

A Report by a Panel of the

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

A Report to the Secretary of the Army

***The U.S. Army Corps of Engineers: An Evaluation of
the Project Partnership Agreement Process***



NATIONAL ACADEMY OF
PUBLIC ADMINISTRATION®

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Front Cover Photo

Poplar Island, recently on the verge of disappearing, is today a national model for habitat restoration and the beneficial use of dredged material. Just off the Chesapeake Bay coastline, about 34 miles south of Baltimore in Talbot County, Maryland, the U.S. Army Corps of Engineers (USACE) is working to return Poplar Island to its former size and important ecological function while helping to ensure the economic vitality of the region. Working in partnership with the Maryland Port Authority and other federal and state agencies, the USACE is using approximately 68 million cubic yards of dredged material from the Baltimore Harbor and Channels Federal navigation projects to develop 735 acres of wetlands, 840 acres of uplands, and 140 acres of open water embayment.

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November 30, 2018

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy, as an institution.

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About the Academy

The National Academy of Public Administration (the Academy) is an independent non-profit, non-partisan organization established in 1967. Chartered by Congress in 1984, the Academy provides expert advice to government leaders in building more effective, efficient, accountable, and transparent organizations. To carry out this mission, the Academy draws on the knowledge and expertise of its over 900 Fellows—including former cabinet officers, Members of Congress, governors, mayors, and state legislators, as well as prominent scholars, business executives, and public administrators. The Academy assists public institutions address their most critical governance and management challenges through in-depth studies and analyses, advisory services and technical assistance, congressional testimony, forms and conferences, and online stakeholder engagement. Learn more about the Academy and its work at www.NAPAwash.org.

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Foreword

The U.S. Corps of Engineers (USACE) works in collaboration with nonfederal entities in the development of water resource projects. The USACE and nonfederal sponsors enter into Project Partnership Agreements (PPA) that define legal requirements for cost sharing and assign responsibilities for the completion of projects for flood and coastal storm risk management, commercial navigation, aquatic ecosystem restoration, and other purposes. The USACE plays a critical role in maintaining and supporting a strong and resilient water infrastructure system for the nation.

Section 1013 of the Water Resources Reform and Development Act of 2014 directs the Secretary of the Army to contract with the National Academy of Public Administration (the Academy) for a comprehensive review of the PPA process and to submit the Academy's findings to the Senate Committee on Public Works and House Committee on Transportation and Infrastructure.¹ Pursuant to this direction, the Academy conducted an evaluation of the PPA process under contract with USACE and with guidance and input from the Assistant Secretary of the Army for Civil Works [ASA (CW)].

This report of a Panel of five Academy Fellows provides the results of their extensive information collection and analysis, based on research, interviews, and site visits conducted over the period of April – August 2018. The report describes the process for developing, negotiating, and approving PPAs; assesses recent changes in the process; evaluates sponsor and stakeholder input; and includes recommendations to improve the process.

As a congressionally chartered non-partisan and non-profit organization with over 900 distinguished Fellows, the Academy brings nationally recognized public administration experts together to help public organizations address future challenges. We are pleased to have had the opportunity to work with the U.S. Army to conduct this review. We appreciate the constructive engagement of the ASA (CW) and USACE and the contributions of many sponsors and other stakeholders, all of whom were generous with their time and thoughtful input.

I extend my thanks to the Academy Panel who offered their invaluable expertise and keen analysis and to the professional study team that provided critical support throughout the project. I expect this report will contribute to improvements in the PPA process and help the USACE and their nonfederal sponsors.

Teresa W. Gerton
President and Chief Executive Officer
National Academy

¹ Water Resources Reform and Development Act (WRRDA), P.L. 113-121 (2014)

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Acronyms and Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
Academy	National Academy of Public Administration
AGC	Army Office of General Counsel
ASA (CW)	Assistant Secretary of the Army for Civil Works
CAP	Continuing Authorities Program
DAS	Deputy Assistant Secretary
DQC	District Quality Control
FY	Fiscal Year
GAO	Government Accountability Office
HQ	Headquarters of USACE
LCA	Local Cooperation Agreement
LERRDS	Lands, easements, rights-of-way, relocations, and disposal requirements
MSC	Major Subordinate Command
O&M	Operation and maintenance
OC	USACE Office of the Chief Counsel
OWPR	Office of Water Policy Review
P2	Project Management Information System
PCA	Project Cooperation Agreement
PDT	Project Delivery Team
PED	Preconstruction Engineering and Design
PL	Public Law
PM	Project Manager
PPA	Project Partnership Agreement
PROSPECT	Proponent Sponsored Engineer Corps Training Program
RIT	Regional Integration Team
USACE	U.S. Army Corps of Engineers
WIINA	Water Infrastructure Improvements for the Nation Act (2016)

WRDA

Water Resources Development Act

WRRDA

Water Resources Reform and Development Act of 2014

Executive Summary

The U.S. Army Corps of Engineers (USACE), a component of the Department of the Army located within the U.S. Department of Defense, has military and civilian infrastructure, or civil works, missions. Through its Civil Works Program and in cooperation with local nonfederal sponsors, the USACE plans and implements water resource projects, authorized by Congress, in principally three core mission areas: 1) flood and coastal storm risk management, 2) commercial navigation, and 3) aquatic ecosystem restoration.

Nonfederal sponsors include states, Indian tribes, local governments, flood control districts, port authorities, and nongovernmental organizations. These project sponsors are required to share in the costs of the project and have other project responsibilities—for example, in most cases they are responsible for operation and maintenance (O&M).

Project Partnership Agreements (PPAs) are legally binding agreements entered into by the Department of the Army and nonfederal sponsors, setting forth the terms and conditions for cost sharing and construction of a project or a separable element² of a project. Pursuant to congressional direction in the Water Resources Reform and Development Act of 2014³ (WRRDA), the USACE contracted with the National Academy of Public Administration (the Academy) to conduct a comprehensive evaluation of the PPA process, including suggested modifications to the process provided by nonfederal interests and recommendations to improve the PPA template⁴ and process.

A Panel comprised of five Fellows of the Academy led the evaluation culminating in this report, which describes the PPA process, reviews recent changes in the process, assesses sponsor input, and provides a set of recommendations for improvement. Under the guidance of the Panel, the study team conducted an in-depth examination of the process for PPA development, negotiation, review, and approval. The study team examined policies and procedures, training materials, and other documentation about the process; conducted extensive interviews with U.S. Army and USACE officials in headquarters, divisions, and district offices, and with nonfederal sponsors and other stakeholders; and visited multiple USACE district offices. Based on these efforts, the study team developed an understanding of the PPA process, including roles and responsibilities, timeframes, and coordination with sponsors.

A key component of the review was the assessment of nonfederal sponsors' views about the PPA process. The study team conducted extensive telephone and in-person interviews with a cross

² WRA Section 103(f) defines a separable element as a portion of a project that 1) is physically separable from other portions of the project; and 2) (A) achieves hydrologic effects, or (B) produces physical or economic benefits that are separately identifiable from those produced by other portions of the project. (1986)

³ WRRDA, PL 113-121, Section 1013, (2014)

⁴ WRRDA 2014 refers to PPA “templates”; however, USACE prefers to use the term “models,” which is the term that will be used for the remainder of this report.

section of nonfederal sponsors representing states, counties, flood control districts, levee districts, port authorities, nongovernmental organizations, and other entities that have sponsored a diverse set of project types, including commercial navigation, flood and coastal storm risk management, and aquatic ecosystem restoration. Interviewed nonfederal sponsors ranged in size and amount of experience working with the USACE. In order to maximize sponsor input, the study team contacted sponsor associations and organizations, attended association conferences and teleconferences, and interviewed association officers and members. Lastly, the study team evaluated the history of PPA development, review, and approval for multiple individual programs and projects to gain a fuller understanding of the experience of the sponsors.

The Academy Panel and study team were impressed by the extraordinary efforts of USACE personnel at all levels, which result in the completion of projects that assist communities improve their ability to manage flood and coastal storm risks, deepen and expand ports to allow for expanded commerce, restore aquatic ecosystems, and address other important water resource-related challenges. District office officials and staff successfully maintain positive relationships with sponsors despite funding and scheduling uncertainties that create difficulties for both partners. The study team observed high levels of cooperation and teamwork and a can-do attitude that persisted despite challenges.

The assistant secretary of the army for civil works [ASA (CW)], chief of engineers, deputy commanding general for civil and emergency operations, and director of civil works all engaged with the Panel and study team early and were supportive throughout the engagement. Their leadership for positive improvement is evidenced in the chief's *June 2017 Campaign Plan*,⁵ in communication from the chief that promotes collaborating with others, and recent guidance from the director of civil works to utilize risk-based decision-making to more effectively solve water resource challenges. The director of civil works is leading a comprehensive organizational review of authorities, policies, regulations, and procedures in order to improve project delivery efficiency and the effectiveness of civil works programs. The USACE's implementation of the recommendations contained in this report would contribute to these leadership goals and reforms by improving the PPA process and creating a more positive experience for nonfederal sponsors that partner with the USACE.

In summary, the Panel found that the USACE has undertaken significant efforts to improve the PPA process in recent years, issuing standardized model agreements and guidance. There are currently twenty-eight PPA models. Many of these models include optional provisions that provide districts with the flexibility to address needed changes to the models during their negotiations with nonfederal sponsors. The availability of models and options has facilitated the delegation of decision-making authority to the division level by ensuring consistent PPA preparation and negotiation by district offices and review and approval by division offices in compliance with statute and policy. This delegation has expedited PPA execution. The new, updated models also help sponsors understand the requirements for partnering with the USACE.

⁵ USACE, FY 18-22 Campaign Plan, June 2017

In addition to the issuance of formal guidance, division, headquarters, assistant secretary, and U.S. Army staff work together, informally to assist districts by regularly providing advice and direction to resolve issues that arise during negotiations with nonfederal sponsors and create new options for PPAs as the need for them arises. ASA (CW) recently delegated authority to the USACE for approval of all PPAs using new models, eliminating the requirement for review by the assistant secretary.⁶

The Panel identified actions that the USACE and ASA (CW) could take to advance their ongoing reforms of the PPA process and strengthen relationships with nonfederal sponsors. The Panel's recommendations focus on the following actions, many of which nonfederal sponsors and USACE staff suggested:

- Implement risk-based roles and performance expectations for organizations and individuals.
- Increase delegation and update and clarify guidance.
- Provide greater flexibility for sponsor-requested deviations to standard model agreements.
- Develop more uniform mechanisms to assist district offices and sponsors to address complex and unique project requirements.
- Implement consistent milestones and tracking to monitor PPAs, evaluate performance and the impact of reforms, and use information to improve the process and transparency.
- Expand engagement with sponsors.

Summarized below are the Panel's recommendations. [Chapters 3](#) and [4](#) provide a more detailed presentation of the recommendations, including the Panel's objectives and actionable implementation steps to guide these efforts.

Report Recommendations

[Recommendation 3.1](#)⁷

The ASA (CW) and the USACE should work together to strengthen capacity for negotiation by providing district negotiators with the necessary tools, support, and authority; better prepare nonfederal sponsors for PPA negotiations; and increase and institutionalize capacity in headquarters to support the negotiation process.

[Recommendation 3.2](#)

Further efforts to delegate authority for the review and approval of PPAs to lower organization levels to streamline and shorten the PPA review and approval process should be carried out in partnership

⁶ Consultation with the assistant secretary is required in instances of unique circumstances, policy issues, or controversial matters.

⁷ The Panel's recommendations are numbered consistent with the chapters in which they appear, thus Recommendation 3.1 is discussed in Chapter 3.

between the ASA (CW) and the USACE in a way that effectively manages risk, promotes consistency in agreements, and ensures compliance with federal law and USACE policy.

Recommendation 3.3

The ASA (CW) and the USACE should work together to develop and implement standard timeframes, milestones, and performance metrics for PPAs and a process for monitoring and evaluating the PPA process.

Recommendation 3.4

The USACE and ASA (CW) should ensure there is adequate capacity in USACE headquarters and institutionalize functions that support effective PPA management.

Recommendation 3.5

Once the USACE demonstrates that action has been taken to streamline the PPA process and shorten review timeframes and make the process more transparent and predictable by sharing this information with Congress and nonfederal sponsors, Congress should consider continuing to provide extended timeframes for PPA execution of new start construction projects in future annual appropriations.

Recommendation 4.1

The USACE and the ASA (CW) should initiate a strategy for meaningful engagement with nonfederal sponsors at the district, division, and headquarters levels.

Recommendation 4.2

The USACE and the ASA (CW) should take steps to better prepare new nonfederal sponsors regarding what to expect from the time they enter into a PPA negotiation through approval, which should increase transparency of, and reduce uncertainty in, the PPA review and approval process.

Chapter One: Introduction

The U.S. Army Corps of Engineers

The USACE has a long, distinguished history of serving the nation. George Washington appointed the first engineering officers of the Army in 1775 during the American Revolution, and engineers have served in combat in all subsequent American wars. While early activities primarily focused on military needs such as building fortifications, the USACE also constructed lighthouses, jetties and piers for harbors, and mapped navigation channels. Congress officially established the USACE's civil works mission in 1824, when they passed the General Survey Act, which authorized the president to use the USACE to survey road and canal routes of national importance.

Throughout the nineteenth century, the USACE played an integral part in the development of the country, identifying impediments to navigation of the nation's waterways, and constructing and maintaining features to improve navigation, including locks, dams, and canals. As part of westward expansion, the USACE built roads, supervised the construction of railroad lines, and produced a wealth of data about the American West.

In the twentieth century, in response to a number of devastating floods, Congress authorized the USACE construction of major basin-wide projects to protect communities from flooding. These large projects served multiple purposes providing flood risk reduction, irrigation, navigation, water supply, hydropower, and recreation benefits. The aquatic ecosystem restoration mission is a more recent addition to the USACE portfolio, authorized in the Water Resources Development Act (WRDA) of 1986⁸ to support USACE efforts to protect, restore, and create aquatic and ecologically related habitats.

Today, the USACE—the world's largest public engineering, design, and construction management agency, improves and maintains more than 900 coastal, Great Lakes, and inland harbors, 13,000 miles of deep-draft channels, and 12,000 miles of inland waterways; operates more than 700 dams; and has built 14,500 miles of levees.⁹

⁸ WRDA, PL 99-662 (1986)

⁹ Nicole T. Carter, Congressional Research Service, *America's Water Resources Infrastructure: Approaches to Enhanced Project Delivery*, Testimony Before the Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, US House of Representatives, January 18, 2018.

Figure 1: Nonfederal Sponsors

What is a nonfederal sponsor?

Congress defines a nonfederal sponsor as a legally constituted public body (including a federally recognized Indian tribe) or a nonprofit entity.^{10,11} A nonfederal sponsor may be a state, county, city, town or any other political subpart of a state or group of states.¹² It includes any interstate agency and port authority established under a compact entered into between two or more states. Most recently, WRDA 2016¹³ added Alaska native villages and regional and village corporations to the list of nonfederal entities that can be a project sponsor.

The USACE works with nonfederal sponsors (see [Figure 1](#)^{10,11,12,13}) to solve water resource challenges through projects that serve both the national interest and the interests of the communities where they are located. The benefits of these projects to the nation are significant. USACE-managed water resource infrastructure provides 24 percent of U.S. hydropower, 18 percent of water consumed by U.S. households, and the transportation of 78 percent of U.S. domestic and international cargo.¹⁴

Contributing to this, nonfederal sponsors shoulder a significant part of the cost and responsibilities for planning, design, construction, and operation and maintenance of nationally significant projects supported at the local level.

It is important to note that the USACE does not distribute federal funds to states or others based on formula or competitive grants but instead is directly involved in the planning, design, construction, and management of projects. This is unlike other federal agencies that fund infrastructure programs. For example, the Department of Transportation's highway construction program provides funds to states and others, primarily through grants. The PPA, a legally binding agreement between the USACE and nonfederal sponsor or sponsors, is also unique. The study team did not identify a comparable vehicle in use by another agency that it could use as a basis of comparison.

¹⁰ Written Agreement Requirement for Water Resources Projects, 42 USC 1962d-5b (2008)

¹¹ Nonprofits cannot be sponsors without the consent of the affected local government, and must have full authority and capability to perform the terms of its agreement and to pay damages, if necessary.

¹² USACE Water Resources Policies and Authorities, *Local Cooperation Agreements for New Start Construction Projects*, ER 1165-2-131, April 15, 1989.

¹³ WIIN Act, PL 114-322 (2016)

¹⁴ U.S. Army Engineer Institute for Water Resources, *Potential and Implementation of Alternative Funding and Finance of the USACE Civil Works Mission*, June 2013.

The PPA—described further in [Figure 2](#), is a legally binding agreement used to obligate the federal government and the nonfederal sponsor and a key aspect of partnership projects. The PPA details the conditions and requirements for the financing and construction of water resource projects. [Appendix G](#) outlines a sample PPA.

The Academy's Charge

The impetus for this study arises from Section 1013 of the WRRDA,¹⁵ which directs the Secretary of the Army to contract with the Academy to:

“carry out a comprehensive review of the process for preparing, negotiating, and approving Project Partnership Agreements and the Project Partnership Agreement template, which shall include:

- 1) an evaluation of the process for preparing, negotiating, and approving Project Partnership Agreements, as in effect on the day before the date of enactment of this Act, including suggested modifications to the process provided by non-federal interests; and
- 2) recommendations based on the evaluation under paragraph (1) to improve the Project Partnership Agreement template and the process for preparing negotiating and approving Project Partnership Agreements.”¹⁶

The Secretary shall submit the results of the Academy's evaluation and recommendations to Congress. In addition, WRRDA directs the Secretary to submit a response to the Academy's report, including those recommendations the Secretary plans to implement, to Congress no later than 180 days after the submission of the Academy's report.

To focus the PPA review, the Academy and the USACE agreed on four specific tasks:

Figure 2. PPA

What is a PPA?

PPAs are legally binding agreements that detail the conditions and requirements for construction of water resource projects to be completed by USACE in partnership with a nonfederal entity. PPAs are drafted and negotiated once a project has been authorized and funded. The PPA must be executed (signed by both parties) before construction can begin. The PPA describes the project, depicts the relevant roles and responsibilities for USACE and the sponsor, identifies estimated project costs and cost shares, and details other aspects of the project. The PPA includes standard local cooperation requirements for indemnification, operation and maintenance of the project and, the sponsor-funded lands, easements, rights-of-way, relocations, and disposals (LERRDs) requirements.

¹⁵ The Water Resources Reform and Development Act of 2014 or WRRDA (PL 113-121) is one of numerous pieces of legislation that have been enacted by Congress to authorize water resource-related USACE activities. These acts are referred to as Water Resources Development Acts or WRDA.

¹⁶ WRRDA, PL 113-121, Section 1013. The full citation is included in [Appendix C](#). (2014)

1. Examine the process for developing, negotiating, and approving PPAs.
2. Assess recent changes in the process.
3. Evaluate nonfederal sponsor and stakeholder input.
4. Recommend changes to improve the process.

