Oxbow North, Oxbow Central and Oxbow South study reaches that were not permissible in the stand-alone Riverside Oxbow Project due to the hydraulic constraints. An additional change is the abandoned Sycamore Creek channel lying within the Oxbow Central and Oxbow North reaches will be restored to add stream habitat with associated riparian edge that was not included in the original project. Habitat improvement features of the Modified Central City project in the Riverside Oxbow area include:

1. Creation or development of 137.6 acres of riparian forest on existing grasslands and excavated valley storage sites
2. Improvement of riparian forest habitat on 263.6 acres
3. Creation, development, and improvement of 52.2 acres of wetlands
4. Development of 76.9 acres of native grassland savannah with 5% to 10 % tree cover
5. Development of native grassland on 10.1 acres
6. Improvement of habitat quality of 53.3 acres of native riparian grasslands
7. Establishment of turf grass for stabilization on 124.7 acres

This suite of improvements provides approximately 40 additional average annual habitat units of riparian forest value and approximately 5 additional average annual habitat units of wetland value compared to the original Riverside Oxbow project. As with the original Central City project, the modified alternative provides compensatory mitigation for aquatic and terrestrial impacts associated with the entire project. The ecosystem improvements discussed above are not included as features of the Corps Component and will be at 100% non-Federal costs.

### **Components of the Central City Project Not Changed with the Modified Central City Project**

Certain components or features of the original Central City Project that would be retained with the Modified Central City alternative provide benefits that address Flood Damage Reduction, Urban Revitalization, and Recreation. Both Plans provide SPF plus 4' protection within the system, and improve the performance of the interior drainage components, eliminating damages associated with the 100 year flood event for Sump 26W and reducing the 100-year floodplain in Sump 16W. As documented above, both concepts fully comply with the criteria established in the Corridor Development Certificate process, and, in fact, exceed the criteria relative to restoration of valley storage for the SPF volume.

The original Central City project and the Modified Project provide direct public access to the water's edge along the bypass channel through its system of trails and walkways. This feature contributes substantially to meeting project goals and objectives for recreational amenities. In addition, both projects provide direct access to recreation on the water. All waterways will be designed to accommodate canoes, kayaks and low-clearance public excursion boats. The bypass channel included in the Corps project adds some 8,400 linear feet of water to the system, extending the water surface available for small boat traffic. The bypass channel, in connection with the interior river channel and interior water feature provide for a 3.5 mile boating loop, enhancing the recreational experience. Additionally, the project provides the opportunity to link the Cultural District, Downtown, and the Northside/Stockyards by water with either the original project or the modified project alternative.

Elements of the original Central City project that are intended to provide the public sector infrastructure (waterways, roads, and bridges) needed to re-orient the project site to the river and provide incentives for private sector revitalization projects would be retained with the Modified

Central City Project alternative. Construction of these project elements is predicted to exceed \$600,000,000 as construction wages multiply through the regional economy. Total employment directly or indirectly derived from construction of either Central City Project is estimated at 6,100 jobs. An additional 35,659 jobs are projected to be associated from recurring business and from residential and commercial related to construction for a total employment impact of 41,759 jobs.

Land use intensification is the primary focus of the overall project's urban revitalization objective. Removal of the levees, development of any canals or other waterways, and transportation enhancements would occur with either the original or the modified project. The Trinity Uptown Plan, which envisions future land use intensification to take the form of high-density mixed use development that includes approximately 10,000 residential households, remains viable with the Modified Central City Project. Achieving a sizable residential population in the area between Downtown, the Northside/Stockyards, and the Cultural District would provide a support base for businesses and activities in those areas as well. The total economic impact of either Central City project alternative is predicted to be almost \$4.3 billion. This compares to a without-project total economic impact of just over \$1.1 billion, representing a difference of almost \$3.2 billion over the 40-year period of analysis. Total employment associated with the original Central City Project or the Modified Central City Project and Trinity Uptown is projected at almost 42,000, an increase of 31,000 over the No Action employment within the project area.

