

PROJECT AGREEMENT
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), and the Michigan Department of Environmental Quality (the Non-Federal Sponsor), represented by its Director, Steven Chester, are entering into this Project Agreement (agreement) to construct the Black Lagoon Project.

Black Lagoon Project, as defined in paragraph 1.k of this agreement, is a qualified project under the Great Lakes Legacy Act of 2002, codified as amended at 33 U.S.C. § 1268(c)(3) *et seq.* The project to remediate sediments in the Black Lagoon is to be carried out within the Detroit Area of Concern, which is wholly or partially within the United States. U.S. EPA has determined that the project area is not likely to suffer significant further or renewed contamination from existing sources of pollutants following the completion of the project.

33 U.S.C. § 1268(c)(12)(E) and (F) specify the cost sharing requirements applicable to the project. These requirements include, but are not limited to: maintaining aggregate expenditures in the area of concern where the project is located, requiring the Non-Federal Sponsor to maintain its aggregate expenditures from all other sources for remediation programs in the area of concern where the project is located, and requiring the Non-Federal Sponsor to enter into a written agreement to furnish its required cooperation for the project or project element.

GLNPO and the Non-Federal Sponsor have the authority and capability to perform as set forth in this agreement and intend to cooperate in cost-sharing and financing of the project according to the terms of this agreement.

GLNPO and the Non-Federal Sponsor, in connection with this agreement, desire to foster a "partnering" strategy and a working relationship through a mutually developed formal strategy of commitment and communication which creates an environment where trust and team work prevent disputes, foster a cooperative bond, and facilitate completion of a successful project.

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

1. For purposes of this agreement:

- a. "Article" means a portion of this agreement identified by roman numeral.
- b. "Construction period" means the time from the date GLNPO first notifies the Non-Federal Sponsor in writing, according to paragraph 19 of this agreement, of the scheduled date for either issuing the solicitation for the first contract to construct project elements, or commencing project construction using GLNPO's contractors to the date that the GLNPO Project Manager notifies the Non-Federal Sponsor in writing of GLNPO's determination that the project construction is complete.
- c. "Dredged or excavated material disposal facility" means the improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated

material associated with constructing, operating, or maintaining the project. The improvements may include, but are not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes.

d. "Financial obligation for construction" means a financial obligation of GLNPO that results or would result in a cost that is or would be included in total project construction costs.

e. "Fiscal year" means one fiscal year for GLNPO. The GLNPO fiscal year begins on October 1 and ends on September 30.

f. "GLLA" means the Great Lakes Legacy Act of 2002, 33 U.S.C. § 1268(c), P.L. 107-303, Section 101, *et seq.*

g. "Highway" means any public highway, roadway, street, or way, including any bridge thereof.

h. "In-kind contributions" means the value, as established by GLNPO, of project related goods and services provided by the Non-Federal Sponsor including, but not limited to: construction of project elements, construction materials, equipment, design or engineering services, and laboratory services.

i. "Non-federal proportionate share" means the ratio of the Non-Federal Sponsor's total cash contribution required according to paragraphs 5 and 19 of this agreement to total financial obligations for construction, as projected by GLNPO.

j. "Paragraph" means a portion of this agreement identified by arabic numeral.

k. "Project" means the project to dredge approximately 73,400 cubic yards of contaminated sediments from the Black Lagoon area of the Trenton Channel of the Detroit River. The Black Lagoon Project will address risks posed to human health and fish populations by PCBs, oil and grease, and heavy metals in the sediments. The sediments will be relocated to a disposal facility managed by the United States Army Corps of Engineers(USACE). Additional site management will include the placement of a sand layer and gravel over the affected area and post remediation sampling. Additional details are set forth in the attached project description.

l. "Removal" means eliminating an obstruction (other than a bridge over the navigable waters of the United States) where GLNPO determines, after consulting the Non-Federal Sponsor, that: 1) elimination is necessary for the construction, operation, and maintenance of the project, including the borrowing of material or the associated disposal of dredged or excavated material ; 2) elimination must be accomplished before the end of the construction period; and 3) the Non-Federal Sponsor, the State of Michigan, or GLNPO has the legal capability to eliminate the obstruction at the expense of the owner or operator.