Project Methodology

To answer the charge, the Academy convened a Panel of five Academy Fellows who are distinguished in their fields. Panel members have backgrounds in federal government and academia and particular expertise in public policy, civil works, infrastructure, and water resource issues. The Academy Panel provided ongoing oversight and direction to a study team that carried out this evaluation following a structured methodology. Biographies for Panel and study team members are included in [Appendix A](#).

The Panel and study team conducted the evaluation between April 2, 2018 and August 30, 2018. The study team accomplished data collection through a combination of primary and secondary research using already-published materials, data from the USACE and others, interviews, and site visits. The study team conducted extensive research and analysis of the USACE information and data related to PPAs, including model PPAs and accompanying guidance, existing PPAs and PPA amendments, and relevant processes and practices. The study team also researched and reviewed relevant statutes, government reports, and congressional testimony and hearings. A bibliography of selected materials is in [Appendix H](#).

The Panel relied primarily on qualitative data in developing findings and recommendations because of the limited availability of quantitative data. The USACE does not centrally collect or maintain quantitative data on the timeframes for development, negotiation, review, and approval of PPAs or amendments. Districts and divisions track PPAs, but they do not use a common database or collect comparable data; for example, some districts and divisions use Microsoft Excel spreadsheets and some use Access databases. Thus, the study team could not readily use the data due to the different formats and data points. The study team requested data calls to secure consistent USACE-wide data but did not pursue these efforts due to the abbreviated timeframe of the evaluation. The Academy was able to obtain PPA data from two divisions. The study team analyzed one set of data to determine review and approval timeframes tracked by the division for PPAs that were reviewed at the division, headquarters, and ASA (CW) levels. While these data demonstrate the utility of consistently tracking review and approval times, it is unclear how representative these illustrative timeframes are of the overall USACE performance due to the limited sample size.

As a result, it was not possible to conduct analyses that could have demonstrated the USACE's recent progress in reforming the PPA process and identify areas needing further improvement. For example, the team was unable to quantify the change in the number of PPAs completed using models or compare timeframes for review and approval of PPAs that conform to approved models with those PPAs that do not. It was not possible to compare current timeframes for review and approval with those before many of the newer models were developed, or to identify remaining process delays and

where in the process delays are most likely to occur, which would make it possible to explore the causes for such delays.

The Academy thanks the many people who shared information, experiences, and perspectives through structured interviews, site visits, and at conferences as they informed the study team's observations and recommendations. The study team conducted 147 not-for-attribution interviews with key stakeholders and experts, including the following:

- ASA (CW), deputy assistant secretaries, and staff
- The chief of engineers, the deputy commanding general for civil and emergency operations, and other USACE officials and staff in headquarters, eight division offices, and eight district offices
- Sponsors and nonfederal sponsor organization leaders, including leaders of membership organizations or attorneys who represent multiple nonfederal sponsors
- Government Accountability Office and Office of Management and Budget officials
- House and Senate staff of authorizing and appropriations committees

In addition to conducting individual interviews with nonfederal sponsors, members of the study team attended the National Association of Flood and Stormwater Management Agencies 2018 conference and participated in teleconferences with the National Waterways Conference and National Coalition of Flood Partners, which provided the opportunity to interact with multiple nonfederal sponsors and learn about the USACE and nonfederal sponsor perspectives.

The study team also made site visits to four districts: Baltimore, Maryland; Chicago, Illinois; New Orleans, Louisiana; and Savannah, Georgia to hold in-depth discussions with district officials and staff, as well as nonfederal sponsors.

[Appendix B](#) provides a list of individuals interviewed, including at the conference and during site visits.

Organization of the Report

The remainder of the report is organized into four chapters to present the results of the evaluation, as follows:

- **[Chapter Two: Organization and Background](#)**: Describes the USACE civil works program and the components in the USACE that have a role in the PPA process, the legal authorities for USACE engagement in partnership projects provided through biennial Water Resource Development Acts, and the stages of project development that lead up to PPA development
- **[Chapter Three: Project Partnership Agreements](#)**: Describes PPAs; the USACE policy and operating guidance for PPA development and model agreement templates; the process for PPA development, negotiation, and approval; practices that supplement the process; and challenges with the process

- **Chapter Four: Sponsor Input:** Summarizes and analyzes nonfederal sponsor perspectives about the PPA process
- **Chapter Five: Conclusion:** Presents a view of how implementation of the Panel's recommendations will facilitate continued improvement of the PPA process

Chapter Two: Organization and Background

The USACE's mission is to deliver engineering services for public and military purposes; in other words, the USACE has both military and civilian (or civil works) responsibilities. The Civil Works program's water resource development activities include flood and coastal storm risk management, commercial navigation, and aquatic ecosystem restoration. USACE headquarters are located in Washington, D.C., and approximately 22,000 civilians and 300 military personnel, located in 38 district offices that are overseen by eight division offices execute the civil works responsibilities. See [Appendix E](#) for a map of districts and offices.

Responsibilities for project management and execution are delegated to the district offices, with oversight by the divisions. Headquarters provides overall policy direction, and executive leadership at every level rests with a military commander. With a cadre of highly technical personnel that support a diverse, service-oriented mission, USACE's civil works activities are distributed in local communities across the United States.

The highly decentralized organizational and operational structure of the USACE and regional variation in programs and sponsors presents a challenge in promoting consistency across the enterprise in terms of implementing programs and policies, monitoring activities, and meeting milestones. As discussed later, headquarters recognizes the value of delegating responsibility and decision-making authority to the districts and divisions, where the relationship with nonfederal sponsors and local knowledge is strongest, yet realizes the need for consistency and accountability.

Organizational Structure and Responsibilities

The civilian component of the USACE, the Civil Works Program, reports to the ASA (CW). [Appendix D](#) contains an organization chart of USACE.

Assistant Secretary for Civil Works: The ASA (CW) provides overall policy direction and oversees the USACE Civil Works Program. The assistant secretary is a civilian presidential appointee, confirmed by the Senate. The three deputy assistant secretaries and staff are involved in the review of PPAs and work with USACE headquarters officials to set policy with respect to the content and delegation of approval of PPAs. Attorneys in the Department of the Army's Office of the General Counsel (AGC) support this office and advise the Army Secretariat [including ASA (CW)] on the legal and policy aspects of USACE projects.

Headquarters: The chief of engineers (who is also the commanding general of the USACE) is responsible for execution of civil works and military missions. The chief delegates authority for leadership and management of the Civil Works Program to the deputy commanding general for civil and emergency operations and to the civilian director of civil works. These two individuals provide leadership direction and policy guidance to headquarters offices, divisions, and districts with respect to PPA development and execution, monitor performance, and provide progress reports to the ASA (CW). They also ensure that policy established by ASA (CW) is applied consistently to PPAs.

Regional Integration Teams (RITs), led as a collateral duty by headquarters senior executives, facilitate the processing of PPAs within headquarters. The RITs interface with divisions, providing direction, advice, and guidance on programs and projects. The Office of Water Policy Review (OWPR) conducts the headquarters review of PPA packages.

Divisions: Eight regional divisions, also known as major subordinate commands (MSC), oversee civil works projects. Division commanders (also known as division engineers) command these eight regional divisions. (A ninth MSC is located outside the United States and does not have civil works responsibilities.) The divisions supervise and manage their subordinate districts. Their role in the PPA process is to ensure that PPAs comply with law and USACE policy.

Districts: There are forty-four USACE districts, thirty-eight of which have civil works responsibilities. District commanders (also known as district engineers) command the districts, which are demarcated by watershed boundaries for civil works programs and projects. With oversight by the division commanders, the district commanders are responsible for working with nonfederal entities in the preparation, negotiation, and execution of PPAs. The district office personnel have the day-to-day relationship with nonfederal sponsors throughout project development and execution.

Office of the Chief Counsel (OC): The OC works with the ASA (CW) and AGC to ensure the legal and policy sufficiency of PPAs. District and division counsels report in a vertical chain to the OC and work together with headquarters attorneys to support and advise program officials with respect to the development, negotiation, and approval of PPAs.

Project Partnerships

The USACE has a long history of working with nonfederal entities at the local level and assisting them in the planning, design, and construction of water resource projects. Also longstanding is the significant participation of communities who sponsor these projects and provide a portion of the financing for studies, construction, and operation and maintenance of water resource projects.

Beginning with enactment of the Water Resources Development Act of 1986 (WRDA 1986)¹⁷, legislation has been enacted on a roughly two-year cycle to authorize cost-shared projects that the USACE undertakes with nonfederal sponsors. The WRDA 1986 formalized and standardized the manner in which the USACE works with nonfederal sponsors and finances projects. Congress revised cost-sharing requirements, imposed ad valorem cargo taxes to maintain harbors, increased fuel barge taxes to support inland lock and dam projects, and included other reforms in order to promote greater participation by nonfederal sponsors in the financial and management aspects of water

¹⁷ WRDA, PL 99-662 (1986)

projects.¹⁸ The WRDA 1986 authorized nonfederal construction of federally authorized navigation projects, and flood damage reduction projects.¹⁹

More recently, Congress and administrations have sought ways to leverage limited federal dollars with expanded nonfederal capabilities to implement water resource projects. In WRRDA 2014²⁰ and WRDA 2016²¹ Congress continued to advance the role of nonfederal sponsors in water resource projects, including increasing the ability of nonfederal sponsors to use their own funds for projects.

With expanded authorities enacted in the recent water resource development acts, more sponsors are able to take advantage of opportunities to advance construction of water resource projects or portions of projects in some cases seeking credit or reimbursement from the federal government. The USACE can accept funds from nonfederal entities to accelerate, advance, or contribute to construction projects.

In a traditionally funded project, nonfederal cost shares are required to be paid consistent with the level of USACE appropriations. Contributed funds are funds that exceed required cost shares for a project, provided by a nonfederal entity, with no expectation for reimbursement. Accelerated funds are monies provided by nonfederal sponsors in excess of the cost share amount required by the level of appropriations (at any given time) but are within the overall nonfederal cost share. Advanced funds are nonfederal funds that exceed the nonfederal cost share required for the project. If Congress appropriates future funds to do so, the government may reimburse advanced funds.

Project Authorization and Funding

In most cases, Congress approves USACE engagement in civil works projects in a two-step process. [Appendix F](#) depicts the project development process. First, Congress approves USACE activities through project-specific authorizations and through several general and regional program authorizations in biennial enactments of WRDAs. The most recent of these is WRDA 2018.²²

The second step involves securing funding for authorized projects and programs. The Energy and Water Appropriations Acts provide funding for civil works programs. The annual funding level for USACE civil works programs has increased from \$4.5 billion in 2001 to \$7.0 billion in 2019. The USACE also receives funding in emergency supplemental appropriations acts for flood-fighting activities, natural disaster response, repairs to certain damaged nonfederal flood-control projects

¹⁸ US Army Corps of Engineers, *The US Army Corps of Engineers: A Brief History* at: <https://www.usace.army.mil/About/History/Brief-History-of-the-Corps/>

¹⁹ *Construction of water resources development projects by non-Federal interests*, 33 U.S.C. 2232

²⁰ WRRDA, PL 113-121 (2014)

²¹ WIIN Act, PL 114-322 (2016)

²² America's Water Infrastructure Act, PL 115-270 (2018)

and existing USACE projects, and—more recently—for construction of flood and coastal storm risk management projects. In February 2018, following Hurricanes Harvey, Irma, and Maria, Congress authorized over \$17 billion in supplemental appropriations.²³

The PPAs are executed for individually authorized and funded projects as well as projects authorized and funded as part of the Continuing Authorities Program (CAP), environmental infrastructure, and regional authorities. The Panel evaluated the PPA process and models for all types of projects, as described below.

Individually-Authorized Projects: The USACE annual budget proposes funding for individual, site-specific construction projects, and Congress approves funding at this detailed level. Earmark prohibitions limit the ability of Congress to designate additional funds for site-specific purposes, so funding provided above the president’s budget is designated for certain types of projects (navigation, flood damage reduction, or ecosystem restoration), and Congress includes directions and limitations on the use of these funds. The USACE allocates increases with guidance and direction from ASA (CW) for ongoing projects and for new starts. These individually authorized construction projects are often large-scale, complex projects, such as harbor expansions, or may be part of nationally or regionally significant programs, such as the South Florida Restoration Program. Large-scale, individually authorized programs can cost billions of dollars and take many years to complete. The annual number of new starts for individually authorized projects has been limited in the last decade.

Continuing Authorities Program: CAP is a national program that includes multiple authorities to study and build smaller-scale water resource projects for various purposes and with specified limits on federal funding. There are nine types of CAP projects authorized including for example navigation improvements, beneficial use of dredged material, beach erosion and storm damage reduction, and aquatic ecosystem restoration. Congressional authority is not required for individual projects; instead, the USACE decides project priorities and allocates an annual amount appropriated for each authority to districts for specific projects. Annual and total project cost caps limit the amount of federal funding spent for projects. For example, navigation improvements authorized under Section 107 of the River and Harbor Act²⁴ are limited to a per-project federal funding limit of \$10 million and an annual program limit of \$50 million.

Environmental Infrastructure and Regional Authorities: Congress also provides funding for environmental infrastructure projects authorized by Section 219 of WRDA 1992.²⁵ The USACE assists nonfederal sponsors with water supply and storage; treatment and distribution systems; and wastewater treatment systems, including treatment plants. These are small-scale projects; sponsors fund 25 percent of project costs, and the federal cost share for each project is limited to \$5 million. Additional authorities exist for water resource projects in fourteen designated geographic areas otherwise known as regional authorities.

²³ Bipartisan Budget Act, PL 115-123 (2018)

²⁴ River and Harbor Act, as amended PL 86-645 (1960)

²⁵ WRDA, PL 102-580 (1992)

Project Development

The development process for partnership projects begins when a nonfederal entity seeks USACE assistance to address a water resource issue. The USACE will evaluate the issue and determine if there is sufficient national interest to justify ongoing involvement. Development of the project then generally proceeds through four phases: 1) the feasibility study, 2) planning and design, 3) construction, and 4) operation and maintenance (O&M). [Appendix F](#) depicts the project development process, as described below.

Feasibility Study: The USACE conducts feasibility studies to determine if the project has sufficient economic development benefits and warrants federal investment. Once Congress authorizes a feasibility study and makes funds available through the appropriations process, the USACE will enter into a feasibility cost share agreement with a nonfederal sponsor. The USACE and the nonfederal sponsor split the costs of the study equally. USACE policy (and congressional direction) requires that the study be completed in three years. When the feasibility study and report are complete, the chief of engineers signs a recommendation, known as the “Chief’s Report,” which is submitted to Congress for their consideration and use as the basis to authorize further development of the project in a future water resources development act.

Preconstruction Engineering and Design (PED): In the PED phase, additional planning studies and detailed technical studies and design are completed. This process generally takes approximately two years and may begin while awaiting congressional authorization for construction. The USACE’s ability to begin design is subject to the availability of funds. The USACE and nonfederal sponsor share costs in the same proportion as the cost-share arrangements for the construction phase. These details are included in a design agreement approved by the USACE and the sponsor.

Construction: The construction phase begins after Congress authorizes the project, provides appropriations, and the USACE and the nonfederal sponsor execute the PPA. There can be long delays between the authorization of a project and when Congress appropriates funds, particularly for new starts (construction of new projects not previously initiated). The 2019 Energy and Water Appropriations Act included funds for five new start construction projects. Many authorized projects do not receive funds. There is currently a backlog of approximately \$75 billion in authorized construction projects that are eligible for annual appropriations.²⁶

The USACE and nonfederal sponsor share the costs to construct a project, depending on the purposes of the project and in accordance with congressionally prescribed formulas, shown in [Figure 3](#).

²⁶ Congressional Research Service, *Statement of Nicole T. Carter Before the Committee on Environment and Public Works*, U.S. Senate, Hearing on Water Infrastructure Needs and Challenges, January 10, 2018.

Figure 3: USACE Cost Sharing Formulas²⁷

Project Type	Maximum Federal Share of Construction	Maximum Federal Share of O&M
Navigation		
- Coastal Port less than 20 ft. harbor	90%	100%
- Coastal Port 20 ft. to 50 ft. harbor	75%	100%
- Coastal Port more than 50 ft. harbor	50%	50%
- Inland Waterways	100%	100%
Flood and Hurricane Damage Reduction		
- Inland Flood Control	65%	0%
- Coastal Hurricane/Storm Damage Reduction	65%	0%
- Periodic Beach Renourishment	50%	0%
Aquatic Ecosystem Restoration	65%	0%
Multi-Purpose Project Components		
- Hydroelectric Power	0%	0%
- Municipal and Industrial Water Supply Storage	0%	0%
- Agricultural Water Supply Storage	65%	0%
- Recreation	50%	0%
- Aquatic Plant Control	NA	50%

Operation and Maintenance (O&M): In most cases, once a project or separable element of a project is completed, the project is turned over to the sponsor, who assumes the responsibilities for O&M. The requirements for O&M are contained in the USACE O&M manual, given to the sponsor.

³⁵ Congressional Research Service, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, Nicole T. Carter and Charles V. Stern, February 27, 2017. The information presented by CRS for coastal ports is modified to include in the Maximum Federal Share of Construction, 10 percent paid by the nonfederal sponsor over a period not to exceed 30 years.

In addition to sharing in the costs of planning, design, and construction of projects, nonfederal sponsors are expected to play an active role throughout project development and execution in collaboration with the USACE. Expectations include attending meetings and communicating regularly; preparing or assisting in preparing documents, including the PPA; making decisions about project costs, schedules, and phasing; and formulating and selecting plans and designs. Sponsors are fully responsible for acquiring real estate and relocating utilities, operation and maintenance, and documenting financial capability. In turn, sponsors expect to be partners in the true sense of the word and have an active role in project-related decisions.

In reality, nonfederal sponsors experience variable levels of engagement with the USACE in decision-making related to cost-shared projects. In most cases, sponsors report excellent relationships with the USACE. Despite most sponsors reporting a good relationship with the districts they work with, many express frustration about their level of participation in decision-making. Numerous sponsors indicated that they do not have adequate opportunity to engage in and provide comments about design, project execution, project completion, and the O&M manual. In some cases, the nonfederal sponsors told the study team that their (the nonfederal sponsor's) participation is not welcome, and they have no ability to influence design, contracting, and other decisions that influence project costs and outcomes. Some sponsors have an opportunity for input, but they make comments that are not fully considered, or they do not receive feedback about why the USACE did not accept their comments. Open and ongoing communication is a key ingredient in maintaining strong USACE-nonfederal sponsor relationships, a conclusion made by the Government Accountability Office when they reviewed USACE flood control projects.²⁸

Changes Since 2014

In accordance with congressional direction, the Panel reviewed changes to the PPA process since 2014, described below.

Models: The USACE has issued new and updated PPA models for individually-authorized and CAP projects. Districts use models for the preparation of PPAs and thereby promote national consistency, policy compliance, legal sufficiency, and equitable treatment of sponsors. Recently issued models address some of the most complex types of projects, such as commercial navigation. The new and updated models simplify terms and conditions for nonfederal sponsors and include options, which provide some flexibility for districts to deviate from models.