### **Recommended Modified Central City Project**

As has been stated, the Modified Central City alternative consists of changes in three categories or features from the original Central City Project as endorsed by the ASA(CW) on 7 April 2006. These changes from the original project include the: location, size, and public versus private ownership of the valley storage sites; location and configuration of the Samuels Avenue Dam; and inclusion of the Marine Creek low water dam and boat channel and lock facility between the Trinity River impoundment and Marine Creek. All other design features of the Modified Project Alternative remain unchanged from the Central City Project as described in the Final EIS for that project. Many features of the Riverside Oxbow project have been incorporated into the Valley Storage development for Modified Central City project. Figure 1-5, Modified Central City Project, displays all of the major features of the recommended plan. Detailed descriptions of the modifications are included in the SEIS, pp. 3-11 through 3-15.

The costs of the Corps Project (Federal Costs) of the Original Central City Project and Riverside Oxbow Project when proceeding with each project separately (No Action) are summarized as follows:

- Original Central City Project costs are defined in the authorizing legislation at \$220,000,000, of which the Federal Cost would be \$110,000,000.
- Riverside Oxbow Project was estimated at \$20,787,000 (October 2002 dollars) or \$23,625,413 in 2005 dollars, of which about \$14,198,873 would be local costs and \$9,426,540 would be Federal Costs.
- Total cost of those features in which the Corps can participate (Total Federal Project Cost) would be \$240,797,000 shared at \$122,516,700 local and \$118,280,300 Federal Cost.

The costs of the Corps Project (Federal Costs) of the Modified Central City Project alternative are likewise limited by the authorization to \$220,000,000, with the local sponsor and the Federal Government providing \$110,000,000 each. When compared to the No Action alternative, and based on 2005 dollars, the Modified Central City Project alternative would result in a 10% reduction in total Federal Project costs due to the elimination of the Riverside Oxbow as an independent project.

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An Independent Cost Review (ICR) was conducted for the Modified Central City project that concluded with a Cost and Schedule Baseline Certification from the Walla Walla District, Cost Engineering Center of Expertise on April 16, 2008. This certification included the MII cost estimate and a risk analysis that determined the probability of various cost outcomes and quantified the required contingency to the desired 80% level of confidence.

This certification meets the requirements of the Memorandum dated July 3, 2007 from the Director of Civil Works. This risk analysis process used the recommended Corps *Monte Carlo* techniques (Crystal Ball) to determine probabilities and contingency on the entire cost estimate. Risk factors evaluated included:

- a. bidding climate and economic factors
- b. land acquisition
- c. contract packaging
- d. design changes
- e. various construction elements
- f. technical complexity
- g. equipment and labor productivity
- h. schedule