m. "Total project construction costs" means all costs incurred by the Non-Federal Sponsor or GLNPO according to this agreement that are directly related to the project's construction. Subject to this agreement, the term includes, but is not limited to: the value of the Non-Federal Sponsor's in-kind contributions; GLNPO's engineering and design costs during construction; investigation costs to identify the existence and extent of hazardous substances; actual project construction costs; GLNPO's supervision and administration costs; GLNPO's costs of contract dispute settlements or awards; and audit costs pursuant to paragraphs 31 and 32 of this agreement.

n. "Utility" means that which the State of Michigan, pursuant to generally applicable state law, defines as a public utility.

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

2. GLNPO, subject to receiving funds appropriated by the United States Congress and using those funds and funds provided to the project by the Non-Federal Sponsor, shall conduct the project, applying those procedures usually applied to Clean Water Act projects, pursuant to federal laws, regulations, and policies.

3. a. Throughout the construction period, the GLNPO Project Coordinator and the Non-Federal Sponsor shall arrange to have the EPA contractor furnish each party with monthly progress reports.

b. Notwithstanding paragraph 2, if the award of any contract for constructing the project features would result in total project construction costs exceeding \$6,500,000 GLNPO and the Non-Federal Sponsor shall defer award of that contract and all subsequent contracts for project construction until they agree to proceed with further contract awards, but in no event shall the contract awards be deferred for more than 9 months. Notwithstanding this general provision for deferring contract awards, GLNPO, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Director of GLNPO determines in writing that the award of the contract or contracts must proceed to comply with law or to protect human life or property from imminent and substantial harm at the prescribed cost share.

4. The Non-Federal Sponsor shall provide information to GLNPO or the EPA contractor for the following purposes:

a. Financial or technical information needed for the EPA contractor to produce monthly reports,

b. Financial records to demonstrate payment of the non-federal share of the project costs, and

c. Financial and technical information to demonstrate maintenance of effort within the AOC.

5. The Non-Federal Sponsor, subject to the receipt of funds appropriated by the Michigan Legislature, shall contribute a share of the total project construction costs as follows:

a. GLNPO will project, based on the information provided by the Non-Federal Sponsor and other sources, the total project construction costs.

b. GLNPO will project the value of the in-kind services provided by the Non-Federal Sponsor. In-kind services can include, but are not limited to the following:

(1) Lands;

(2) Equipment; and

(3) Labor.

c. If the value of the projected in-kind services is less than 35 percent of the total project construction costs, the Non-Federal Sponsor shall provide an additional cash contribution, as specified in paragraph 19, in the amount necessary to make its total contribution equal to 35 percent of total project costs.

6. GLNPO shall perform a final accounting according to paragraph 22, to determine the value of the Non-Federal Sponsor's contributions under the agreement to determine whether the Non-Federal Sponsor has met its obligations under the GLLA.

7. The Non-Federal Sponsor shall not use federal program funds to meet any of its obligations for the project under this agreement. The Non-Federal Sponsor must make a one-time demonstration at the signing of this agreement that it will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the project is located at or above the average level of such expenditures in the two fiscal years preceding the date of project initiation.

8. The Non-Federal Sponsor certifies that Non-Federal Sponsor and, to its knowledge, any of its contractors who will execute work under this agreement:

- a. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local ("public") transactions;
- b. Have not within a three year period preceding this agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under paragraph 8.b; and
- d. Have not within the preceding three years had a public transaction terminated for cause or default.