Delegation: The USACE delegates approval of a significant number of PPAs to division commanders, including PPAs that conform to models and those with nonsubstantive deviations from the models. In addition, USACE guidance allows delegation of approval for PPAs that conform to models to district commanders for a limited number of project types. In 2016, the USACE delegated approval of Integral Determination Reports (determinations that sponsor-funded in-kind work is integral to the project) to division commanders, discontinuing the need to submit these to headquarters for review and

²⁸ Anne-Marie Fennell, *Army Corps of Engineers: Cost Increases in Flood Control Projects and Improving Communication with Sponsors*, GAO-14-35, (Washington, DC; Government Accountability Office). (2013)

approval. Recently, ASA (CW) delegated approval of PPAs with substantive deviations to USACE headquarters for new models. While ASA (CW) is consulted in instances when the PPAs involve unique circumstances, policy issues, or controversial matters, the need for formal reviews by ASA (CW) has been eliminated for these PPAs. These changes streamline the review and approval process and should result in shorter timeframes for completing PPAs.

Internet Resources: The USACE posts PPA models and guidance, along with relevant policies, handbooks, and national direction memoranda on the Project Partnership Agreements page of the USACE website. USACE districts are required, based on congressional direction and USACE policy issued in 2014, to post PPAs on their websites; however, some of these postings can be difficult to locate and are sometimes out of date.

Congressional Requirements: In 2017 and 2018, Congress set constrained timeframes to execute new start PPAs within a matter of months. Direction was issued in the Statement of the Managers accompanying the Energy and Water Appropriations Acts. In addition, beginning in 2017, Congress required notification from the USACE seven days in advance of PPA execution for projects excluding environmental infrastructure and CAP projects. As discussed in Chapter 3, USACE compliance with these requirements has affected certain aspects of the PPA process.

Division Agreement Workshops: USACE divisions host workshops that provide an opportunity for district and division personnel to meet and share information about policy and processes relating to agreements. USACE headquarters and AGC staff attend to inform division and district staff about policies and procedures and to facilitate information sharing.

Chapter Three: PPAs – Development, Negotiation, and Approval

Execution of a PPA is a significant milestone for the USACE and nonfederal sponsors. It represents the culmination of efforts undertaken by both parties to reach agreement on project plans and designs, secure authorization and funding, and negotiate legal commitments. It signals the next phase of the partnership – beginning construction. The PPA is a legal agreement that provides the basis for the partnership between the USACE and nonfederal sponsors, as they continue to work together toward project completion.

Personnel in the USACE district offices who build relationships with nonfederal sponsors manage cost-shared water resource projects; these relationships are sustained through the multiple project phases described in the previous chapter. Once the USACE receives funding for the construction phase of the project, the nonfederal sponsor and project manager (PM) begin preparing for PPA development by reviewing agreement models and requirements, consulting with legal experts on terms and conditions, and considering the project details. Negotiations result in a draft PPA that moves through the review process within the USACE and ASA (CW), if necessary. The PPA process concludes with approval and execution.

The Panel's evaluation of the PPA development, negotiation, review, and approval process discussed in this chapter begins with consideration of the standard guidance and models for use in negotiations with nonfederal sponsors. This is followed by sections that describe and discuss PPA development and negotiation; review and approval; delegation; monitoring and tracking; and practices that support the process. The discussion identifies the strengths and weaknesses of the current process. Based on the evaluation, the Panel provides a set of objectives to improve the PPA process, recommendations to address these objectives, and implementation steps for each recommendation.

Standardized Models and Guidance

The USACE has developed and ASA (CW) has approved model PPAs to facilitate PPA preparation, standardize terms and conditions for consistent nationwide implementation of statutory requirements and policy, and provide equitable treatment for nonfederal sponsors that are interested in pursuing a project with the USACE. Model templates incorporate statutory requirements related to cost sharing, indemnification and operation and maintenance. The districts use these models in negotiations with sponsors. As long as the PPA developed by the districts conforms to the model, it is compliant with policy, and the division commander can approve the PPA without review by headquarters and the ASA (CW).

There are now twenty-eight PPA models available for use by USACE staff and nonfederal sponsors. There are models for individually authorized cost-shared projects, such as flood storm risk reduction and commercial navigation, for CAP projects, environmental infrastructure, and regional authorities. [Appendix G](#) describes what is included in a PPA and includes an example of a model.

The USACE posts models and associated guidance on the USACE public-facing website under the [Civil Works Mission](#), in a section labeled Project Partnership Agreements.²⁹ This provides easy access to models by the USACE and sponsors and facilitates their use.

The USACE has put considerable effort in recent years into improving existing models and issuing new models to incorporate authorities enacted in water resource development acts and requirements in appropriations, while incorporating experience gained from working with sponsors. In addition to shortening and simplifying the models to make them easier for nonfederal sponsors to use, the USACE responded to requests for flexibility in the models by including standard options that can be added to PPAs to address issues that could affect multiple projects. For example, the model for CAP coastal storm risk management projects includes an optional clause that can be added to allow for multiple sponsors. PMs and nonfederal sponsors can use these options to modify agreements while remaining in compliance with USACE policy, thereby, allowing approval at a lower organizational level.

These efforts have resulted in models to cover a variety of authorized projects. Since 2014, the USACE has issued or updated virtually all models, as shown below in Figure 4.

Figure 4: Dates When PPA Models Were Issued or Updated

PPA Model	Date Issued	Updated
Coastal Storm Risk Management w/ periodic nourishment	2016	2018
Coastal Storm Risk Management w/o periodic nourishment	2016	2018
Commercial Navigation	2018	2018
Ecosystem Restoration	2017	2018
Structural Flood Risk Management	2017	2018
CAP Section 14 Emergency Streambank Erosion/Shoreline Protection	2018	
CAP Section 103 Coastal Storm Risk Mgmt. w/ periodic Nourishment	2016	--
CAP Section 103 Coastal Storm Risk Mgmt. w/o periodic Nourishment	2016	--

²⁹ USACE Project Partnership Agreement website including model templates and guidance is located at <https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements/>.

PPA Model	Date Issued	Updated
CAP Section 107 Small River and Harbor Navigation	2018	--
CAP Section 204 Beneficial Use of Dredged Material	2015	2016
CAP Section 205 Structural Flood Risk Management	2017	2017
CAP Section 206 Aquatic Ecosystem Restoration	2017	2017
CAP Section 208 Clearing and Snagging for Flood Risk Management	2006	2014
CAP Section 1135 Improvement of the Environment	2017	--
Regional Authorities ³⁰	2005 - 2009	2005 - 2014

The USACE staff at the district, division, and headquarters levels report variable engagement in model development. District and division staffs suggest that models could be more adaptable and applicable to local issues if they were engaged earlier and more fully in the model development process to share their programmatic knowledge and expertise. Nonfederal sponsors also suggest that they could add to the USACE’s understanding about issues that are of concern and contribute to developing consistent solutions. Admittedly, there are PPA requirements based on statute that cannot be waived or changed, but accommodating increased input from sponsors and staff could help the USACE to frame policies or share approaches that would make it easier for sponsors to enter into PPAs.

In general, sponsors and the USACE staff consider the current models improved as compared to their lengthier, more complex, and less transparent predecessors. However, some nonfederal sponsors contend that every project is unique and, even with the increased flexibility provided by options, they require changes to the model to fit their particular project and local requirements. The USACE considers a sponsor-requested change to the model to fit a particular circumstance a “deviation.” PPAs with substantive deviations are subject to additional, higher levels of review prior to approval and execution.

The guidance accompanying PPA models specifies approval authority for PPAs that conform to the models, those that have nonsubstantive deviations, and those that have substantive deviations. For each model agreement, there is information on the USACE website about the history and applicability of the model and an implementation guidance memorandum. This guidance directs appropriate levels of review, approval, and execution for each PPA model.

³⁰ PPA models for regional authorities have not been updated recently because funding is not requested in the budget for these projects and therefore they are not a priority.

The USACE has updated the guidance accompanying the models and made it shorter and simpler, but the guidance now omits language that could help remind division and district personnel that there is a process to address sponsor requests for deviations to the model. When comparing current guidance with guidance accompanying models developed in the 2005-2009 range, two changes stand out. First, the older guidance includes the rationale for standardized models explaining that the use of models in the development of individual agreements helps to streamline project implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of project sponsors. The guidance memorandum goes on to say that while these attributes favor the use of the models, deviations from the models may be appropriate in certain cases. The guidance directs collaboration with nonfederal sponsors to develop agreements using the model as-is or adapting the model as necessary for the particular project. This is useful guidance to include on the website or in memoranda that accompany the newer PPA models to remind districts that it is USACE policy to work collaboratively with sponsors; and, if necessary, deviations to the models should be considered, discussed, and included in PPAs.

Some USACE employees and nonfederal sponsors told the study team that there is significant pressure put on sponsors to use the models without making any changes and, in so doing, allows for approval by the division commander and avoids the more lengthy headquarters and ASA (CW) review processes. A recent review conducted by GAO identified the importance of guidance to maintain the consistency of district and division direction to sponsors.³¹

Second, the older guidance encourages district offices to work through the vertical team of division, headquarters, and the ASA (CW) to resolve sponsor-raised issues early in the development and negotiation process. The guidance suggests that this process of early consultation, before the formal review and approval process begins, could allow for quick resolution and allow for project implementation on schedule.

As will be discussed later in the chapter, early coordination of PPAs and a team approach to resolve issues allows the district to prepare and negotiate a PPA with the sponsor that can be sent forward, consistent with direction from headquarters and the ASA (CW), thereby, avoiding more formal communication moving up and down the vertical chain to resolve issues in a lengthy, sequential review process.

Instructional information about the PPA process, useful for USACE and nonfederal sponsors, is also available on the USACE website but is not complete or up to date. The USACE Project Partnership Kit, revised most recently in January 2001, includes important information about partnerships, cost sharing and project development and explains the PPA requirements that are based on statute and considered nondiscretionary. The USACE could use the kit to help improve understanding of PPAs and PPA requirements if the kit were up to date and reflected current laws, policies, and processes.

³¹ Anne-Marie Fennell, *Army Corps of Engineers: Better Guidance Could Improve Corps' Information on Water Resources Projects Undertaken by Nonfederal Sponsors*, GAO-17-97, (Washington, DC: Government Accountability Office). (2016)

Several less experienced sponsors told the study team that the kit was a helpful reference to understand the USACE PPA process and prepare for negotiations with the USACE.

PPA Leadership

As described in Chapter 2, headquarters components including the OC, RIT, and OWPR provide national leadership for the PPA process. Three people, in particular—two attorneys reporting to OC and a program representative who works for a RIT—all who have other assigned duties, work with the ASA (CW) and the AGC to interpret legislation; develop guidance, new models and options; and provide advice and assistance to districts and divisions in the preparation, negotiation, and review of PPAs. These efforts help ensure the consistent preparation and execution of PPAs based on statute and policy. These individuals are known throughout the USACE for their expertise, experience, and their understanding of the nuances and complexities of PPAs.

This same cadre proactively develops PPA guidance related to emergency supplemental appropriations and is in demand to participate in national training classes and workshops. They are the single authoritative resource to assist divisions, districts, and nonfederal sponsors with the legal and programmatic requirements of PPAs; and they coordinate with the ASA (CW) and the USACE leadership to formulate decisions as to the treatment of PPAs that deviate from policy or are complex, unique, and controversial.

At first, the model development function was assumed by the OC as a collateral duty. The attorneys saw the opportunity to improve the PPA process and undertook a reformative initiative to develop and issue standardized models and guidance that are easier to understand, more clearly spell out the requirements for both the USACE and sponsors, and facilitate delegation to the field. The model development function is now being expanded to include three positions located in the OC, with programmatic advice and input provided by the program representative (assigned to a RIT) who has been working with the team.

Two of the most senior, experienced staffs that develop and update models and guidance; one of the OC attorneys; and the RIT program expert are approaching retirement age. The OC has efforts underway to address the need to capture the knowledge of the retiring attorney. The office brought in a new staff person to transition into the OC senior attorney's position, and they are in the process of filling another new position. These plans appear to provide sufficient capacity and capability for OC staff involved in developing models and guidance and advising program officials about individual PPA legal issues. The gap is on the programmatic side of the equation; there are no comparable plans to transition someone to fill behind the programmatic expert; and there is a risk of losing significant and important institutional knowledge and capacity.

RITs were established in 2010 to improve organizational effectiveness subsequent to a review conducted by the Government Accountability Office.³² The deputy of the RIT performs the day-to-day operational functions and supervises a team of two to three staff. The RITs assist the divisions with

³² *Army Corps of Engineers: Organizational Realignment Could Enhance Effectiveness, But Several Challenges would have to Be Overcome*, GAO-10-819, (Washington, DC: Government Accountability Office). (2010)

implementation of policy and direction, monitor their performance, and interface with them on national initiatives. RITs maintain communication with divisions through weekly or biweekly teleconferences, participation in quarterly program and project reviews held by the divisions, and quarterly program and project reviews held in headquarters. They are the intake point in headquarters for PPA packages, guiding them through the headquarters review and approval process, helping respond to questions raised if they require ASA (CW) review and approval, and sending them back to the divisions with comments once approved.

A recent decision made by USACE leadership assigned an additional team to each Deputy RIT, thereby doubling up the number of RIT teams they manage and divisions they support. This raises concerns about capacity, because these deputy RITs and their teams play a key role in facilitating the movement of PPA packages from the divisions to headquarters review teams and to the ASA (CW). These individuals are an important link in the chain of communication between the districts, divisions, and headquarters and provide the means for data collection about PPAs, as discussed later in this chapter.

One more headquarters component plays a central role in the PPA process. The OWPR conducts the formal headquarters review of PPA packages, convening teams of multiple disciplines drawn from USACE headquarters offices. The USACE staff and sponsors recall a time in the past when this office was the central point of coordination for PPAs in headquarters and played a role in the resolution of PPA programmatic-related issues. A shift has taken place since the person that was in that role retired from the OWPR, and the office no longer plays an active role in the resolution of issues that come up through the vertical chain from districts, divisions and RITs. Instead, the coordination of PPA issues is centered with the OC team that develops PPA models and guidance and in the vertical chain of communication and consultation between and among OC attorneys. This has resulted in a process that is driven by legal considerations and somewhat risk-averse. PPA models and the review of substantive deviations by headquarters and, if necessary, the ASA (CW) minimize legal risk. However, this could be affecting the degree to which programmatic flexibilities that sponsors are requesting get consideration in allowing deviations, in recommending options to models to address deviations that are frequently requested by sponsors, or in the resolution of issues, that takes place in the vertical chain of communication from district to division to headquarters.

The current status and possible erosion of national programmatic leadership and direction is a critically important consideration in evaluating the PPA process. Program expertise is vital to effective understanding of projects, which in turn affects negotiations with nonfederal sponsors, the development of models and guidance, and the review process. There are also gaps in the programmatic management of the PPA process at headquarters that were identified by this evaluation, such as tracking and monitoring PPAs. In addition, although the vertical chain of communication and coordination within OC is robust with regard to PPAs, there is not a comparable level of capacity on the programmatic side of the organization.

Thus, three issues emerge: 1) maintaining capacity for developing and updating models and guidance and providing assistance to districts and divisions, a need that will continue into the future especially as increasing numbers of PPAs are approved by the divisions; (2) expanding programmatic leadership and direction to fill gaps and continue the USACE reforms to institute a consistent national

approach to PPAs; and (3) institutionalizing these functions for the long-term. The OWPR, who performs the formal PPA reviews, working in coordination with the RITs, is the logical location for expanded programmatic national leadership and direction, such as tracking and monitoring, although it currently lacks the necessary capacity and authority.

PPA Development and Negotiation

From initial planning through project completion and including the PPA process, a USACE PM in the district office works with the nonfederal sponsor. Once the project receives construction funding through the appropriations process, the PM works with the nonfederal sponsor to develop the PPA in coordination with a project delivery team (PDT).

The PDT is comprised of USACE district personnel with planning, engineering, construction, operations, and real estate expertise and sponsor representatives. Another key member of the PDT is the district counsel (an attorney who works at the district level for OC) who assists the PM in identifying the appropriate PPA model to use and participates in negotiations with the nonfederal sponsor and the sponsor's legal representative. (The district counsel also has a role in the review and approval process, described later in this chapter.)

In consultation with the district counsel, the PM selects the appropriate model to use, as the basis for PPA preparation in coordination with the sponsor. The PM works with the sponsor to complete the PPA, shares a draft PPA with the sponsor, and discusses alternatives to resolve sponsor concerns. More experienced PMs and more experienced sponsors are able to resolve many issues informally, based on a level of trust that develops over time between the individuals and an in-depth understanding of the PPA's legal requirements, the construction process, and roles and responsibilities. The GAO conducted a review of cost-shared projects undertaken by sponsors and reported that USACE officials said that nonfederal sponsors' prior experience partnering with the USACE contributed to the success of partnership projects and that working with less experienced sponsors can be challenging.³³ Similarly, in multiple instances, sponsors told the study team that their experience and expertise working with PPAs helped them understand the process and be better prepared to work with less experienced PMs that were assigned to their project because of USACE staff changes and turnover.

Nonfederal sponsors decline to enter into PPA negotiations and drop out of the process after negotiation has begun for many reasons. Some sponsors cannot enter into PPAs because, for example, their state constitution will not allow them to take on the statutorily required responsibility for indemnification of the federal government. The team also learned that smaller, less experienced sponsors sometimes find the PPA requirements daunting and may discontinue negotiations. In some cases potential nonfederal sponsors determined during negotiations of the PPA that they are not adequately resourced or staffed to maintain the level of project engagement that is required. Nonfederal sponsors that do not have a committed source of funding, such as bond revenues, the ad

³³ *Army Corps of Engineers: Better Guidance Could Improve Corps' Information on Water Resources Projects Undertaken by Nonfederal Sponsors*, GAO-17-97, (Washington, DC: Government Accountability Office). (2016)

valorem tax revenues that are available to some levee districts, or port fees collected by port authorities; may not have sufficient resources and/or staff; or they may not be able to accept the responsibilities and potential costs for operation and maintenance, hazardous materials remediation, land acquisition, and other costs borne by the sponsor.

