PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
TOWN OF CAROLINA BEACH, NORTH CAROLINA
FOR
PERIODIC NOURISHMENT
OF
THE CAROLINA BEACH PORTION OF THE CAROLINA BEACH AND VICINITY
COASTAL STORM RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this 24th day of November, 2021, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander, Wilmington District, U.S. Army Corps of Engineers (hereinafter the "District Commander"), and the Town of Carolina Beach, North Carolina (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Carolina Beach portion of the Carolina Beach and Vicinity coastal storm risk management project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was authorized by Section 203 of the Flood Control Act of 1962 (Public Law 87-874), as amended;

WHEREAS, Section 401(7) of the Water Resources Development Act of 2020 (Public Law 116-260) extended periodic nourishment of the Project for a 15-year period (hereinafter the "periodic nourishment", as defined in Article I.B. of this Agreement);

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

WHEREAS, the Non-Federal Sponsor already owns the real property interests required for periodic nourishment, operation, and maintenance of the Project and will provide the Government with authorization for entry to such real property interests to undertake periodic nourishment of the Project;

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

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means the Carolina Beach portion of the Carolina Beach and Vicinity coastal storm risk management project that was constructed in 1964 and consists of approximately 14,000 feet of ocean shoreline fronting the majority of the Town of Carolina Beach with a dune having a crown width of 25 feet at 12.5 feet North American Vertical Datum of 1988 (NAVD88), a storm berm with a crown width of 50 feet at 9.5 feet NAVD88 and a varying width construction berm at 5.5 feet NAVD88, and a rock revetment of approximately 2,050 feet long on the far northeast segment of the Project.

B. The term "periodic nourishment" means a 15-year extension of periodic nourishment of the Project beginning on the date on which the Government initiates construction of the first cycle of such periodic nourishment, as generally described in the Final Integrated Beach Renourishment Evaluation Report and Environmental Assessment for the Carolina Beach portion of the Carolina Beach and Vicinity, North Carolina Project, dated October 2019 and approved by the Director of Civil Works on June 16, 2020 (hereinafter the "Decision Document").

C. The term "HTRW" means hazardous, toxic, and radioactive wastes, which includes any material listed as a "hazardous substance" (See 42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

D. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to periodic nourishment of the Project and cost shared. The term includes, but is not necessarily limited to: the Government's costs of engineering, design, and construction; the Government's supervision and administration costs; the Non-Federal Sponsor's creditable costs for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Coordination Team to discuss significant issues and actions; audits; betterments; additional work; or the Non-Federal Sponsor's cost of negotiating this Agreement.

E. The term "real property interests" means lands, easements, and rights-of-way owned by the Non-Federal Sponsor that are required for periodic nourishment, operation and maintenance of the Project.

F. The term "functional portion thereof" means a portion of a cycle of periodic nourishment that has been completed and that can function independently, as determined in writing by the District Commander, although the remainder of the cycle of periodic nourishment is not yet complete.

G. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for South Atlantic Division (hereinafter the "Division Commander"). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for periodic nourishment of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the periodic nourishment of the Project; however, it does not include HTRW cleanup and response.

H. The term "betterment" means a difference in an element of a cycle of periodic nourishment that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to periodic nourishment of that element.

I. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

J. The term "Maximum Cost Limit" means the statutory limitation on the total cost of the periodic nourishment of the Project, as determined by the Government in accordance with Section 902 of the Water Resources Development Act of 1986, as amended, and Government regulations issued thereto.

K. The term "additional work" means items of work related to, but not cost shared as a part of, periodic nourishment of the Project that the Government will undertake on the Non-Federal Sponsor's behalf while the Government is carrying out periodic nourishment, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake periodic nourishment of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsor shall contribute 50 percent of construction costs, allocated by the Government to coastal storm risk management; 100 percent of construction costs allocated by the Government to beach improvements with exclusively private benefits; 100 percent of construction costs allocated by the Government to improvements and other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation; and 100 percent of the construction costs allocated by the Government to the prevention of losses of undeveloped private lands, as follows:

1. The Non-Federal Sponsor shall provide the Government with authorization for entry to the real property interests required for periodic nourishment of the Project in accordance with the Government's schedule for each cycle of periodic nourishment. The Non-Federal Sponsor shall ensure that real property interests required for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

2. If providing in-kind contributions, as a part of its 50 percent cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, and determine the value of in-kind contributions, as follows:

a. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient to determine the value of credit to be provided for its in-kind contributions.

b. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; and supervision and administration costs, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Such costs shall be subject to audit in accordance with Article VIII.B. to determine reasonableness, allocability, and allowability of costs.

c. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

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

3. For construction costs allocated to coastal storm risk management for each cycle of periodic nourishment, after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraph B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article IV. For construction costs allocated to beach improvements with exclusively private benefits, to improvements and other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation, and to the prevention of losses of undeveloped private lands, the Non-Federal Sponsor, in accordance with Article IV.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

4. No later than August 1st prior to each subsequent fiscal year during a cycle of periodic nourishment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article IV.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for periodic nourishment of the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the periodic nourishment of the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this

Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. The Government's undertaking of a cycle of periodic nourishment has no effect on the Non-Federal Sponsor's continuing responsibility for operation, maintenance, repair, rehabilitation, and replacement of the Project, at no cost to the Government, in accordance with applicable Federal laws and specific direction provided in the Operations and Maintenance Manual, dated September 1998 (hereinafter the "O&M Manual"). Within 30 days of determining that a cycle of periodic nourishment, or a functional portion thereof, is complete, the District Commander shall so notify the Non-Federal Sponsor in writing. In addition, the Government shall furnish the Non-Federal Sponsor with copies of all as-built drawings for the completed work. If a cycle of periodic nourishment changes the Non-Federal Sponsor's responsibilities for operation, maintenance, repair, rehabilitation, and replacement of the Project, the Non-Federal Sponsor shall commence any additional responsibilities upon notification from the Government.

1. The Government and the Non-Federal Sponsor shall consult on any updates or amendments to the O&M Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

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

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

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

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

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

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

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

M. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for periodic nourishment. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

N. In addition to the ongoing, regular discussions of the parties in the delivery of periodic nourishment, the Government and the Non-Federal Sponsor may establish a Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

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

ARTICLE III - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for periodic nourishment, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for periodic nourishment, operation, and maintenance of the Project, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable laws and determine whether to initiate a cycle of periodic nourishment, or if already initiated, whether to continue, suspend, or terminate the cycle of periodic nourishment.

1. Should the parties initiate or continue the cycle of periodic nourishment, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid by the Non-Federal Sponsor without reimbursement or credit by the Government. In no event will the Government proceed with that cycle of periodic nourishment before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate the cycle of periodic nourishment, but may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project, including periodic nourishment related thereto, for purposes of CERCLA liability or other applicable law.

ARTICLE IV – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, total construction costs are projected to be $80,048,000, with the Government's share of such costs projected to be $40,024,000 and the Non-Federal Sponsor's share of such costs projected to be $40,024,000. Construction costs allocated to coastal storm risk management are projected to be $80,048,000, with the Government's share of such costs projected to be $40,024,000, and the Non-Federal Sponsor's share of such costs projected to be $40,024,000, which includes creditable in-kind contributions projected to be $0, and the amount of funds required to meet its cost share projected to be

$40,024,000. Construction costs allocated to beach improvements with exclusively private benefits are projected to be $0. Construction costs allocated to improvements or other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation are projected to be $0. Construction costs allocated to the prevention of losses of undeveloped private lands are projected to be $0. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation are projected to be $136,000. Costs for betterments are projected to be $0 and costs for additional work are projected to be $0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. While undertaking a cycle of periodic nourishment, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs allocated to coastal storm risk management by delivering a check payable to "FAO, USAED, Wilmington (K7)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs allocated to coastal storm risk management as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon completion of each cycle of periodic nourishment, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If a final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.

F. If there are beach improvements with exclusively private benefits; improvements or other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation; the prevention of losses of undeveloped private lands; or the Government agrees to perform betterments or additional work on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Wilmington (K7)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE V - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate periodic nourishment of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for a cycle of periodic nourishment are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow periodic nourishment to resume. In addition, the Government may suspend periodic nourishment if the Maximum Cost Limit is exceeded.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article III.

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

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this

Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VI - HOLD AND SAVE

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

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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of periodic nourishment of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE IX - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE X - NOTICES

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

If to the Non-Federal Sponsor:
Town Manager
Town of Carolina Beach
1121 North Lake Park Blvd.
Carolina Beach, North Carolina 28428

If to the Government:
District Commander
U.S. Army Corps of Engineers, Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XI - CONFIDENTIALITY

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

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

ARTICLE XIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Town Council of the Town of Carolina Beach, North Carolina where creating such an obligation would be inconsistent with Article V, Section 7 of the Constitution of the State of North Carolina or North Carolina General Statutes § 159-8. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY	TOWN OF CAROLINA BEACH, NORTH CAROLINA
BY: ______________	BY: LeAnn Pierce
Benjamin A. Bennett Colonel, U.S. Army District Commander	LeAnn Pierce Mayor
DATE: 11-24-2021	DATE: 11-24-2021

CERTIFICATE OF AUTHORITY

I, Charlotte Noel Fox, do hereby certify that I am the principal legal officer for the Town of Carolina Beach, North Carolina, that the Town of Carolina Beach, North Carolina is a legally constituted public body with full authority and legal capability to perform the terms of the Project Partnership Agreement between the Department of the Army and the Town of Carolina Beach, North Carolina in connection with the Carolina Beach portion of the Carolina Beach and Vicinity Coastal Storm Risk Management (CSRM) Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Project Partnership Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Project Partnership Agreement for Periodic Renourishment on behalf of the Town of Carolina Beach, North Carolina acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 24 day of NOVEMBER 2021.

Charlotte Noel Fox

Charlotte Noel Fox
Town Attorney
Carolina Beach, North Carolina

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.

LeAnn Pierce
LeAnn Pierce
Mayor
Town of Carolina Beach, North Carolina

DATE: NOVEMBER 24, 2021