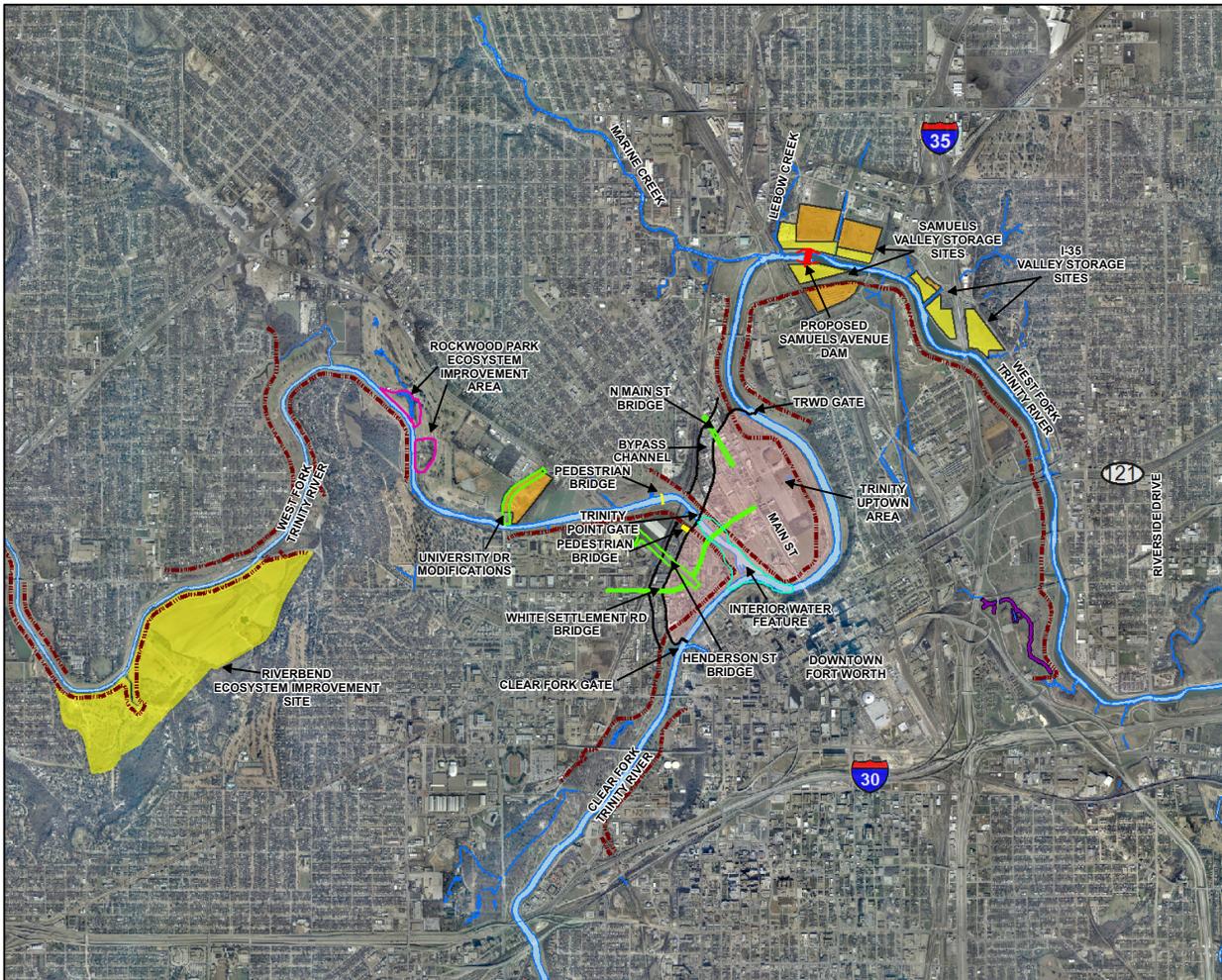
The overall project contingency, as determined by the analysis, was allocated on a feature-specific level based on the dollar-weighted relative risk (standard deviation) of each feature. This review and analysis was developed under the guidance of ER 1110-2-1150 Engineering and Design for Civil Works Projects and ER 1110-2-1302 Civil Works Cost Engineering and submitted to the Walla Walla District.

The approved Central City Project cost in 2005 dollars was estimated at \$435,000,000. The Modified Central City Project in 2007 dollars is estimated at \$596,740,000. The increase from the FSEIS Modified Project cost of \$576,000,000 is based upon risk-adjusted cost projections approved during the ICR by the Walla Walla District. There are no differences in project scope or project components between these two estimates. Of the \$596,000,000, \$78,500,000 will be requested from the Federal Highways Administration for the Henderson and Main Street Bridges; thus, \$518,240,000 will be funded through the USACE and local sponsor. The fully funded Modified Project cost is estimated at \$673,450,000 escalated to the mid-point of construction. All project costs beyond the authorized Federal Project cost of \$220,000,000 would be the responsibility of the local project sponsor.

The increase in Total Project Cost for the Modified Central City Project alternative, all of which would be local cost, is the result of incorporating features of the Riverside Oxbow project and relocating the valley storage sites to the Riverside Oxbow area. The Modified Project includes both increases and decreases in costs from project features. Savings would come primarily in the costs of lands and damages. Costs increases would be primarily in the excavation and earthwork for the development of the valley storage areas, dams and structures, fish and wildlife facilities, and recreation facilities. The associated benefits with these costs are the additional acreage of habitat development, additional recreational components consisting of equestrian composite and hard paved trails, soccer fields, covered basketball courts and additional public use and access including boat launches, pedestrian bridges and public roads and parking.

# Project Report

## Figure 1-1 Approved Central City Project



### Legend

- BYPASS CHANNEL
- PROPOSED SAMUELS AVE DAM
- INTERIOR WATER FEATURE
- PEDESTRIAN BRIDGE
- EXISTING LEVEE
- ROAD IMPROVEMENT
- ECOSYSTEM RESTORATION AREA
- AQUATIC HABITAT MITIGATION AREA
- TRINITY UPTOWN AREA
- STREAMS

### VALLEY STORAGE SITE WORK DESCRIPTION

- CUT
- FILL/SPOIL



0 0.25 0.5 1 Miles

Aerial Photography Date: January 2005



### ATTENTION

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