During negotiations, nonfederal sponsors ask for changes to the model PPA for a variety of reasons. The following are the PPA provisions that most often prove problematic for nonfederal sponsors:

- Requirement that the nonfederal sponsor indemnify the federal government from all damage claims and assume the full burden of liability
- Requirement that the sponsor pay the full cost of O&M in perpetuity, which sponsors say could hold the sponsor responsible beyond the useful life of the project
- Requirement that nonfederal sponsors pay the full cost of acquiring property interests; relocating utilities and pipelines; and investigating and cleaning up or mitigating hazardous substances – costs that may not be fully known at the time the PPA is being negotiated
- Nonfederal sponsor responsibility to share in the cost of project overruns, including those caused by the USACE actions
- Valuation of donated goods based on cost instead of value (including donations of land), which means they cannot be counted toward the sponsor's cost share

In the case of O&M costs in perpetuity, Congress and the USACE have addressed these concerns for ecosystem restoration projects. The WRDA 2016³⁴ modified O&M requirements for the nonstructural aspects of these projects by allowing nonfederal sponsor responsibilities for O&M to end after ten years following a determination of ecological success. The USACE has no ability to omit requirements based on statute; however, sponsors suggest that venues in which they can discuss these requirements with the USACE and other sponsors would create improved understanding of the requirements and ways that other nonfederal sponsors have managed them. Potentially, they can also resolve some concerns through working together to develop legislative changes to propose to Congress or finding alternative interpretations of statute that protect the federal government, satisfy Congress, and better meet the needs of nonfederal sponsors.

Both experienced and inexperienced sponsors report encountering challenges during negotiations with the USACE because of limited flexibility to make changes to the model agreements. Sponsors say that they feel pressured to use models and discouraged from raising important issues that should be resolved through the negotiation of PPA terms and conditions. This causes sponsors to think that the USACE is ignoring their concerns; and thereby, contributes to the view that the partnership between the USACE and the sponsor is out of balance (discussed further in Chapter 4).

PMs, assisted by district counsel attorneys, willingly take on the role of educating and informing sponsors about PPA provisions and managing sponsor expectations. However, the practice of persuading sponsors to use the models without deviation may have progressed too far in some

³⁴ WIIN, PL 114-322 (2016)

district offices. Anticipated long timelines for PPA review and approval and multiple rounds of review comments and subsequent negotiations influence both parties to avoid incorporating deviations in PPAs. Sponsors are told that the division commander can more quickly approve a model PPA, whereas a PPA that deviates from the model in any way, including a comma out of place, will take an additional year or more to get through the headquarters and ASA (CW) review and approval processes.

Division counsels decide whether PPA deviations from approved models reflect substantive changes requiring a higher-level review and approval or nonsubstantive changes allowing review and approval to remain at the division level. USACE staffs acknowledge that these decisions are a “matter of judgment” and that there are no formal criteria established to guide those individual counsel determinations; however, it appears that most deviations are substantive.

There is minimal available data on actual review times (as discussed later in this chapter), but the study team was able to validate that some PPAs and PPA amendments have taken over a year to be approved. Given their interest in avoiding project delays (and additional project costs), sponsors often decide to use the model without deviations even if it does not address what they consider to be important conditions. The study team was told by some sponsors about issues that were not addressed during PPA negotiations that later surfaced during project construction and required a PPA amendment. In other cases, nonfederal sponsors reported knowing at the time they signed a PPA that they were going to have to request an amendment, but signed it anyway in an effort to speed up project initiation. The PPA amendment review and approval timeframes can also be quite lengthy.

If the PPA conforms to the model or includes nonsubstantive deviations, the sponsor works with the district to respond to review comments and changes from the division prior to approval. If the PPA has substantive deviations, then reviews by the division and headquarters occur, and review by the ASA (CW) may be necessary. Sponsors express frustration that, although the districts are the lead negotiators, they are not empowered to approve the PPA. PMs and sponsors told the study team that there was not an opportunity to discuss proposed changes and comments with the reviewers that are higher up in the vertical chain in order to seek clarification or renegotiate. Sponsors may not have a full understanding of the rationale for the changes, because they are not afforded this opportunity for further discussion.

Because of these types of challenges, some sponsors go directly to headquarters to develop and negotiate PPAs, bypassing the district and division. The study team also heard of instances when sponsors contacted headquarters directly for assistance in resolving issues because the staff in the district did not have adequate experience with PPA preparation. The availability of early informal consultation about deviations to the PPA model with the vertical chain often addresses some of these process issues, but not all districts take advantage of it. Inviting district, division, and sponsor input could help the USACE identify the issues that arise most often in negotiations, which they could then use to help inform model, option, and guidance development.

PPA Package: The formal package that results from the development and negotiation process includes the draft PPA along with information needed to provide background on the project. USACE guidance on the PPA webpage includes direction about the materials that are to accompany the PPA

when it is going through the headquarters review process. Most divisions require these same materials for their review of the PPA. The formal review at district, division, headquarters, and the ASA (CW) considers a package that includes the following:

- Transmittal memorandum
- Draft PPA agreement
- Reference for the model on which the PPA is based
- List of deviations and detailed reasons for deviations
- Certificate of legal review signed by the district counsel
- Completed PPA checklist with signatures
- Signed self-certification from the sponsor of financial capability
- Federal/nonfederal funds allocation table
- Copy of the Chief's Report, WRDA implementation guidance or other applicable guidance (otherwise known as decision documents)
- Spreadsheet containing the Section 902 limit calculation if the PPA is for a specifically authorized project that is subject to Section 902 (WRDA 1986³⁵)

The PPA checklist is a six-page document that summarizes project details, including funding and authorization history, construction status, project cost, mitigation requirements, benefit/cost ratio, cost sharing and credit, and environmental compliance. The checklist is signed by the PM and district commander. In 2007, the USACE eliminated the requirement for nonfederal sponsors to submit financing plans for review by district commanders. The USACE conducted a Lean Six Sigma review that led to implementation of a process whereby sponsors submit a self-certification of financial capability. Guidance for sponsors about the financial capability certification is available on the USACE PPA webpage³⁶. Although the USACE allows transmittal of PPA packages electronically, the PPA package guidance is not updated and continues to direct the submission of six hard copies of the package to enable headquarters review.

PPA amendments going through the review process require the same set of materials, along with copies of the original agreement and any prior amendments.

PPA Review and Approval

Guidance that accompanies the models, and is posted on the USACE website, provides direction for PPA review and approval and specifies the organizational level at which the PPA can be approved. In general, the responsibility for review and approval is delegated to the division commander if the PPA

³⁵ WRDA, PL 99-662 (1986)

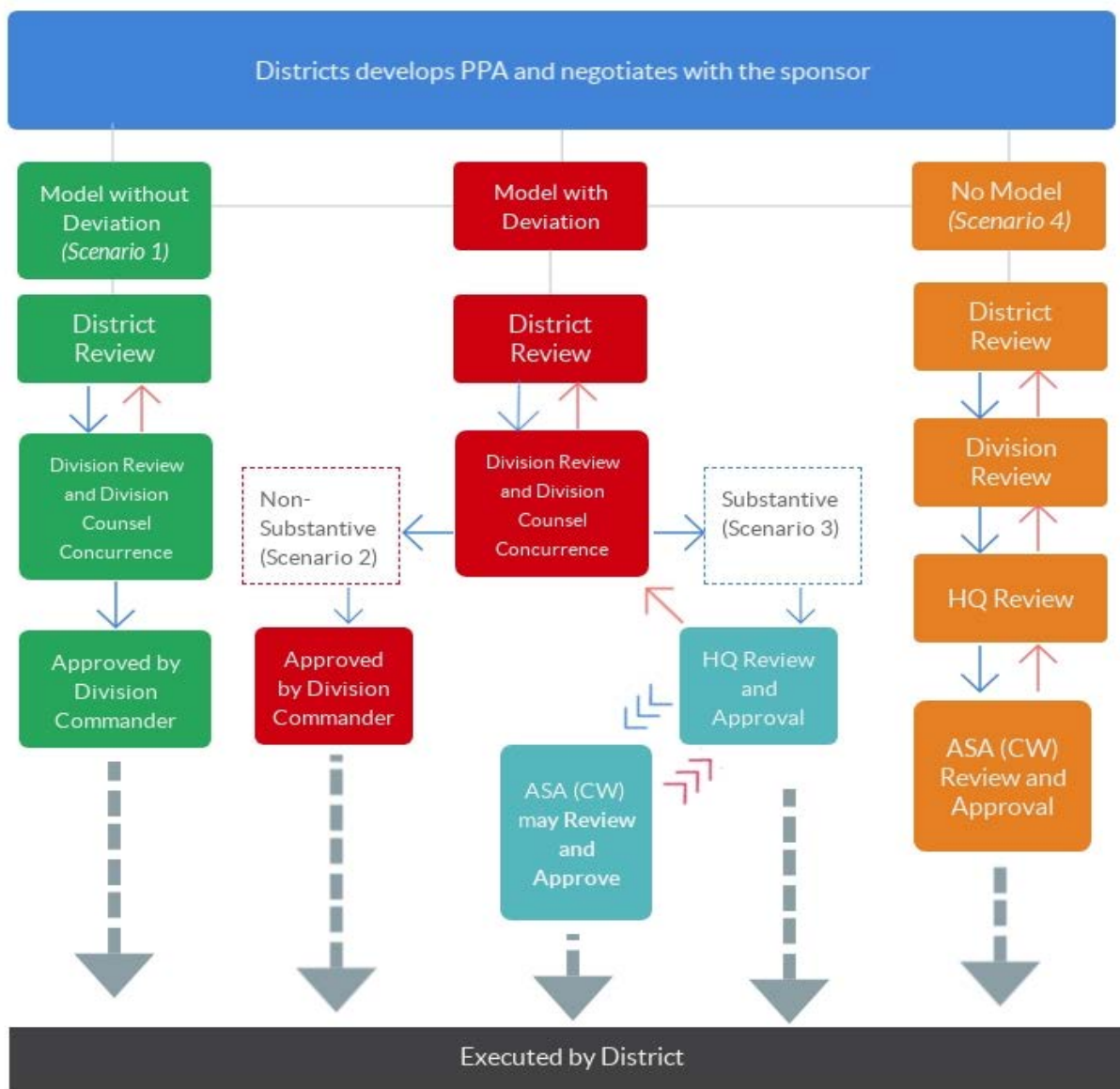
³⁶ USACE Forms - Checklist, Sponsor Self-Certification of Financial Capability, etc.; Available at: https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements/ppa_forms/

does not deviate from the model or if the deviations are not substantive. PPAs that deviate from the model are subject to review and approval at the USACE headquarters if the deviations are substantive or involve policy issues, unique circumstances, or controversial matters. ASA (CW) reviews PPAs with deviations if they involve unique, controversial or policy issues.

The USACE and ASA (CW) told the study team that review and approval for PPAs based on new models was recently delegated to USACE headquarters. The USACE headquarters will consult with ASA (CW) on these PPAs, especially if the PPA is high profile and politically sensitive. Now that models have been recently issued or updated for major mission areas, the USACE expects that most PPAs will use models; and thus, ASA (CW) review and approval will not be required in many cases.

Based on the USACE guidance, and in practice, the review and approval of PPAs can follow one of four possible scenarios as described in the paragraphs that follow, and as depicted in [Figure 5](#) on the next page. In all cases, PPAs, once approved, are typically executed at the district office level, which involves signature by the nonfederal sponsor and the district commander. Once this happens, the project construction phase can begin.

Figure 5: PPA Review and Approval Process³⁷



³⁷ The review and approval process for Scenario 3 is evolving: the study team was told that ASA (CW) recently delegated review and approval to headquarters for PPAs using new models, which includes the models for coastal storm risk management, commercial navigation, ecosystem restoration, and structural flood risk management and all of the CAP models. Instead of submitting these PPAs to ASA (CW) for formal review and approval, headquarters USACE consults with them on deviations that are unique, complex, or have policy implications. However, this practice has not been formalized in policy or guidance and therefore ASA (CW) review and approval is included in the graphic depiction of Scenario 3.

Scenario 1: Model without Deviations: If the PPA model is used without deviation, the PPA is reviewed at the district level, then at the division level, and approved by the division commander. Prior to division commander approval, the division counsel reviews the PPA package to ensure that the model is appropriate for the project and that the PPA does not deviate from the model. For a limited number of PPAs, the division commander can delegate authority for approval of PPAs that do not deviate from the model to the district commander. In these instances, the district counsel concurs that there is no deviation to the model PPA, and it is the appropriate model. This is allowed for the following types of PPAs:

- CAP Section 208 Clearing and Snagging for Flood Risk Management
- 15 Regional Authorities

The study team was able to confirm that only one division delegates the approval of these PPAs to the district commanders; and in this one instance, the division conducts what it calls a quality assurance check (described as an abbreviated review) of the PPAs before the district commander executes the agreement.

Scenario #2: Model with Nonsubstantive Deviations: If a model is used and includes a deviation that is determined to be nonsubstantive, the district first reviews the PPA and then transmits the PPA to the division for review and approval by the division commander. The division counsel validates that the model is appropriate for the project and reviews the district's determination about the deviation, that is if the deviation from the model is a substantive change and requires higher-level review and approval or is nonsubstantive deviation, allowing review and approval of the PPA by the division commander. The division often consults with headquarters OC informally to make this determination. Approval of these PPAs may not be delegated to the district commander.

Scenario #3: Model with Substantive Deviations, Policy Issues, Unique Circumstances, or Controversial Matters: In general, PPAs that deviate from the model substantively, including those that have policy issues, unique circumstances, or are controversial, undergo additional higher-level review at headquarters and the ASA (CW), if necessary. Recently, ASA (CW) delegated authority for USACE headquarters to review and approve PPAs that include substantive deviations for PPAs prepared using new models. USACE Headquarters is to consult with ASA (CW) in instances when the PPA includes unique circumstances, policy issues, or controversial matters.

Scenario #4: A Model Is Not Used: If a model is not used as the basis to develop the PPA, it requires review by the district, division, headquarters, and the ASA (CW).

PPA Amendments: The study team was told that, in general, approval of amendments to existing partnership agreements is delegated to the level at which the original PPA³⁸ was approved; however, this practice is not reflected in current written policy. Memoranda accompanying older models posted on the USACE website state that approval of amendments to agreements that address non-policy and nonsubstantive changes are delegated to the division commander, whereas amendments

³⁸ The predecessor to the PPA was the Project Cooperation Agreement (PCA) and prior to that the agreements were called Local Cooperation Agreements (LCA).

that involve policy issues, unique circumstances, or controversial matters are approved by headquarters and may require ASA (CW) approval. For example, due to their controversial nature, amendments to South Florida Restoration Program PPAs were reviewed at the division and headquarters levels and approved by the ASA (CW).

The following paragraphs provide a more detailed description of how the USACE carries out a review at each level.

District Review: The draft PPA is coordinated with the PDT and reviewed by the sponsor. The PM circulates the PPA package for approval by district office personnel identified in the District Quality Control (DQC) plan. All civil works planning, engineering, and O&M products are required to undergo DQC-based review consistent with USACE policy.³⁹ DQC review in some districts is sequential and requires sign-off by many or most of the senior managers. Because some individuals included in the review may not be familiar with PPAs and project details, this can cause delay.

The district counsel determines which of the four scenarios above will be followed for each PPA package and will advise the division of its determination for concurrence by the division counsel.

In cases where the division commander has delegated approval of PPAs that do not deviate from the model to the district commander, the district counsel determines that the appropriate model has been used and that there are no deviations. Approval of a PPA that includes a nonsubstantive deviation to the model cannot be delegated to the district commander; the PPA must be reviewed by the division counsel and approved by the division commander.

If there are PPA language changes resulting from higher-level reviews, the district conveys them to the nonfederal sponsor. Comments on the PPA from these reviews can include changes to the PPA itself or direction to update plans, certificates, or clearances that became stale during the review process. If the nonfederal sponsor does not agree with the changes, then the district consults with the division, headquarters, and at times the ASA (CW) and AGC staffs as it conducts further negotiations with the sponsor to resolve matters. Once the sponsor approves the changes to the PPA and required documentation is completed, the nonfederal sponsor's representative and the district commander sign the PPA; and at that point, the PPA is executed.

Division Review: Each division has assigned responsibility for managing agreements, including PPAs and other types of agreements, to a single office that is located in the planning and policy division, programs support division, or integration division (exact titles vary). In every division, this is the central point of coordination for PPAs and each has a method or system to track PPAs in the development, negotiation, and review processes and PPAs that are awaiting approval by the division commander. The division assembles a multidisciplinary team that conducts a formal review of the PPA package to ensure it is complete and correct. The division shares comments generated from the division review with the district; and if changes are necessary to correct mistakes or inaccurate information, the district makes the required revisions and resubmits the package to the division for validation of changes (called a back check).

³⁹ USACE, *Water Resources Policies and Administration: Civil Works Review*, EC 1165-2-214, December 15, 2012.

For PPAs requiring higher-level review, the division transmits the PPA package including division comments to the RIT in USACE headquarters. The RIT coordinates the transmittal of information, responses to questions, and other communications between the USACE divisions and headquarters and the ASA (CW). The RIT also assists the division in keeping track of PPA packages submitted to headquarters for review.

Headquarters Review: Once the RIT receives the PPA package, the USACE headquarters initiates its review. The OWPR assembles a multidisciplinary team that includes RIT members and OC attorneys and has set a standard timeframe of 30 days for review of the PPA package. As part of overseeing the review, the OWPR tracks and monitors the review timeframes for each reviewer on the team and tracks the overall review time for each PPA.

ASA (CW) Review: The deputy assistant secretary (DAS) for management and budget coordinates the PPA review at the ASA (CW) level. Staff that report to the DAS receive the PPA package and coordinate its review with the AGC. The DAS for project planning and review, the DAS for policy and legislation, and the principal DAS also review the package. Once the review is completed, and the PPA is determined to be legally sufficient, the package is provided to the ASA (CW) for approval. Generally, approval of the PPA includes a specific execution delegation to the district commander. In very rare instances, the assistant secretary will participate in a signing ceremony with the nonfederal sponsor.

Once the headquarters review [and, if necessary, ASA (CW) review] is complete and the PPA is approved, the RIT prepares a formal memorandum for signature by the Director of Civil Works to transmit the approval and any additional information to the division.

Throughout the review process and at each juncture, formal memoranda are issued to move the PPA package to the next destination and finally back to the district where it originated. Because this is a formal review, reviewers at each level are diligent in examining the entire package and looking for improvements that may not be critically important. While districts report that valuable information is often passed on as a result of these reviews, multiple sequential reviews of the same materials appear duplicative and may not be the best use of limited resources.

Congressional Notification: In 2017, Congress imposed an additional step in the PPA process. The USACE is now required to notify the House and Senate appropriations committees at least seven days prior to execution of PPAs, excluding environmental infrastructure and continuing authority projects.⁴⁰ This direction arises from congressional concerns about differing interpretations for new start projects.

Additionally, Congress imposed deadlines for new-start PPAs beginning in 2017, requiring that the USACE execute PPAs for five projects by September 30, 2017. With delayed enactment of FY 2017

⁴⁰ Statement of the Managers accompanying the Fiscal Year (FY) 2017 Energy and Water Appropriations Act (PL 115-31) and Statement of the Managers accompanying the FY 2018 Energy and Water Appropriations Act (PL 115-141).

appropriations,⁴¹ the USACE had approximately four months within which to execute these PPAs (a USACE work plan was prepared and approved that identified the five new starts).

The FY 2018 appropriations were similarly delayed;⁴² and as a result, the USACE had about four months to execute three PPAs.

In 2019, the enactment of an appropriation in September⁴³ provides the USACE nearly a year to execute PPAs for new start projects.