ARTICLE III - LANDS, EASEMENTS, AND PUBLIC LAW 91-646 COMPLIANCE

9. GLNPO, after consulting with the Non-Federal Sponsor, shall determine the lands, easements, or rights-of-way necessary for conducting the project, including those necessary for the disposal of dredged or excavated material, or relocations, and those lands, easements, or rights-of-way that are subject to the navigation servitude. Before construction ends, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way necessary for the construction, as set forth in the project descriptions. Furthermore, before issuing the solicitation for each contract for constructing or operating and maintaining the project, or before GLNPO incurs any financial obligation for constructing the project if it elects to perform with its contractors, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way that GLNPO determines the Non-Federal Sponsor must provide for that work and shall authorize GLNPO to enter the lands, easements, or rights-of-way.

10. Until GLNPO furnishes the Non-Federal Sponsor with the results of the final accounting pursuant to paragraph 22, the Non-Federal Sponsor, in a timely manner, shall provide GLNPO the documents that are necessary for it to determine the value of any contribution provided pursuant to paragraph 9. Upon reviewing and approving and these documents, GLNPO shall afford credit for the value of the contribution according to paragraph 5.

11. 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 by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations at 49 C.F.R. Part 24, in acquiring lands, easements, or rights-of-way necessary for constructing or operating and maintaining the project, including those

necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with the Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

12. The Non-Federal Sponsor shall receive credit towards its total contribution according to paragraph 5 for the value of the lands, easements, or rights-of-way that it provides pursuant to article III. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, or rights-of-way that it provided previously for another federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, or rights-of-way that were acquired or provided using federal program funds.

13. For the sole purpose of affording credit according to this agreement, the value of lands, easements, and rights-of-way, including those necessary for the borrowing of material, or 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 according to this paragraph.

a. 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 the real property interests on the date the Non-Federal Sponsor authorizes GLNPO to enter the property. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this agreement shall be the fair market value of the real property interests at the time the interests are acquired.

b. General Valuation Procedure. Except as provided in paragraph 13.c, or 13.d, the fair market value of lands, easements, or rights-of-way shall be determined according to paragraph 13.b.i, unless a different amount is determined later to represent fair market value according to paragraph 13.b.ii.

i. The Non-Federal Sponsor shall obtain, for that real property interest, an appraisal prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and GLNPO. The appraisal shall be prepared according to the applicable rules of just compensation, as specified by GLNPO. The fair market value shall be the amount in the Non-Federal Sponsor's appraisal, if GLNPO approves the appraisal. If GLNPO does not approve the Non-Federal Sponsor's appraisal, GLNPO may obtain an appraisal, and the fair market value shall be the amount in GLNPO's appraisal, if the Non-Federal Sponsor approves the appraisal. If the Non-Federal Sponsor does not approve GLNPO's appraisal, GLNPO, after consultation with the Non-Federal Sponsor, shall consider both parties' appraisals and shall determine the fair market value based on both appraisals.

ii. 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 13.b.i, GLNPO, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consulting with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph 13.b.i, but not to exceed the amount actually paid or proposed to be paid. If GLNPO 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 13.b.i.

c. Waiver of Appraisal. Except as required by paragraph 13.d, GLNPO may waive the requirement for an appraisal to determine the value of a real property interest for crediting purposes 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, GLNPO and the Non-Federal Sponsor must agree in writing to the value of the real property interest in an amount not to exceed \$10,000.

d. 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 shall submit to GLNPO, prior to instituting the proceedings, a written notice of its intent to institute the proceedings and an appraisal of the specific real property interests to be acquired in the proceedings. GLNPO shall have 60 days after receipt of the notice and appraisal to review the appraisal, if not previously approved by GLNPO in writing.

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

ii. If GLNPO provides written disapproval of the appraisal, including the reasons for disapproval, within the 60-day period, GLNPO and the Non-Federal Sponsor shall consult in good faith to resolve promptly the issues or areas of disagreement identified in GLNPO's written disapproval. If after good faith consultation, GLNPO 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 in instituting the eminent domain proceeding. If after the good faith consultation, GLNPO and the Non-Federal Sponsor cannot agree on an appropriate amount, the Non-Federal Sponsor may use the amount in its appraisal as the estimate of just compensation in instituting the eminent domain proceeding.

iii. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted according to this paragraph, fair market value shall be either the amount of the court award for the real property interests taken to the extent GLNPO determined such interests are necessary for constructing, operating, or maintaining the general navigation features, or the amount of any stipulated settlement or portion thereof that GLNPO approves in writing.