The Panel highlights this issue because the abbreviated process may have created a situation where nonfederal sponsors with very complex and unique projects, or alternatively less experienced sponsors, were not able to compete for new start funding because of the need for lengthier PPA negotiations, review, and approval. Alternatively, sponsors may have been hesitant to raise needed deviations to models in order to meet the short timeframe.

It is noteworthy that USACE was able to meet the constrained timeframes in 2017 by using a model for one agreement, which was approved at the division level, and by preparing three agreements in headquarters for commercial navigation projects, (the commercial navigation PPA model was issued in 2018).

In 2018, the USACE was able to meet these timeframes by using models, with the PPAs approved at the division level.

Supplemental Appropriations to Respond to Hurricanes and Other Events

Completing PPAs for projects funded through supplemental appropriations varies from the normal course of business because cost-sharing requirements may differ from standard formulas and many of the projects funded by supplemental appropriations may not follow the traditional project development process. In addition, an allocation of some portion of the supplemental funds is required to complete or repair projects that already have an executed PPA, Project Cooperation Agreement (PCA), or Local Cooperation Agreement (LCA). Recognizing the urgency of these projects and the need to begin execution expeditiously, the USACE headquarters assesses the needs of the districts for agreement templates and begins discussions with the ASA (CW) to design the models used by district and division staff as early as possible. The USACE and the ASA (CW) reach agreement on policy issues and determine delegations of authority for review and approval of PPAs. The USACE told the study team that this process is continually improving because they use lessons learned from prior supplemental appropriations, specifically the Hurricane Katrina and Sandy supplemental appropriations.

⁴¹ Consolidated Appropriations Act, PL 115-31, (2017)

⁴² Consolidated Appropriations Act, PL 115-14, (2018)

⁴³ FY 2019 Consolidated Appropriations Act, PL 115-245, (2018)

Delegation of Review and Approval Authority

As described earlier in this chapter, the ASA (CW) and the USACE have delegated review and approval authority for PPAs that conform to standardized models to the divisions. Currently in process is the implementation of a recent decision to delegate approval of all PPAs using new models to USACE headquarters. The ASA (CW) will no longer review and approve these PPAs with deviations; rather, these PPAs will be approved by USACE headquarters in consultation with ASA (CW). This is a positive step to enable the USACE to streamline and shorten the review and approval process for many PPAs while maintaining consistent enterprise-wide implementation of policy, previously attained by requiring headquarters and ASA (CW) reviews of most PPAs. Another benefit of delegation is that it pushes decision-making for PPAs closer to—or to—the districts; this is the level with the closest relationship with nonfederal sponsors and other stakeholders, with the greatest knowledge of local circumstances and characteristics and project-specific requirements that should be addressed in the PPA. Thus, delegation could lead to improved negotiation of deviations to model PPAs, addressing a key concern of nonfederal sponsors.

While there are advantages to delegation of authority for review and approval of PPAs to lower levels, there are also benefits to the current more centralized review and approval process that should be considered:

- In the USACE's highly decentralized organizational and operational structure, multiple layers of review help to provide consistency in PPAs across the enterprise, eliminate risk, and ensure compliance with federal law and USACE policies. Headquarters involvement is particularly critical in achieving these benefits because the highest level of expertise and an enterprise-wide view of the PPA process reside there.
- Districts, especially those that work on PPAs only occasionally or have experienced recent staff turnover, benefit from assistance from divisions and headquarters.
- The current process enables situational awareness at the division, headquarters, and ASA (CW) levels, particularly in the absence of a robust tracking and monitoring system. In the current environment, which lacks a system for monitoring PPAs in the pipeline, there is no alternative way to maintain the flow of information from district, to division, to headquarters, and to the ASA (CW).
- Through higher-level reviews, policy issues can be raised and PPAs and project features can be compared across agreements in order to understand how PPA requirements affect project execution. The policy discussions that arise from this process help to inform the revision of existing models and identify the need for new models and guidance.

The USACE leadership communicated to the study team that it is exploring the possibility of delegating review and approval authority and is also in the process of reviewing organizational processes and practices to identify opportunities to apply risk-based decision-making. The Panel believes that the PPA review and approval process could be considered as part of the assessment of processes and practices, and that risk-based criteria could guide decision-making regarding which PPAs should be delegated and to which level (as well as verify that previous delegations were to the

appropriate levels). Examples of possible criteria that the USACE could use to assess risk are the size and duration of projects, project costs, and the experience levels of the districts and nonfederal sponsors.

Another prerequisite to effective delegation is the implementation of a robust quality assurance program. The following are examples of quality assurance system features; the absence of these features should be considered when assessing risk:

- Capability and capacity of staff at the level that will be assuming authority—capacity can be built through training, district-to-district technical support, and sharing of lessons learned and best practices (through communities of excellence, workshops, online listservs, etc.), and clear and updated guidance.
- Tracking and monitoring PPAs—delays in the process could signal a district or division that is struggling; tracking will also facilitate spot checks of PPAs to ensure consistent policy application and legal compliance.

As demonstrated by the actions of one division that has delegated approval of a very limited set of PPAs to district commanders, further delegation with effective quality assurance and risk-based decision-making may be possible and effective.

Tracking and Monitoring PPAs and Establishing Standard Timeframes

Currently, the ASA (CW) and the USACE do not centrally collect consistent, complete, and accurate data on PPAs and amendments. Without the systematic collection of these data, mechanisms to assemble the data and make it available for analysis and consistent practices to use the data to evaluate the PPA process, the USACE cannot ensure agency objectives are met or demonstrate progress. Specifically, collecting and analyzing PPAs and amendment data from across the enterprise would allow the USACE to accomplish the following:

- Make the process more transparent and predictable by setting standard timeframes; tracking PPA and amendment progress and milestones through the entire process, from development through execution; and consistently reporting this information to nonfederal sponsors.
- Effectively manage the PPA process by monitoring timeframes and performance metrics and holding individuals and organizations within the process accountable.
- Continually improve the PPA process by identifying problem areas and focusing management attention on developing solutions.
- Demonstrate the effectiveness of reform initiatives by developing a baseline of timeframes and monitoring trends.
- Assure high levels of PPA quality and that approval authority has been delegated to the appropriate level through spot checks of PPAs and amendments that are in process or have been executed recently.
- Alert headquarters and the ASA (CW) to potentially controversial or visible projects that have a PPA in process.

The problem is not a lack of tracking. It is that tracking is decentralized, inconsistent, not comparable, and accomplished using different databases and systems. There is no mechanism to collect tracking data from multiple entities and make it available for monitoring, analysis, and performance assessment. Within each district, individual PMs are required to track the major project milestones for the projects they manage, including PPA execution. Districts and divisions track the review timeframes for PPAs and the RITs, and the OWPR track PPA review timeframes at the headquarters level. Leadership also tracks PPA information by using quarterly reviews of project performance to compare actual timeframes for PPA execution to the milestones recorded in the USACE enterprise P2 system. Although most of these separate tracking processes are automated, they do not feed a central data warehouse and cannot be integrated to provide complete process timeframes. There are milestones in the P2 system that could be used to track timeframes in the PPA process; however, the P2 system is not being used to its full potential and only one milestone for PPA execution is being used consistently for reporting purposes. Data used by the divisions that are tracking PPAs is not collected using the same data points; thus, it cannot be compared, combined, or consolidated. Lastly, in many cases, data are incomplete.

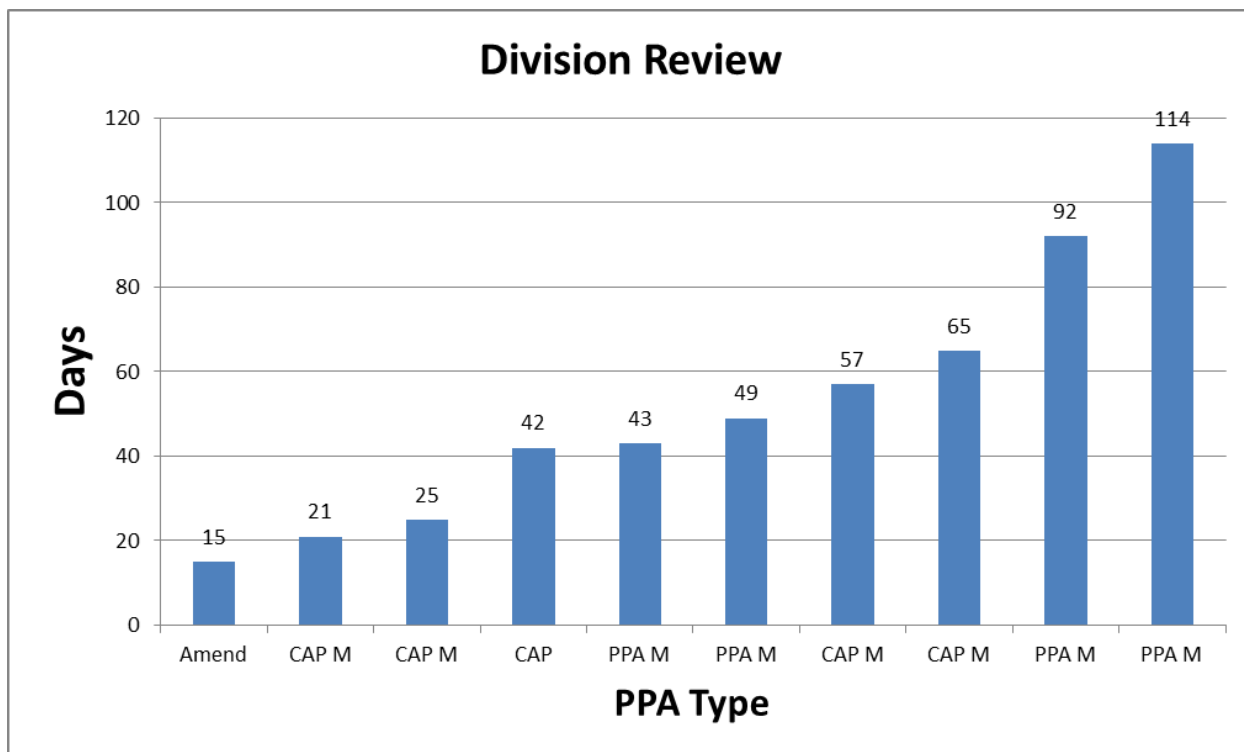
The study team was able to obtain data from two divisions on the PPA review and approval process, but the data from one of the divisions were incomplete. [Figures 6](#) and [7](#) reflect data from the other division that were complete. Note that the study team was unable to verify the accuracy of the data. The data are limited because they do not include district review and approval timeframes (which can also be lengthy as those reviews are conducted sequentially) or timeframes for other steps in the process (e.g., negotiation). The data presented are for illustrative purposes only, to show how management could track information to evaluate PPA and amendment timeframes, improve accountability, and support continual improvement of the process.

The division reviewed twenty PPAs and amendments from January 2016 through April 2018, including ten that were approved at the division level and another ten that required headquarters review and approval; of the ten sent to headquarters, nine also required ASA (CW) review and approval.

The division tracking system identified the following sequential steps for these twenty PPAs:

- Division review, beginning when the PPA package was received in the division and ending when the division either approved the PPA or transmitted the package to headquarters for higher level review
- Headquarters review, beginning when the package was received in headquarters and ending when it was approved or transmitted to the ASA (CW)
- The ASA (CW) review, beginning when the package was received and ending when the PPA was approved

Figure 6: Division Review

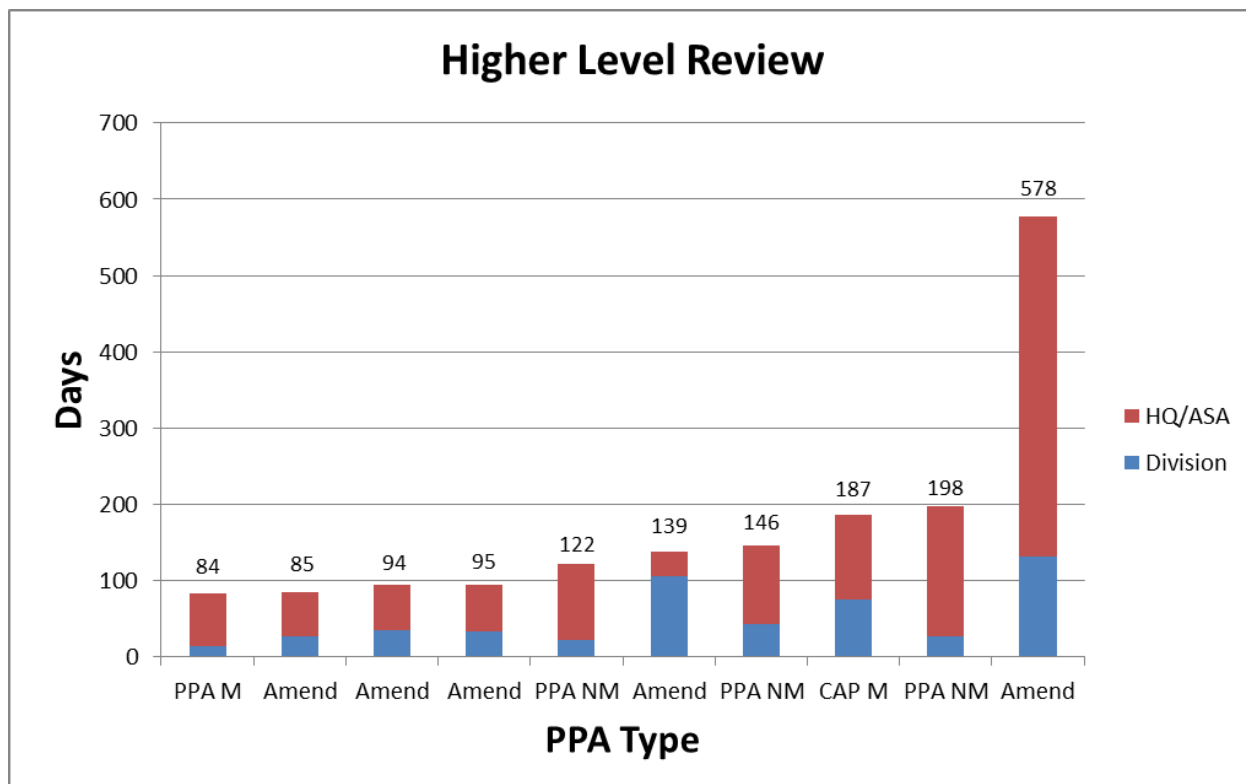


Key to Figure 6: Amend= amendment, CAP M = CAP PPA based on a model, CAP = CAP PPA not based on a model, PPA M = individually authorized project PPA based on a model

The Panel presents the data in Figure 6 and Figure 7 to illustrate the potential for analyses the USACE could perform if comprehensive, consistent data were available for all PPA and amendment reviews. Lacking more complete data, it is not possible to know how representative these data are relative to all USACE PPA and amendment reviews over the last few years. Given the limited sample size, the study team did not believe more detailed analysis of these data would be useful.

For the ten PPAs and amendments reviewed at the division level, the division review time varied between fifteen and 114 days. Eight of the PPAs used a model, five were CAP PPAs, and there was one amendment.

Figure 7: Higher-Level Review



Key to Figure 7: PPA M = individually authorized project PPA based on a model, Amend= amendment, PPA NM = individually authorized project PPA not based on a model, CAP M = CAP PPA based on a model

For purposes of presentation of the data, the ASA (CW) and USACE headquarters timeframes are combined, because the study team could not be certain that the division was able to accurately record when the PPA package left headquarters and was transmitted to ASA (CW).

For the ten PPAs and amendments requiring higher-level review, the total review time ranged from eighty-four to 578 days. Only two of the PPAs used a model and only one was a CAP PPA. There were five amendments.

The USACE has not established nationwide standards for PPA review timeframes; however, many divisions have established timeframes for review and approval. For example, one division manages PPAs based on a policy that sets the standard maximum review durations as shown in Figure 8. The division’s policy also includes an expedited, in-progress review schedule of twenty-one days that includes a vertical team briefing. This policy could help inform the USACE-wide guidelines for PPA process and review times.

Figure 8: Example of a Division Review Process Policy

Standard Maximum Timeframes for Agreement Review	PPAs w Deviations	PPAs w/o Deviations
Division Initial Review	28	14
District Evaluation (consideration of comments)	14	7
Division Back Check (validation comments are addressed)	14	7
Signature Routing	7	7
Total Review Duration	63	35

In addition to monitoring timelines, the standard and accurate tracking of PPAs could facilitate the collection of information about the universe of PPAs, cost-shared projects, and partnerships—information that would be useful for evaluating the effectiveness of partnership engagement. The USACE reports that there are currently 958 active PPAs and PCAs. To arrive at that number, USACE headquarters had to make a data call to the divisions.

Figure 9: USACE Active Project Partnership Agreements⁴⁴

USACE Division	Number of Active Agreements
Mississippi Valley Division	77
North Atlantic Division	73
Great Lakes and Ohio River Division	71
Southwest Division	27
Pacific Ocean Division	5
South Atlantic Division	521
Northwest Division	34
South Pacific Division	150
Total	958

⁴⁴ Active PPAs are those that are currently in effect.

Practices that Supplement the Process

The PPA process is facilitated by training, information-sharing workshops offered by divisions, structured meetings to discuss projects and programs, and other efforts that improve understanding of the process and communications with nonfederal sponsors.

Training: The USACE's national training program, Proponent Sponsored Engineer Corps Training Program (PROSPECT), offers a five-day training course on developing, negotiating, and processing agreements. The USACE offers this course annually to multiple disciplines, and the course is designed to provide basic knowledge and skills to develop, negotiate, and process agreements including PPAs. The course is open to personnel in a range of mid-level to senior positions. Approximately seventy individuals take the course each year. The study team was told by USACE personnel who completed the course that it is a basic orientation course and is useful for new staffs that have not worked on PPAs before. There currently is no requirement for USACE personnel working with PPAs to take this course or any other training that might help improve skills.

District and Division Meetings: In 2016, the South Atlantic Division offered workshops on agreements and continues to offer them on a biennial basis. The most recent two-day workshop was held July 24-25, 2018. Led by senior programmatic and legal staff in the division, with participation of program and legal experts from USACE headquarters and Army General Counsel, the workshop provided a thorough and in-depth review of partnership agreements with technical and practical information useful to people involved in developing, reviewing, and executing agreements of all types. The study team was told that other divisions are also holding workshops.

All of the divisions hold structured internal meetings to enhance communications about projects and agreements. Although the focus of these meetings is on the execution of projects, they provide an opportunity to elevate PPA issues. Division program review boards meet quarterly to review projects and milestones and evaluate the schedule for each project. The divisions and RITs communicate through weekly or biweekly telephone calls and teleconferences. Some divisions also conduct regularly scheduled quality assurance reviews with their district offices to ensure that guidance is followed and effective practices are in place.