ARTICLE V - PROJECT COORDINATION TEAM

14. To provide for consistent and effective communication, the Non-Federal Sponsor and GLNPO, not later than 30 days after the effective date of this agreement, shall appoint named senior representatives to a Project Coordination Team. The Project Coordination Team shall meet regularly until the end of the construction period. GLNPO's Project Coordinator, named in paragraph 42, and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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

16. Until construction completion, the Project Coordination Team shall generally oversee the project including, but not necessarily limited to, matters related to design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; GLNPO's cost projections; final inspection of the entire project or functional portions of the project; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operating and maintaining the general navigation features; and other project-related matters. The Project Coordination Team also shall generally oversee the coordination of project schedules.

17. The Project Coordination Team may make recommendations to the GLNPO Project Coordinator on project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. GLNPO in good faith shall consider the recommendations of the Project Coordination Team. GLNPO, having the legal authority and responsibility for constructing the project, may accept or reject, in whole or in part, the Project Coordination Team's recommendations.

ARTICLE VI - METHOD OF FUNDING

18. As of the effective date of this agreement, the total project construction costs are projected at \$6,500,000, and the Non-Federal Sponsor's contribution required under paragraph 5 is projected at \$2,275,000. These amounts are subject to adjustment by GLNPO, after consultation with the non-Federal Sponsor, and are not to be construed as the total financial responsibilities of GLNPO and the Non-Federal Sponsor.

19. The Non-Federal Sponsor, subject to the receipt of funds appropriated by the Michigan Legislature, shall provide the cash payment to the EPA contractor required by paragraph 5 according to the provisions of this paragraph.

- a. The Non-Federal Sponsor shall enter into a contract with the EPA contractor to perform the project work.
- b. The EPA contractor, pursuant to the contract negotiated with the Non-Federal Sponsor, shall invoice the Non-Federal Sponsor on a periodic basis for its 35% share of the project costs. The Non-Federal Sponsor shall pay the invoices according to the terms of the contract.
- c. The EPA contractor, pursuant to the contract negotiated with GLNPO, shall invoice GLNPO on a periodic basis for its 65% share of the project costs. GLNPO shall pay the invoices according to the terms of the contract.

20. If at any time GLNPO determines that the total construction costs of the project will exceed the amount listed in paragraph 18 and that the Non-Federal Sponsor's contribution are projected to exceed the amount listed in paragraph 18, GLNPO shall notify the Non-Federal Sponsor in writing of the additional funds required and shall explain why they are required. Subject to paragraph 3.b., the parties must come to agreement on the project cost increases before continuing work. Once agreement has been reached, the Non-Federal Sponsor, subject to the receipt of funds appropriated by the Michigan Legislature, shall pay 35% of the cost increase as specified in the invoice process above.

21. Until GLNPO gives the Non-Federal Sponsor the results of the final accounting, GLNPO shall maintain current records of contributions provided by the parties, current projections of the total project costs, and costs due to additional work under paragraph 5, 19.d, 13.d, or 22.

22. Upon construction completion or termination of this agreement before construction completion and upon resolution of all relevant proceedings, claims, and appeals, GLNPO shall conduct a final accounting, based primarily on the information collected by the Non-Federal Sponsor pursuant to paragraph 4, and give the Non-Federal Sponsor the final accounting results. GLNPO may perform an interim accounting on its own or, if requested by the Non-Federal Sponsor.

a. The final accounting shall determine the total costs of project construction, each party's contribution for construction, and each party's required share for construction.

i. If the final accounting shows that the Non-Federal Sponsor's total contribution is less than its required share of the total project construction costs, the Non-Federal Sponsor shall, subject to the receipt of funds appropriated by the Michigan Legislature, within 90 calendar days after receipt of written notice and receipt of contractor invoices, pay the amount necessary to meet its required share pursuant to the terms of the contract negotiated with the EPA contractor referenced in paragraph 19.

ii. If the final accounting shows that the Non-Federal Sponsor's contribution exceeds its required share of the total project construction costs, GLNPO shall, subject to the availability of funds and subject to appropriations, refund the proportional excess to the Non-Federal Sponsor within 90 calendar days after completing the final accounting.