USACE Website: The USACE makes executed PPAs publicly available on district web pages consistent with direction in WRDA 2007⁴⁵ to post partnership agreements for all water resource development projects. The postings include all PPAs and PPA amendments executed since November 8, 1997. Multiple sponsors said that they look for PPAs that have been completed by other nonfederal sponsors because it helps them understand how the models are used. The study team was able to validate that most district offices have posted PPAs and PPA amendments, although there is no standard location to find the PPAs on each district web page and in some cases the postings were difficult to locate and not up-to-date.

USACE Guidance: The USACE issues internal guidance in the form of engineer regulations, circulars, and design guides as well as policy memoranda to implement new statutory requirements, changes

⁴⁵ WRDA of 2007, PL 110-114 (2007)

in engineering standards, administrative changes, and for other purposes. These policy and guidance issuances include direction that influences the development, review, and approval of PPAs as well as aspects of the USACE-nonfederal sponsor partnership. For example, Engineer Regulation, Chapter 12 Real Estate Roles and Responsibilities for Civil Works: Cost Shared and Full Federal Projects (ER 405-1-12) provides valuable information about the real estate requirements for the development and execution of cost-shared construction projects. These requirements are a key component of PPA negotiations because they may not be addressed to a sufficient extent in feasibility study or planning and design phases.

The USACE staff and sponsors suggest that the issuance of guidance to reflect new policies driven by legislative or administrative policy changes is not timely. They note that implementation guidance for WRDA 2016⁴⁶ was issued more quickly than guidance to implement WRRDA 2014⁴⁷ and districts and divisions had increased opportunities to provide input to the 2016 guidance. The study team observed that many headquarters staffs have multiple roles and responsibilities; and in addition, they are detailed to short-term assignments to fill vacated positions that are not yet filled. Capacity is a challenge for the individuals that are tasked with continuing day-to-day duties while updating guidance. These documents are important references for USACE staff, particularly because they may work infrequently on PPAs. Without timely and clear policy guidance, district staff may inadvertently develop PPAs that have to be revised to conform to approved policies, thus creating the need for additional negotiation with sponsors and/or delays in PPA review.

Panel Findings and Recommendations

Findings

- ***The current PPA review and approval process takes too long and is inefficient and workload intensive, especially for PPAs that do not conform to models. Roles and responsibilities are not defined, and the process is burdened with issues and comments moving up and down the review chain – in some cases multiple times.*** The ASA (CW) and the USACE are implementing a recent change in delegations that will allow the USACE to approve PPAs based on new models including those with substantive deviations. Implementation of this process should reduce the number of PPAs undergoing review by ASA (CW).
- ***Standardized PPA models streamline PPA development, review, and approval in a way that achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of nonfederal sponsors. However, in some cases there is inappropriate pressure placed on sponsors to agree to PPAs that conform to the models and limited opportunity provided for them to identify and secure deviations.*** Approval of PPAs is not delegated to the level of the organization that has the greatest

⁴⁶ WIIN, PL 114-322 (2016)

⁴⁷ WRRDA, PL 113-121 (2014)

understanding of local conditions and specific projects and the relationship with the nonfederal sponsor. On the other hand, many district offices do not have sufficient knowledge and experience with PPAs due to the limited number of PPAs executed by the district, staff turnover, inadequate training and/or shortcomings in knowledge transfer when there are staff changes.

- ***A lack of standardized timeframes, milestones, and performance metrics results in an unpredictable process and prevents the USACE from holding people accountable for the timely development, review, and approval of PPAs.*** The lack of a centralized tracking system is a related problem and makes it impossible for the USACE to collect performance data to evaluate the PPA process, and identify areas for improvement.
- ***The USACE has taken steps to increase the legal capacity for the PPA process in headquarters but has reduced programmatic capacity.*** In addition, some critical functions are not institutionalized, endangering the efficiency and efficacy of the PPA process in the long term.
- ***In 2017 and 2018, Congress imposed tight timelines for execution of new start PPAs, which the USACE was able to meet with the use of models. However, these short timeframes may disadvantage inexperienced nonfederal sponsors and inappropriately pressure sponsors to use models without deviation.*** Congress provided improved timeframes in 2019.

Recommendation 3.1

Panel Objective: *Improve the PPA negotiation process to be more responsive to nonfederal sponsor requirements and reduce the need for PPA changes and renegotiation, while effectively managing risk and ensuring compliance with federal law and USACE policy.*

Recommendation: *The ASA (CW) and the USACE should work together to strengthen capacity for negotiation by providing district negotiators with the necessary tools, support, and authority; better prepare nonfederal sponsors for PPA negotiations; and increase and institutionalize capacity in headquarters to support the negotiation process.*

Implementation Steps:

- Assess the need for, and prioritize the development of, models to address regional or programmatic needs when there is sufficient demand; continue to revise and update existing models, adding more options, as appropriate, to expand flexibility.
- Provide clear guidance, training, and support from divisions and headquarters to ensure district negotiators have the necessary authority, information, and skills to respond to nonfederal sponsor needs, while protecting the interests of the federal government and complying with federal law and USACE policy.
- Issue guidance to ensure districts and others involved in negotiations do not inappropriately pressure nonfederal sponsors to use models.

- Assist staff and sponsor understanding of the difference between substantive and nonsubstantive deviations from models, using examples from real world experience; issue guidance directing districts to activate informal consultation with divisions and/or headquarters when questions arise regarding deviations.
- Create opportunities for districts, divisions, and nonfederal sponsors to provide meaningful input on model and guidance development, with the goal of identifying potential areas of concern and proactively addressing them.
- Facilitate and expedite negotiation(s) by convening in-person or video conference meetings of all relevant stakeholders—program and legal staff at the district, division, headquarters, and ASA (CW) levels and nonfederal sponsors—as the first step of PPA negotiation, when complex or unique projects require deviations to the model and/or there is no suitable model (see [Panel Recommendation 3.2](#)). The headquarters role in this process should be facilitated by a PPA coordinator tasked with programmatic leadership (possibly located in OWPR) and the appropriate RIT, working in collaboration with OC, and bringing in other disciplines, as appropriate, such as real estate.
- Update materials and make information for nonfederal sponsors readily available and easy to locate including an updated Project Partnership Kit, relevant models and guidance, and executed PPAs.

Recommendation 3.2

Panel Objective: *Reduce duplication of effort and workload and more effectively manage the PPA process to prevent project delays by making the review and approval process more efficient and effective.*

Recommendation: *Further efforts to delegate authority for the review and approval of PPAs to lower organization levels to streamline and shorten the PPA review and approval process should be carried out in partnership between the ASA (CW) and the USACE in a way that effectively manages risk, promotes consistency in agreements, and ensures compliance with federal law and USACE policy.*

Implementation Steps:

- Develop and implement quality assurance measures (such as training, clear guidance, and tracking and monitoring) to reduce the need for quality control (multiple reviews of the PPA package), and to support a continuous improvement process (as discussed in [Recommendation 3.3](#)).
- Once quality assurance is in place, develop risk-based criteria to guide delegation of authority for approval of PPAs and amendments to the lowest possible level and incorporate the criteria in guidance. These criteria should be used to assess delegations that have already taken place, as well as any that might be considered in the future. Use quality assurance results (sampling) to evaluate the criteria to ensure it is minimizing risk and identify opportunities for updating the criteria to ensure delegation at appropriate levels.

- Strengthen the capacity of entities involved in the PPA process by creating “communities of practice” and/or a PPA Center of Expertise to facilitate the delivery of technical assistance and sharing of lessons learned and best practices, and evaluating the need for additional training courses.
- Expedite the review and approval process by adding a first step to the PPA negotiation process for complex and/or unique projects that includes early consultation with all relevant stakeholders to evaluate deviations in preparation for submitting a formal PPA package. Create and encourage an informal process for elevating and addressing issues of concern as they arise during negotiation, as discussed in [Recommendation 3.1](#). While this step will require additional time and resources at the front-end of the PPA process, it should significantly reduce review timeframes because reviewers will already be familiar with the project and aware of the deviations and the reasons for them.
- Develop clear guidance on review and approval roles and responsibilities to minimize duplication of effort.
- Update guidance to reflect the current practice for electronic transmittal of the PPA package and incorporate electronic signatures in the process.
- Develop standard timeframes and performance metrics for PPA execution that reflect implementation of the Academy’s recommendations for streamlining and shortening the process; communicate timeframes to nonfederal sponsors and Congress to improve transparency and predictability.

Recommendation 3.3

Panel Objective: *Institute standards and practices that will support continuous improvement of the PPA process, including making it more transparent and predictable.*

Recommendation: *The ASA (CW) and the USACE should work together to develop and implement standard timeframes, milestones, and performance metrics for PPAs and a process for monitoring and evaluating the PPA process.*

Implementation Steps:

- Develop standard timeframes for action by each organizational level for the PPA process, beginning with development and ending with execution; collect metrics based on planned versus actual timelines and make them available internally and to stakeholders for the sake of transparency.
- Utilize the existing project management information system (P2) to the greatest possible extent by requiring users to track actual performance-based PPA milestones; develop standard report templates that can be generated by the P2 system that will facilitate reporting metrics on planned milestones versus actual timelines.
- Hold individuals and offices accountable for meeting milestones.
- Use performance data to identify problem areas in the process in need of resolution.

- Conduct evaluation of the process to adjust standard timelines, as appropriate, and periodically assess policies and practices for improvement using modern management techniques.

Recommendation 3.4

Panel Objective: *Ensure adequate capacity at USACE headquarters and in ASA (CW) to support an efficient and effective PPA process and continuous improvement.*

Recommendation: *The USACE and ASA (CW) should ensure there is adequate capacity in USACE headquarters and institutionalize functions that support effective PPA management.*

Implementation Steps:

- Institutionalize and formalize the headquarters functions of developing and updating models and guidance, gathering input from the USACE and sponsors for model improvement, and providing assistance to districts, divisions, and sponsors. Ensure adequate capacity is available to support the RIT function for assisting in the resolution of issues and concerns and the timely review of PPA packages.
- Establish a headquarters programmatic PPA coordinator that will provide leadership and undertake new approaches to improve the effectiveness and efficiency of the PPA process, including the following:
 - Facilitate implementation of a standard pre-negotiation and ongoing consultation process involving the district, nonfederal sponsor, division, headquarters, and the ASA (CW) for early resolution of PPA issues in preparation for submittal of the formal PPA package in instances of complex and/or unique projects.
 - Foster communication and collaboration among and between organizational levels through mechanisms like listservs, workshops, and the creation of a community of practice.
 - Evaluate the need for additional training courses, focusing on computer-aided training that the USACE and sponsors can easily access.
 - Monitor and evaluate the PPA process to identify areas for improvement and develop and lead processes for developing solutions.
 - Maintain situational awareness at headquarters and the ASA (CW) by creating and disseminating PPA reports.
 - Serve as the USACE liaison to an advisory council consisting of nonfederal sponsors (see [Recommendation 4.1](#)).

Recommendation 3.5

Panel Objective: *Establish timeframes for new start PPA execution that ensure equity among sponsors and allow adequate time for negotiation of deviations from the models, if needed.*

Recommendation: *Once the USACE demonstrates that action has been taken to streamline the PPA process and shorten review timeframes and make the process more transparent and predictable by sharing this information with Congress and nonfederal sponsors, Congress should consider continuing to provide extended timeframes for PPA execution of new start construction projects in future annual appropriations.*

Implementation Steps:

- Use input from the USACE and nonfederal sponsors to develop deadlines that meet the needs of Congress while minimizing unintended consequences.

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Chapter Four: Nonfederal Sponsor Perspectives

As described in Chapters One and Two, the USACE enters into agreements with nonfederal sponsors to implement water resource projects authorized by Congress, primarily for three core mission areas: 1) flood and coastal storm risk management, 2) commercial navigation, and 3) aquatic ecosystem restoration. The role of nonfederal sponsors in funding and carrying out these projects has been increasing in recent years.

This chapter summarizes the concerns, experiences, and perspectives that nonfederal sponsors shared with the study team. This responds to the WRRDA 2014 requirement to analyze sponsor suggestions and does not incorporate an official response or rebuttal from the USACE.

The study team conducted interviews with sponsor organizations, including organizations that represent multiple nonfederal sponsors, such as membership organizations. It was impossible for the study team to interview all nonfederal sponsors; and therefore, the team made an effort to interview sponsors representing different geographic regions and project types (e.g. navigation, flood risk management, ecosystem restoration and individually authorized, CAP, and supplemental funded projects). The nonfederal sponsors interviewed also had varying levels of experience working with the USACE, ranging from decades of experience to those who are just beginning to negotiate their first PPA.

The study team collected additional information on nonfederal sponsor perspectives through interviews with the USACE, other federal officials, and congressional committee staff who shared complaints and concerns that nonfederal sponsors have communicated to them and a review of previous studies of the PPA process.

It is important to put the complaints and concerns discussed in this chapter in the context of the relationship most of the nonfederal sponsors reported having with the USACE. At least half of the nonfederal sponsors the Academy interviewed had nothing but positive things to say about the individuals they work with at the USACE, especially in their district offices; they have good relationships with the districts and communicate with them on a regular basis.⁴⁸ In addition, some nonfederal sponsor organizations/associations report that they have a positive relationship with the USACE and are able to hold meetings with the USACE, conduct workshops that involve USACE staff, and provide input to help shape policies and programs and assist the USACE to promote initiatives like levee safety. Only five nonfederal sponsors reported not having a good relationship with the district office (or a subset of the office, such as the legal team). Many nonfederal sponsors who shared concerns with the Academy emphasized that their problems are with the process and USACE policy, not with USACE employees.

⁴⁸ GAO also found good communication between USACE district offices and a select number of nonfederal sponsors. See *Army Corps of Engineers: Cost Increases in Flood Control Projects and Improving Communication with Nonfederal Sponsors*, GAO-14-35, (Washington, DC: Government Accountability Office), (2013), p. 18.

PPAs and the PPA Process Are “One-Sided” in Favor of the USACE

Approximately half of the nonfederal sponsors interviewed described the PPAs and the PPA process as “one-sided” in favor of the USACE. Some of the districts and divisions echoed this opinion. As a result, most nonfederal sponsors do not view their relationship with the USACE as a true partnership. However, some larger, politically active sponsors who have more experience working with the USACE report having a more balanced relationship.

While the bulk of nonfederal sponsor complaints about the unequal balance of power were related to the PPAs and how projects are carried out (per the agreements), some sponsors believe that the USACE has all the power during the PPA development and negotiation process.

These sponsors do not feel the negotiation is between two equal parties; and their concerns relate to inclusion of deviations in the PPA, constrained timelines for preparation of PPAs, limited protections for the sponsor, and limited opportunity for sponsor input to decisions. As was discussed in Chapter 3, there are items of local cooperation in PPAs that are required by statute, such as indemnification, real estate acquisition, and operation and maintenance of the project in perpetuity. Nonfederal sponsors understand that these requirements are statutory but believe the USACE’s interpretation of the statutes is too strict, inflexible, and is unreasonably in favor of the federal government, which contributes to sponsor views of the PPAs as unequal partnerships.

Deviations: Smaller nonfederal sponsors often sign agreements they are not completely comfortable with because they are desperate for funds. Most sponsors—regardless of size—report feeling pressured to sign model conforming PPAs as is, even if they do not fit local needs or circumstances. Two nonfederal sponsors recalled being told to “take it or leave it” during the negotiations process. In one case, the nonfederal sponsor claimed that the previous district office team would not allow any deviations (that had changed with staff turnover). In most cases, sponsors feel pressured because the projects are urgently needed, and districts tell them that *any* deviation to the model will have to go further up the chain for review and approval, which will add a year or more to the process. While USACE headquarters officials say they have instructed divisions and districts that they should never pressure nonfederal sponsors to sign a model if they are not comfortable with it, it appears that this message is primarily delivered through training sessions and workshops, which not all district and division staff attend. More than one district confirmed that they routinely tell sponsors that any deviation will cause significant delays.

Constrained Timelines: Another pressure on nonfederal sponsors to use model PPAs is Congress’s practice in the Statement of the Managers, accompanying the Energy and Water Appropriations Acts of 2017 and 2018, of including a deadline for executing PPAs within a few months. Although Congress’s intention in issuing this direction was to facilitate the PPA process and move quickly to starting construction, nonfederal sponsors say that the USACE’s review process takes so long that it would be impossible for them to meet the deadline without using a model. While this development is out of the USACE’s control, it exacerbates the imbalance in the relationship between nonfederal sponsors and the USACE—and reinforces the need for the USACE to focus attention on further streamlining the review process and consider further delegation, as appropriate. In 2019, Congress provides nearly a year for the USACE to execute new start PPAs, which should take the pressure off

nonfederal sponsors to use the models. A comparison of the use of models in FY 2019 to the previous two years could help the USACE understand the extent to which the short deadline contributed to the use of models during that timeframe.

Limited Protections for Nonfederal Sponsors: Those nonfederal sponsors who called the PPAs themselves (including the models) one-sided say that the agreements include a great deal of protection for the USACE and little for the nonfederal sponsor. For example, if hazardous waste is found, it is the sole responsibility of the nonfederal sponsor. As another example, the agreements do not bind the USACE to future funding, while there is language stating that if the federal government funds the project the nonfederal sponsor must contribute their share in proportion to the federal shares on an annual basis. The PPA terms and conditions are set by the federal government (many of which are statutory requirements) and nonfederal sponsors have to agree to them if they want the project to proceed.

Limited Nonfederal Sponsor Input: In addition to providing very little protection for nonfederal sponsors, the agreements are formulated in a way that gives the USACE control over project-related decisions. Nonfederal sponsors gave the following specific examples of decisions over which the nonfederal sponsor has little or no control:

- Land and real estate agreements
- Project termination (the USACE can terminate the project without penalty, but the nonfederal sponsor cannot)
- Construction contracts and management
- USACE costs
- Project design
- Determination of project construction completion (several nonfederal sponsors noted that the USACE tries to turn projects over to sponsors for them to take over O&M responsibilities before the projects are complete; there is an appeals process, but the sponsor is still required to carry out O&M until the matter is settled)
- O&M

Nonfederal sponsors are particularly frustrated by the one-sided relationship with the USACE in light of the fact that they have been asked to shoulder more and more of the responsibilities for projects—and the full cost of O&M. In fact, O&M is a common example nonfederal sponsors use to illustrate the one-sided nature of PPAs. Nonfederal sponsors are required to sign an agreement that legally binds them to pay for O&M in perpetuity. Even though the feasibility report includes O&M cost estimates, actual costs are unknown until the project is complete, and the USACE provides the nonfederal sponsors with the O&M manual. The O&M requirement is statutory (except for ecosystem restoration projects); however, sponsors suggest that funding these costs in perpetuity is well beyond what is considered the useful life for some projects.

Some nonfederal sponsors, while agreeing that the USACE has not historically been responsive to their input on the aspects of projects listed above, noted that they have seen some improvement in the USACE's consideration of their input in recent years.

Models Have Improved the Process but Challenges Remain

The USACE has devoted considerable time and effort to improving existing models and developing new ones. Important improvements include simplifying and shortening the models to help make them easier for the sponsor to understand and developing options to provide flexibility. USACE officials at headquarters believe that these and additional planned improvements to the models should address many nonfederal sponsor concerns.