ARTICLE VII - DISPUTE RESOLUTION

23. Unless otherwise expressly provided for in this agreement, the dispute resolution procedures of this article are the exclusive mechanism to resolve disputes arising under or with respect to this agreement.

24. Any dispute which arises under or with respect to this agreement initially shall be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen within 20 days of the receipt of other party's written notice of dispute.

25. Statements of Position.

a. If the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, the position advanced by GLNPO shall be binding unless, within 10 days after the conclusion of the informal negotiations, the Non-Federal Sponsor invokes the formal dispute resolution procedures of this article by serving on GLNPO a written statement of position on the matter in dispute. The statement of position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Non-Federal Sponsor.

b. Within 30 days after receiving the Non-Federal Sponsor's statement of position, GLNPO shall serve on the Non-Federal Sponsor its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by GLNPO. Within 20 days after receiving GLNPO's statement of position, the Non-Federal Sponsor may submit a reply.

c. GLNPO shall maintain an administrative record of the dispute that contains all statements of position, including supporting documentation, submitted pursuant to this paragraph. Where appropriate, GLNPO may allow submission of supplemental statements of position by the parties to the dispute.

d. The Director of GLNPO will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall bind the Non-Federal Sponsor, subject to any opportunity for judicial review under applicable law.

ARTICLE VIII - OPERATION AND MAINTENANCE

26. Subject to applicable federal laws and regulations, the Non-Federal Sponsor, subject to the receipt of funds appropriated by the Michigan Legislature, at no cost to GLNPO, shall operate and

maintain the elements of the project constructed pursuant to this agreement in a manner compatible with the authorized purposes of the project including dredging or excavation and disposal of material from the project. The Non-Federal Sponsor shall be responsible for taking all actions necessary to undertake the operation and maintenance of the project as set forth in the attached project description.

27. The Non-Federal Sponsor authorizes GLNPO to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for the purpose of implementing or overseeing the project. However, nothing in this agreement, conveys to GLNPO any interest in real property owned or controlled by the Non-Federal Sponsor.

28. The Non-Federal Sponsor authorizes GLNPO or its agent to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in GLNPO's sole discretion, are necessary for operating, maintaining, or managing any element of the project.

ARTICLE IX - SEVERABILITY CLAUSE

29. If a court issues an order that invalidates any provision of this agreement, the parties shall remain bound to comply with all provisions of this agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

30. GLNPO and the Non-Federal Sponsor shall provide information to the EPA Contractor, as requested, so that the EPA contractor can produce the required monthly reports and final project audits.

31. The Non-Federal Sponsor shall maintain and provide, as requested, financial records and other documentation that demonstrate it paid its share of the project costs or provided services in kind.

ARTICLE XI - FEDERAL LAWS AND REGULATIONS

32. In the exercise of their respective rights and obligations under this agreement, the Non-Federal Sponsor and GLNPO agree to comply with all applicable federal laws and regulations, including, but not limited to:

a. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d); 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);

b. The provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a *et seq.*);

c. The Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 *et seq.*), debarment and suspension requirements (40 C.F.R. Part 32);

d. The Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c) and the Endangered Species Act (16 U.S.C. §§ 1534 to 1544);

e. Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4 relating to federally-assisted construction contracts; and

f. Any statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, non-federal sponsor shall undertake good faith efforts in compliance with 40 C.F.R. § 31.36(e) to give opportunities to qualified Small Business Enterprises (“SBE”), Minority Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. The Non-Federal Sponsor shall submit a report of such efforts in a manner acceptable to GLNPO.