Several sponsors had high praise for the new models, including the options and flexibility they provide. However, even some sponsors who agreed that the models have improved pointed out challenges in using them remain. Nonfederal sponsors contend that it is impossible for the models to accommodate local conditions and considerations; navigation projects, in particular, are unique and complex. Moreover, although there are now almost thirty PPA models, they still believe the models attempt to promote consistency, which they say is impossible.

Districts' Approach to PPAs Is Largely Dependent on Experience and Personalities

While nonfederal sponsors largely reported having a positive relationship with their local district offices, those working with districts that have little experience with PPAs or new staff due to turnover say this impedes timely resolution of PPA issues and delays approvals. In addition, less experienced districts might not be aware of legislative changes or new policies, which could further delay agreements.

Several nonfederal sponsors noted that they get different answers from different legal teams, and that some staff is more flexible and easier to work with than others. That the districts' approach to PPAs varies depending on the experience and personalities of individuals, explains why nonfederal sponsors who work with more than one district say that the districts operate differently.

The Timeline for Reviewing PPAs and Amendments Is Uncertain and Too Long

Estimates from sponsors on how long it takes to get a PPA or amendment approved range from six months to three years. Nonfederal sponsors report that the process is complicated and time-consuming, as PPAs and amendments can go up and down the chain for review multiple times. Nonfederal sponsors also said that the uncertainty caused by delays in approving PPAs and amendments can add to project costs, for example due to inflation. Districts and divisions can usually provide a fairly accurate expected timeframe for completion of their reviews; however, if the PPA or amendment has to go to headquarters, there is no way to plan on when headquarters and the ASA (CW) will complete their reviews.

There appear to be fewer complaints recently about delays in the approval of PPAs. It is unclear if this is a result of the streamlined models, the statutory deadlines for new start agreements, or a combination of both.

Nonfederal Sponsors Have Little Opportunity to Provide Input to the USACE in a Systematic Way

Nonfederal sponsors do not have a systematic way to provide the USACE with feedback on the PPA process, PPAs, or policies that affect agreements. In addition, sponsors say that in recent years, the USACE has issued guidance in the form of internal memoranda, manuals, and circulars, in lieu of making the new policies and guidance available for public review and comment with publication in the *Federal Register*. Although issuance of policy in this manner is more expeditious and allows for faster implementation, the lack of a formal process means that the USACE is not required to seek stakeholder input or to respond to comments they do receive.

Some of the districts and divisions convene regular meetings with nonfederal sponsors to promote partnerships. These meetings occur semiannually at the district level and annually with the divisions. The study team was told that these meetings are attended by district and/or division commanders and are primarily used to provide updated information to nonfederal sponsors on things like legislative changes and policy developments. Sponsors say that these meetings do not provide an opportunity for nonfederal sponsors to raise issues related to PPA processes, practices, and policies.

The USACE sends a customer service survey to nonfederal sponsors and other stakeholders annually. According to the USACE, the purpose of the survey is to both help the USACE improve and identify issues that need attention immediately. Unfortunately, the response rate is rather low (with percentages ranging from the high forties to the mid-fifties) and, according to some sponsors, action is not taken to address the problems identified. Because the responses are not anonymous and are submitted directly to the district, sponsors reported feeling pressured to submit positive responses lest they jeopardize their relationship with the district; others reported that when they did submit negative responses, the district commander contacted them and complained about the feedback (the surveys affect district commander performance evaluations). The survey is a missed opportunity to systematically collect data from nonfederal sponsors that could help identify common problems that require policy or other solutions.

Nonfederal sponsors complain that when they do provide meaningful feedback to the USACE (e.g., during the four 2014 USACE “listening sessions” to solicit input on WRRDA implementation guidance), they feel like their input goes into a “black hole.” They get no response from the USACE on whether or how their comments were considered, whether the USACE is taking any action as a result, and why or why not. Nonfederal sponsors believe that they shoulder greater responsibility for projects, and thus should get a seat at the table. These nonfederal sponsors do not expect to have undue influence over policy; they simply want the opportunity to have meaningful discussions.

Some Nonfederal Sponsor Issues Are outside the USACE's Control

Nonfederal sponsor issues beyond the control of the USACE include budgetary constraints and the required items of local cooperation that are based on statutory requirements, including indemnification, O&M, and the valuation of donated goods.

Budgetary Constraints: The significant demand for water resource infrastructure projects, combined with historically limited funding, has resulted in a backlog of projects, delays between authorization and appropriation, and appropriations for projects stretching out over multiple years. The limit on new project starts is an area of particular frustration for nonfederal sponsors. The budgets submitted to Congress by the Bush, Obama, and Trump Administrations concentrated budgetary resources on completing existing projects and limited new project starts. Congress barred funding for new starts altogether in FY 2011 through 2013 but began to allow for new starts in 2014. Since that time, Congress funded a limited number of new starts, including five new starts in 2019.⁴⁹ The USACE received record levels of funding from Congress in the 2019 annual appropriation (\$7 billion) and an additional \$17 billion in the supplemental appropriations for Hurricanes Harvey, Irma, and Maria. However, from the perspective of sponsors, the delays between authorization and appropriations and phased funding delay project completion and increase costs due to inflation and, potentially, damage from flooding or hurricanes.⁵⁰

When projects are funded below the optimal amount in any given year (or for multiple years over the course of a project) work must stop until additional funding is appropriated. Project stops and starts cause delays and cost increases due to inflation, mobilization and demobilization of construction crews, and potential damage from flooding or hurricanes.⁵¹ Similarly, if project costs exceed the cap set by Congress, it could take years for the USACE to get authorization from Congress to raise the cap—during which time the project must come to a halt. These delays and cost increases cause uncertainty for nonfederal sponsors and might prohibit some nonfederal entities from signing agreements.

Indemnification: According to federal law, nonfederal sponsors must “hold and save the United States free from damages due to the construction or O&M of the project, except for damages due to the fault or negligence of the United States or its contractors.”⁵² Nonfederal sponsors believe they are asked to shoulder an unfair share of liability risk, considering they have little control over much of

⁴⁹ Nicole T. Carter, Congressional Research Service, *America's Water Resources Infrastructure: Approaches to Enhanced Project Delivery*, Testimony before the Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, U.S. House of Representatives, January 18, 2018.

⁵⁰ *Army Corps of Engineers: Cost Increases in Flood Control Projects and Improving Communication with Nonfederal Sponsors*, December 2013, GAO-14-35, (Washington, DC: Government Accountability Office), (2013)

⁵¹ Ibid

⁵² WRDA, PL 99-662, Section 103(j), (1986).

the project. In addition, this requirement is in conflict with some states' constitutions or laws. In fact, at least one state is unable to enter into PPAs, as a result of this clause.

However, while none of the nonfederal sponsors the Academy interviewed were happy about the indemnification clause, many sign PPAs because they believe not constructing the projects would be riskier than the potential future liability. Some states have found ways to work around the indemnification issue—even in cases where the clause is in violation of their states' constitution. For example, some states have passed legislation to allow them to take on the liability when entering into contracts with the federal government. Other states have local governments serve as the official nonfederal sponsor, and these entities secure insurance and sign the PPAs.

Donated Goods: According to statute, in-kind donations are credited at their cost (in other words, zero dollars) instead of their value, which means that the nonfederal sponsor receives no credit toward their project cost share for these goods or services. This is an impediment to nonprofit, nongovernmental organizations becoming nonfederal sponsors because they do not have the resources of other nonfederal entities.

Nonfederal Sponsors Can Contribute to Issues/Problems

In their defense, the USACE officials contend that sponsors can contribute to problems and delays—and several sponsors agree. For example, in many cases nonfederal sponsors cannot sign a PPA until it has gone through multiple layers of review, which could include a board or commission that meets quarterly. Depending on the timing of when the nonfederal sponsor receives the PPA for their signature, it could take up to three months to get the board/commission approval.

New, inexperienced sponsors experience greater difficulty understanding the PPA process, which can complicate negotiations and add to delays. Even more experienced nonfederal sponsors experience staff turnover, as well as turnover of commission and board members, which can delay PPA approvals.

Panel Findings and Recommendations

Findings

- *While it would be impossible for the USACE and nonfederal sponsors to be equal partners, the current relationship is overly one-sided and does not ensure that nonfederal sponsors will be able to be fully engaged in carrying out vital water resources projects.*
- *Some of the sources of friction between the USACE and nonfederal sponsors are outside of the USACE's control; however, the USACE's process exacerbates these issues because they lack transparency and predictability.*
- *The USACE does not adequately prepare nonfederal sponsors for entering into negotiations, allow opportunities for nonfederal sponsors to provide meaningful input on policy, or include feedback loops on nonfederal sponsor input.*

- *Smaller nonfederal sponsors with fewer resources and less experience working with the USACE are at a disadvantage as compared to larger, more experienced nonfederal sponsors.*

Recommendation 4.1

Panel Objective: *Strengthen relationships and foster a spirit of partnership between the USACE and nonfederal sponsors.*

Recommendation: *The USACE and ASA (CW) should initiate a strategy for meaningful engagement with nonfederal sponsors at the district, division, and headquarters levels.*

Implementation Steps:

- Establish an advisory group of nonfederal sponsors and other stakeholders to provide input to the USACE at the headquarters level on the PPA process, PPAs, regulations, policy, and other issues that affect nonfederal sponsors, giving priority to issues that are of most concern to the greatest number of sponsors. The dialog can help to communicate the basis for PPA requirements such as those based on statute.
- Utilize district and division meetings with nonfederal sponsors to resolve PPA issues and gather meaningful input from sponsors on what is and is not working well. Solicit suggestions for improvement (consider holding part of the meeting without USACE senior leadership present to encourage candid conversation), and provide information to sponsors on the process (e.g., how substantive and nonsubstantive determinations are made), best practices (e.g., strategies for dealing with indemnification), and updates on recent and upcoming legislative and policy changes.
- Make changes to the online customer satisfaction survey instrument to increase its usefulness to both the USACE and nonfederal sponsors by ensuring the anonymity of responses; analyzing the survey questions to determine if they are the right ones to ask; and developing a policy for how results will be analyzed, used, and publicized. Researching how other agencies conduct customer satisfaction surveys, analyze and use results could prove instructive.
- Create feedback loops at the district, division, and headquarters levels so that nonfederal sponsors know the USACE considered their input on policy and understand the agency's response and the reason for the response.

Recommendation 4.2

Panel Objective: *Improve nonfederal sponsor satisfaction with PPAs and the PPA process.*

Recommendation: *The USACE and ASA (CW) should take steps to better prepare new nonfederal sponsors regarding what to expect from the time they enter into a PPA negotiation through approval, and increase transparency of, and reduce uncertainty in, the PPA review and approval process.*

Implementation Steps:

- Develop a comprehensive orientation package for new sponsors, including an updated Project Partnership Kit with accompanying materials, such as a PowerPoint presentation and a video. The focus of the orientation materials should be on helping new sponsors understand PPA limitations, timeframes, areas of flexibility, and things that cannot be negotiated.
- Communicate expected review timeframes to nonfederal sponsors and periodically notify the nonfederal sponsor where the PPA package is in the review and approval process.

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Chapter Five: Conclusion

Many of the Panel's recommendations are interrelated; and if adopted, the PPA process would benefit in multiple ways. The Panel's recommendations build on the ASA (CW) and the USACE progress and plans to create a process that is more streamlined, transparent, and predictable—and that will help improve relationships with nonfederal sponsors. This chapter provides an overview of how the ASA (CW) and the USACE could improve the PPA process, if the Panel's recommendations are successfully implemented.

The PPA development, negotiation, and review process is a critical component of implementing vital water resource projects of importance to the nation's economy and the safety and quality of life of its citizens. The PPA is a legally binding agreement between the USACE and nonfederal sponsors that establishes the terms and conditions for construction of the project including cost sharing and items of local cooperation. The PPA remains in effect until amended or terminated continuing through the end of the project, which could last decades.

As this evaluation documented, the PPA process is workload-intensive and complex and can be lengthy for some projects. The USACE reform efforts in recent years have significantly streamlined and expedited the process, while allowing for national standardization and delegation of authority. One important improvement has been the development and issuance of new and improved model templates and guidance. However, not every project easily fits within a model because of regional and project anomalies and unique nonfederal sponsor requirements. Another improvement has been the delegation of approval authority for certain PPAs and amendments. As a result, USACE personnel and nonfederal sponsors report that the models, guidance, and process have improved. Unfortunately, the USACE lacks data that would make it possible to document and measure the effect of reforms.

The Panel's evaluation of the USACE's PPA process identified strengths and weaknesses. Since 2014, the USACE has strengthened the PPA process and undertaken reforms, which include:

- Development and update of models consistent with statute and the USACE and ASA (CW) policies for all specifically authorized project mission areas
- Addition of options to increase the flexibility and applicability of models to the variety of unique conditions nonfederal sponsors present
- Delegation of approvals of PPAs to organizational levels closer to the location of the project and its nonfederal sponsor

These reforms are intended to improve consistency and standardization and, where possible, reduce the need for higher level, more lengthy reviews, thereby facilitating PPA approval and initiation of project construction.

The Panel's recommendations address key weaknesses in the PPA process and suggest a more streamlined process for the review of PPAs; empowerment of districts to allow greater delegation and negotiations that can allow deviations; accountability in the process with tracking, monitoring, and performance evaluation; and improved orientation of and meaningful engagement with

nonfederal sponsors. These recommendations build on the reforms that the ASA (CW) and the USACE have initiated and include implementation steps to focus efforts on priority actions.

The Panel recommendation to establish standard, transparent goals for timeframes to review PPAs and amendments at each organizational level and to compare these goals to actual timeframes should provide an effective internal incentive to expedite PPA and amendment reviews and approvals. This will demonstrate to nonfederal sponsors, other stakeholders, including Congress, and USACE staff that leaders are addressing a major nonfederal sponsor issue and a source of frustration to many district staff – the delays in the approval of PPAs and amendments.

The Panel's recommendations for the USACE to develop risk-based thresholds for review of PPAs and delegate PPA approvals to lower organizational levels should improve the review process. Defining substantive and nonsubstantive deviations using examples based on experience will provide greater clarity and less second-guessing about which deviations are substantive and require higher-level review. Eliminating the current uncertainty about which model deviations are considered substantive will provide district staff more latitude to negotiate deviations with nonfederal sponsors and will reduce pressure on nonfederal sponsors.

The Panel recommendations will also enable USACE leadership to achieve their goal for greater delegation. The Panel recommends delegation of PPA approvals in a manner that ensures that policies will be implemented consistently among all thirty-eight districts and eight divisions. An effective PPA monitoring system, greater accountability and adherence to transparent and consistent review goals, use of risk-based thresholds for review and approval, and an efficient quality assurance program relying on periodic higher level reviews of select PPA approvals, will provide the essential components for successful additional delegations of PPA and amendment approvals.

The Panel recommendations should also help to change the widely held perception among nonfederal sponsors that the PPAs are one-sided, favoring the federal government, and insufficiently flexible to accommodate nonfederal sponsor financial and legal concerns. The Panel recommendation that the USACE initiate a strategy for more meaningful engagement with nonfederal sponsors would improve interactions with nonfederal sponsors within both the PPA process and other areas that can contribute to improved partnerships. For example, greater opportunity for nonfederal sponsors to provide input on proposed USACE policies and models will resolve some sponsor issues that are raised during PPA negotiation and review. Establishing explicit feedback loops within the PPA review process so sponsors know their concerns were considered and why a request for deviation was rejected, and allowing sponsors to have direct exchanges with the vertical chain of command can lead to better understanding of project particulars and opportunities to address possible alternative solutions.

The Panel recommends that the USACE work with nonfederal sponsors to resolve significant, substantive issues informally before PPA packages are prepared for formal review and approval. District staff can prepare issue papers defining these nonfederal sponsor policy issues for discussion at a meeting of district, division, headquarters, the ASA (CW), and the nonfederal sponsor. This collaborative approach to recognizing potential policy issues early in the PPA process models cases where the USACE has proactively worked with sponsors and is likely to promote a more meaningful

partnership between the USACE and its nonfederal sponsors, concentrate USACE reviews on critical policy issues raised by nonfederal sponsors, and expedite the review and approval of PPAs.

This recommended collaborative approach for resolving significant policy issues early in the PPA review process may result in increased requests for PPAs with deviations from approved models. However, this should impact primarily PPAs for unique and complex projects and would not affect PPAs that conform to models and PPAs with nonsubstantive deviations. The outcome is to facilitate the ability of the USACE and ASA (CW) to focus their efforts on the projects with greatest risk and those requiring greatest scrutiny. Panel recommendations to ensure approved PPAs are posted and readily accessible on district web sites and sharing best practices should allow the USACE and sponsors to find ways to address requests for deviations in a more consistent, transparent manner.

The reforms already undertaken by the USACE to improve its PPA review process are a critical first step to strengthen the process and develop better relations with their nonfederal sponsors. The Panel's recommendations will reinforce these USACE initiated improvements, help reduce current durations in the PPA review process, and promote a more meaningful, collaborative partnership with USACE's nonfederal sponsors. A more effective partnership between the USACE and its nonfederal sponsors and a more efficient PPA review process will ensure that critical future water resource projects will be initiated in a more timely and cooperative manner.

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Appendix A: Panel Member and Study Team Biographies

Panel

Joseph Westphal* (Chair) – Ambassador Westphal is a Senior Global Fellow of the Lauder Institute in the Wharton School of the University of Pennsylvania. He formerly served as Ambassador to Saudi Arabia, Under Secretary of the U.S. Army, and Chief Management Officer to the U.S. Army and U.S. Department of Defense. Ambassador Westphal worked as Provost Vice President for Research and as Professor for the New School University and as Chancellor and Professor of Political Science for the University of Maine System. He also served as Secretary of the Army (Acting) in the U.S. Department of Defense and Assistant Secretary of the Army for Civil Works in the U.S. Department of Defense.

Peter Basso* – Mr. Basso is a senior consultant to WSP Strategies subsidiary. He served as the American Association of State Highway and Transportation Officials' (AASHTO) Chief Operating Officer, Business Development Director, and Director of the AASHTO Center for Program and Project Finance. Mr. Basso served as Assistant Secretary for Budget and Programs and as Chief Financial Officer of the U.S. Department of Transportation. He has also held positions as Assistant Director for General Management at the Office of Management and Budget, Deputy Chair for Management of the National Endowment for the Arts, and Director of Fiscal Services for the Federal Highway Administration.

Gerald Galloway* – Gerald E. Galloway, PE, PhD is a Glenn L. Martin Institute Professor of Engineering, Department of Civil and Environmental Engineering, University of Maryland, a Faculty Fellow of the Hagler Institute for Advanced Study Texas A&M University and a visiting professor at the A&M Galveston Campus. His teaching and research focus is on water resources policy, resilience, and disaster risk management under climate change. He serves as a consultant to several international, federal, state, and non-governmental agencies and has been involved in water projects in the U.S., Europe, Asia, and South America. He is a thirty-eight year veteran of the U.S. Army, who retired as a Brigadier General and Dean (Chief Academic Officer) at the U.S. Military Academy at West Point.