ARTICLE XII - RELATIONSHIP OF PARTIES

33. In the exercise of their respective rights and obligations under this agreement, GLNPO and the Non-Federal Sponsor each act in an independent capacity, and neither is considered the officer, agent, or employee of the other.

34. In the exercise of their 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.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

35. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

36. If the Non-Federal Sponsor fails to fulfill its obligations under this agreement, the Director of GLNPO shall terminate the 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 to satisfy agreements with any other non-federal interests in connection with the project.

37. If GLNPO fails to fulfill its obligations under this agreement, the Director of MDEQ shall terminate the agreement or suspend future performance under this agreement unless he determines that continuation of work on the project is in the interest of the State of Michigan, or is necessary to satisfy agreements with any other non-federal interests in connection with the project.

38. If GLNPO or the Non-Federal Sponsor does not receive annual appropriations sufficient to meet its share of scheduled expenditures for the project for the then-current or upcoming fiscal year, GLNPO or the Non-Federal Sponsor shall notify the other in writing, and either party may without penalty terminate the agreement or suspend future performance under the agreement. If either party suspends future performance pursuant to this paragraph, the suspension shall remain in effect until GLNPO or the Non-Federal Sponsor receives sufficient appropriations or until either GLNPO or the Non-Federal Sponsor terminates the agreement, whichever occurs first.

39. If either party terminates this agreement pursuant to this article, both parties shall conclude their activities relating to the project and proceed to a final accounting pursuant to paragraph 22.

40. Any termination of this agreement or suspension of future performance under this agreement shall not relieve the parties of liability for any obligation previously incurred. Interest

shall accrue on any delinquent payment owed by the Non-Federal Sponsor at a rate, to be determined by the Secretary of the Treasury, equal to 150 per cent of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately before the payment became delinquent, or auctioned immediately before the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HISTORIC PRESERVATION

41. The Non-Federal Sponsor shall evaluate the project's impact on historic property. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and shared according to this agreement.

ARTICLE XVI - NOTICES

42. Unless otherwise specified here, any notice, request, demand or other communication required or permitted between the parties under this agreement shall be in writing and addressed as follows:

to the Non-Federal Sponsor: Michael Alexander
MDEQ Project Manager
525 Allegan
2nd Floor South Tower
Lansing, MI 48933

to GLNPO: Marc Tuchman
GLNPO Project Coordinator
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-1369

43. Either party may change its notice address provided in paragraph 42 by written notice to the other party.

44. The addressee shall be deemed to have received any notice given pursuant to this agreement at the earlier of the date it is actually received, or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

45. 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 XVIII - RESPONSIBLE PARTIES

46. If it is discovered through any investigation for hazardous substances or other means that CERCLA, RCRA, or TSCA liability for hazardous substances addressed by the project can be attributed to a responsible party, the Non-Federal Sponsor and the GLNPO shall provide prompt written notice to each other. The Non-Federal Sponsor and the GLNPO shall consult according to article V in an effort to ensure that responsible parties bear their fair share of clean up and response costs. Implementation of the project shall not relieve any third party from any liability that may arise under CERCLA, RCRA, or TSCA.

ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

47. This agreement does not create any rights, confer any benefits, or relieve any liability, for any third person not party to this agreement.

ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

48. No officer, agent, consultant, or employee of the Non-Federal Sponsor or of GLNPO, may be charged personally, or held liable, under this agreement because of any breach, attempted breach, or alleged breach of the agreement.

49. This agreement will become effective on the date the GLNPO representative signs the agreement.

ARTICLE XXII - AUTHORITY OF SIGNATORY TO BIND

50. Each undersigned representative of the Non-Federal Sponsor and GLNPO certifies that he or she is fully authorized to enter into the terms of this agreement and to execute and legally bind such Party to this agreement.

By: _____
Thomas V. Skinner
Great Lakes National Program Manager

By: _____
Steven Chester
Director of the Michigan Department of
Environmental Quality

Date: _____

Date: _____