Kingsley Haynes* – Dr. Haynes is a Professor Emeritus and a former Ruth D. and John T. Hazel MD Endowed Chair for the School of Public Policy at George Mason University. Other positions at George Mason University include Dean of the School of Public Policy and the Graduate School and Director of the Institute for Public Policy. During his time at Boston University, Dr. Haynes was Chair of the Department of Geography and Provost's Public Policy Program. At Indiana University, he worked as a Professor as well as the Director for the Regional Economic Development Institute and Urban Regional Analysis Faculty.

Mamie Parker* – Ms. Parker is Founder and President of MA Parker and Associates. She has worked with the U.S. Fish and Wildlife Service in positions including: Chief of Staff; Assistant Director of Fisheries; Northeast Regional Director, Hadley, Massachusetts; Deputy Geographic Assistant; Southeast Regional Director, Atlanta, Georgia; Midwest Regional Environmental and Ecosystem

Coordinator, Minneapolis, Minnesota; Fish and Wildlife Biologist, Columbia, Missouri; Fishery Biologist, Lake Mills and Madison, Wisconsin.

Academy Study Team

Roger Kodat, *Program Area Director* – Mr. Kodat has led more than twenty projects for the Academy, several focusing on strategic planning and organizational transformation. He brings twenty years of commercial and investment banking experience with JPMorganChase, and six years of senior level federal government experience at the Department of the Treasury. President George W. Bush appointed Mr. Kodat to serve as Deputy Assistant Secretary of Treasury in 2001, where he was responsible for Federal Financial Policy. Some of his tasks at Treasury included: policy formulation for the 2006 Postal Accountability and Enhancement Act; rule-making and oversight of Federal loan and loan guarantee programs; and managing the Federal Financing Bank (a \$32 billion bank at that time). Mr. Kodat holds a Bachelor Science degree in Education from Northwestern University and both a Masters of Business Administration in Finance and Masters of Arts in Political Science from Indiana University.

Pamela Haze*, *Project Director* – Ms. Haze has been a Fellow of the National Academy of Public Administration since 2012. She served as Project Director for three prior Academy projects and participated as a team member on two others. Before joining the Academy staff, she served as the Deputy Assistant Secretary for Budget, Finance, Performance and Acquisition at the U.S. Department of the Interior (DOI). In addition, she served as the Director of DOI's Office of Budget. She spent the majority of her thirty-four year federal career with DOI and worked for the Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Land Management, and the Bureau of Outdoor Recreation. She also worked for the Office of the Federal Inspector of the Alaska Natural Gas Transportation System, and the Small Business Administration. She is a recipient of the Elmer Staats Award for Personal and Professional Standards and the Meritorious and Distinguished Presidential Rank Awards. Ms. Haze received a Bachelor of Science in Biology and Masters of Science in Environmental Science from George Mason University.

Ken Ryder*, *Senior Advisor* – Mr. Ryder held the position of Executive Director for Research and Analysis in the Office of Thrift Supervision at the U.S. Department of the Treasury. Ken also held positions with the U.S. Office of Management and Budget as the Deputy Associate Director of the Housing, Treasury and Finance Division; Deputy Associate Director in the Special Studies Division within the Economics and Government Directorate; Branch Chief of the Housing Branch in the Treasury, Commerce and Housing Division; and Senior Management Associate of the Management Division in the National Security and International Affairs Directorate. Ken also served as an economist for the Rand Corporation and as a staff member of the Directorate of Manpower Requirements Reserve Affairs at the Office of the Assistant Secretary of Defense for Systems Analysis.

Maria Rapuano, *Senior Advisor* – Ms. Rapuano served as a Deputy Project Director for Academy studies of the U.S. Department of Agriculture, Department of Justice, and Government Printing Office, and as a Senior Advisor for reviews of the Department of Homeland Security Science and Technology Directorate, the Defense Civilian Intelligence Personnel System, and the FEMA Flood Mapping Program. Prior to joining the Academy, Ms. Rapuano was a Project Director with the Alliance for

Healthy Homes (formerly the Alliance to End Childhood Lead Poisoning) and helped found and direct the organization's international program. She holds a Master of Arts in International Affairs from The American University and a Bachelor of Arts in Government from the College of William and Mary.

Jonathan Tucker, *Senior Advisor* – Dr. Tucker joined the Academy's staff in 2004 and is a Senior Analyst with expertise in policy analysis, program evaluation, organizational design and management assessment, strategic planning, and information technology management. He was the lead analyst for information technology issues for the Academy's recent assessments for the Department of Housing and Urban Development and the Social Security Administration. He holds a Doctorate in Public Policy from George Mason University, a Master of Science in Science and Technology from Rensselaer Polytechnic Institute and a Bachelor of Arts in Public Policy from New College of the University of South Florida.

Hailey Ellsworth, *Research Associate* – Ms. Ellsworth joined the Academy staff in August 2017 and was a member of the team evaluating the USACE PPA process. She was also engaged in two other Academy projects; a workforce plan for the Department of Transportation; and an organizational assessment of the Oklahoma Corporation Commission. She previously assisted in a realignment study of the U.S. Maritime Administration and an internal review of the National Academies of Sciences, Engineering, and Medicine. She interned for the Academy during the summer of 2017 and previously held positions as a project manager for an online startup company and as an intern for Pinnacle Bank. She graduated from Brigham Young University, with a Bachelor of Science in Economics along with a minor in Business Management. Ms. Ellsworth has left the Academy.

Richard Pezzella, *Research Associate*— Mr. Pezzella joined the Academy in June 2018 after completing a series of internships around Washington, D.C. Previously, he worked in Washington during the summer of 2016 as a grassroots organizer with Mayday America, a campaign finance reform group. After college graduation, in May 2017, he returned to Washington to intern in the office of Congressman Eliot L. Engel, and the government relations and communications firm, Signal Group. His areas of interest and expertise include infrastructure, public health, international relations, technology, and space policy. Mr. Pezzella graduated in May 2017 from SUNY New Paltz with a Bachelor of Arts in Anthropology and International Relations. He is originally from Brooklyn, New York.

Luke Lockwood, *Intern* – Mr. Lockwood became a member of the study team through the American University Semester Program where he followed a course of study while interning at the Academy. He also assisted on the Academy's organization assessment of the Oklahoma Corporation Commission. Luke will receive his undergraduate degree from Bowdoin College in 2020, where he is majoring in Government and Legal Studies with a minor in Economics. Luke participates in various clubs at Bowdoin including Bowdoin Men against Sexual Violence and Breaking the Bowdoin Bubble.

**Academy Fellow*

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Appendix B: List of Individuals Interviewed

(Titles and positions listed are accurate as of the time of the Academy's contact.)

U.S. Army

Joseph P. Bentz – Deputy Assistant Secretary of the Army (Civil Works), Management and Budget

Anne Brown – Associate Deputy General Counsel, Installations, Environment and Public Works, Office of General Counsel, Department of the Army

Sharron Dacosta-Chisley – Assistant for Water Resources Management, Office of the Assistant Secretary of the Army for Civil Works

Ryan A. Fisher – Principal Deputy Assistant Secretary of the Army for Civil Works

R.D. James – Assistant Secretary of the Army for Civil Works

David J. Leach – Deputy Assistant Secretary of the Army (Civil Works), Project Planning and Review

U.S. Army Corps of Engineers

Headquarters

Mathew Axtell – Assistant Counsel for Environmental Law, Office of Chief Counsel

Doug Bellomo – National Flood Risk Management Program, Institute for Water Resources

Wesley Coleman – Chief, Office of Water Project Review

David R. Cooper – Chief Counsel

Michael Haskins – Realty Specialist

Steve Kopecky – Deputy, Pacific Ocean and Northwestern Divisions Regional Integration Teams

Lauren Leuck – Institute for Water Resources

John Lucyshyn – Upper Mississippi Valley Division Regional Integration Team

Joseph Manous – Director, Institute for Water Resources

Joseph Mose – National Continuing Authorities Program Manager

Mark Mugler – Director, Program Integration Division

Daniel Murray – Associate Deputy Chief Counsel, Office of Chief Counsel

Susan Nee – Senior Counsel, Office of Chief Counsel

Larry Prather – Retired US Army Corps of Engineers, Former Chief, Division of Planning and Policy

Joseph Redican – Acting Chief, Division of Planning and Policy

Paul Scodarie – Institute for Water Resources

General Todd Semonite – Commanding General and Chief of Engineers

Bradd Schwichtenberg – Deputy, South Atlantic and South Pacific Divisions Regional Integration Teams

Cathy Shuman – Deputy, North Atlantic and Great Lakes and Ohio River Divisions Regional Integration Teams

General Scott Spellmon – Deputy Commanding General for Civil and Emergency Operations

Aaron Watkins – Institute for Water Resources

Katie Williams – Deputy, Mississippi Valley and Southwestern Divisions Regional Integration Teams

Divisions

Barbara Altera – Deputy Division Counsel, South Atlantic Division

Karen Berresford – Chief, Civil Works Integration Division, South Pacific Division

Eric Bush – Chief, Planning and Policy, South Atlantic Division

Brian Chewning – Chief, Program Support Division, Mississippi Valley Division

Joe Forcina – Chief, Business Management Division, North Atlantic Division

Russell Iwamura – Regional Economist/Senior Plan Formulator, Pacific Ocean Division

Paula Johnson-Muic – Chief, Real Estate Division, Southwest Division

Gary Mosteller – District Support Program Manager, Great Lakes and Ohio River Division

Rebecca Moyer – Chief, Civil Works Integration Division, Southwest Division

Karen Dove Odumosu – Agreements Coordinator, South Atlantic Division

Neal Purcell – Division Counsel, South Atlantic Division

Ronny Sadri – Acting Chief Planning & Policy, Regional Formulator, Great Lakes and Ohio River Division

Renee Turner – Chief, Civil Works Integration Division, Mississippi Valley Division

Jessie Winkler – Lead Program Manager, Northwestern Division

Jeremy Weber – District Support Planner, Northwestern Division

Districts

John Astley – District Counsel, New England District Office

Sherrie Barham – Chief, Programs and Project Management Branch, Chicago District Office

Sarah Bradley – Senior Project Manager, New Orleans District Office

Darrel Broussard – Project Manager, New Orleans District Office

Julie Byars – District Counsel, New England District

Kirsten Buczak – Project Manager, Chicago District Office

Justin Callahan – Environmental Protection Specialist, Baltimore District Office

Katie Charan – Project Manager, Sacramento District Office

Tony Clark – Continuing Authorities Program Manager, Baltimore District Office

Spencer Davis – Chief, Civil Works Programs and Project Management, Savannah District Office

Susanne Davis – Chief, Planning Branch, Chicago District Office

Durund Elzey – Assistant Deputy District Engineer for Programs and Project Management, New Orleans District Office

Josh Garcia – Section Chief in Program Management, Sacramento District Office

Howard Gonzales – Chief, Ecosystem Branch, Programs & Project Management Division, Jacksonville District

Judith Gutierrez – Deputy Chief, Real Estate Division, New Orleans District Office

Craig Homesley – Real Estate Division, Baltimore District Office

Patrick Howell – Project Manager, Sacramento District Office

Kevin Jerbi – Assistant District Counsel, Chicago District Office

Maurya Kilroy – Assistant District Counsel, New Orleans District Office

Jeff Lorenz – Office of District Counsel, Baltimore District Office

Brooks Moore – Assistant District Counsel, Jacksonville District

David Morrow – Deputy District Engineer for Program and Project Management, Baltimore District Office

Chris Nolta – Chief, Civil Project Management Branch, Baltimore District Office

Mike Nguyen – Project Manager, Chicago District Office

Monica Ott – Project Manager, Chicago District Office

John Pax – District Counsel, Jacksonville District

Imad Samara – Project Manager, Chicago District Office

Robert Scharf – District Counsel, Sacramento District Office

Joseph Seebode – Deputy District Engineer, Programs and Project Management, New York District Office

Cameron Sessions – Section Chief in Program Management, Sacramento District Office

Nick Sims – Senior Project Manager, New Orleans District Office

Robert Sirard – Project Manager, Civil Programs and Project Management, Savannah District Office

Paul Varnado – Project Manager, New Orleans District Office

Taylor Wimberly – Project Manager, Savannah District Office

Mark Wingate – Deputy District Engineer for Programs and Project Management, New Orleans District Office

Engineer Inspector General

Tony Garcia – Deputy Engineer Inspector General

Willie James – Team Leader for Alternative Financing Processes Inspection

Gregory Regelski – Team Leader and Subject Matter Expert for Civil Works Related Inspections
Office of Management and Budget

Kelley Colyer – Chief, Water and Power Branch

Lori Krauss – Water and Power Branch

Rick Mertens – Former Chief, Water and Power Branch, now with Agriculture and Natural Resources,
Texas A&M

Amy Sharp – Water and Power Branch

Congressional Committees and Staff:

Jen Armstrong – Senate Appropriations Committee, Energy and Water Subcommittee

Ian Bennett – House Transportation and Infrastructure Committee, Water Resources and the Environment Subcommittee

Elizabeth Fox – House Transportation and Infrastructure Committee, Water Resources and the Environment Subcommittee

Angie Giancarlo – House Appropriations Committee, Energy and Water Subcommittee

Victor Sarmiento – House Transportation and Infrastructure Committee, Water Resources and the Environment Subcommittee

Jaime Shimek – House Appropriations Committee, Energy and Water Subcommittee

Pauline Thorndike – USACE, on detail to Senate Environment and Public Works Committee

Government Accountability Office

Anne-Marie Fennell – Director, Natural Resources and Environment

Jamie Meuwissen – Senior Analyst

Kyle Stetler – Senior Analyst

Nonfederal Sponsors and Sponsor Organizations

Todd Bernardy – Flood Projects Office, Division of Flood Management, Department of Water Resources, State of California

Charles Brittingham – Senior VP, Cassidy & Associates

Regan Brown – Assistant Director for Navigation, Port of Lake Charles Harbor and Terminal District

William Bourgeois – Bourgeois Law, LLC

Grady Bryant – Gahagan & Bryant Associates, Inc.

Christopher Collins – Louisiana Department of Transportation

Chris Correale – Director, Harbor Development, Maryland Port Administration

R.B. Daniell III – Waterways Program Manager, Georgia Department of Transportation

Ken Dawson – Chief Executive Assistant, Parish of Ascension

Michael K. Dees – General Counsel, Port of Lake Charles Harbor and Terminal District

Michelle Diffenderfer – President, Lewis Longman and Walker, LLC

Cindy Lou Dixon – Attorney, New York State Department of Environmental Conservation

William Dixon – Director, Division of Coastal Engineering, New Jersey Department of Environmental Protection

Deborah L. Drum – Director, Palm Beach County Environmental Resources Management Department

Steve Fitzgerald – Harris County Flood Control District, Texas and President NAFSMA

Kyle Graham – Arcadis, Environmental Services

Jimmy Hague – The Nature Conservancy

Kirk Hansen – Mississippi River Habitat Coordinator, Iowa Department of Natural Resources

Channing Hayden – Director of Navigation, Port of Lake Charles Harbor and Terminal District

Alan Hofman – General Manager, Fresno Metropolitan Flood Control District

Wilbur Huang – Section Chief, Flood Projects Office, Division of Flood Management, Department of Water Resources, State of California

Claude R. Jackson – Special Waterways and Intermodal Project Manager, Georgia Department of Transportation

Karin Jacoby – Husch Blackwell

Megan Jacoby – South Florida Water Management District

Richard Johnson – Sacramento Area Flood Control Agency

John Kuehne, Deputy Attorney General, New Jersey

Amy Larson – President, National Waterways Conference

Brian Mast – San Antonio River Authority

Albert Martinez – Engineering Project Manager, Riverside County Flood Control and Water Conservation District

Jeremy McBryan, Water Resources Manager, Palm Beach County

Susan McCormick – Chief of Coastal Erosion Management Program, New York State Department of Environmental Conservation

Megan Moore – Long Term Resource Monitoring Field Station Team Supervisor, Mississippi River Coordinator, Minnesota Department of Natural Resources

Hope Moorer – General Manager, Navigation Programs, Georgia Ports Authority

Michael Musto – Section Chief, Flood Projects Office, Division of Flood Management, Department of Water Resources, State of California

Kurt Nelson – Tulalip Tribe

Jim Newsome – South Carolina Ports Authority

David Peterson – Louisiana Coastal Protection and Restoration Authority

Gaylon Pinc – Program Management Group LLC

John Poulter – Willow Fork Drainage District

Patricia A. Power – Bose, McKinney & Evans LLP

Jonathan Ringo – Assistant General Counsel, Port of Lake Charles Harbor and Terminal District

Suzanne Scott – San Antonio River Authority

Scott Shapiro – Downey Brand

Scott Sigman – Illinois Soybean Association

Daniel Smith – Willow Fork Drainage District

Michael Spolar – Senior Engineer, Robinson Engineering, Ltd.

Michael Stahl, Deputy Director, Palm Beach County Environmental Resources Management Department

Mark Strudley – County of Santa Cruz

Dan Vicari – Executive Director, Gary Sanitary and Stormwater District

Jim Walker – American Association of Port Authorities

Kirsten Wallace – Upper Mississippi River Basin Association

Paul Warner – South Florida Water Management District

Appendix C: Congressional Direction for the Evaluation of PPAs

Authorization

The Water Resources Reform and Development Act of 2014, Public Law 113-121, directed the evaluation of the PPA process as follows:

SEC. 1013. EVALUATION OF PROJECT PARTNERSHIP AGREEMENTS.

(a) In General- The Secretary shall contract with the National Academy of Public Administration to carry out a comprehensive review of the process for preparing, negotiating, and approving Project Partnership Agreements and the Project Partnership Agreement template, which shall include--

(1) an evaluation of the process for preparing, negotiating, and approving Project Partnership Agreements, as in effect on the day before the date of enactment of this Act, including suggested modifications to the process provided by non-Federal interests; and

(2) recommendations based on the evaluation under paragraph (1) to improve the Project Partnership Agreement template and the process for preparing, negotiating, and approving Project Partnership Agreements.

(b) Submission to Congress-

(1) IN GENERAL- The Secretary shall submit the findings of the National Academy of Public Administration to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) REPORT- Not later than 180 days after the date on which the findings are received under paragraph (1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a detailed response, including any recommendations the Secretary plans to implement, on the process for preparing, negotiating, and approving Project Partnership Agreements and the Project Partnership Agreement template.

Appropriations

The Consolidated Appropriations Act of 2017, Public Law 115-13, funded the evaluation as follows:

The Joint Explanatory Statement of the Consolidated Appropriations Act of 2017 (*Congressional Record*, v. 163, No. 76 – Book II, May 3, 2017, p. H3741):

EXPENSES. The agreement includes \$181,000,000 for Expenses. The agreement includes \$1,000,000 for the Corps to initiate the evaluation of Project Partnership Agreements authorized under section 1013 of the Water Resources Reform and Development Act of 2014.

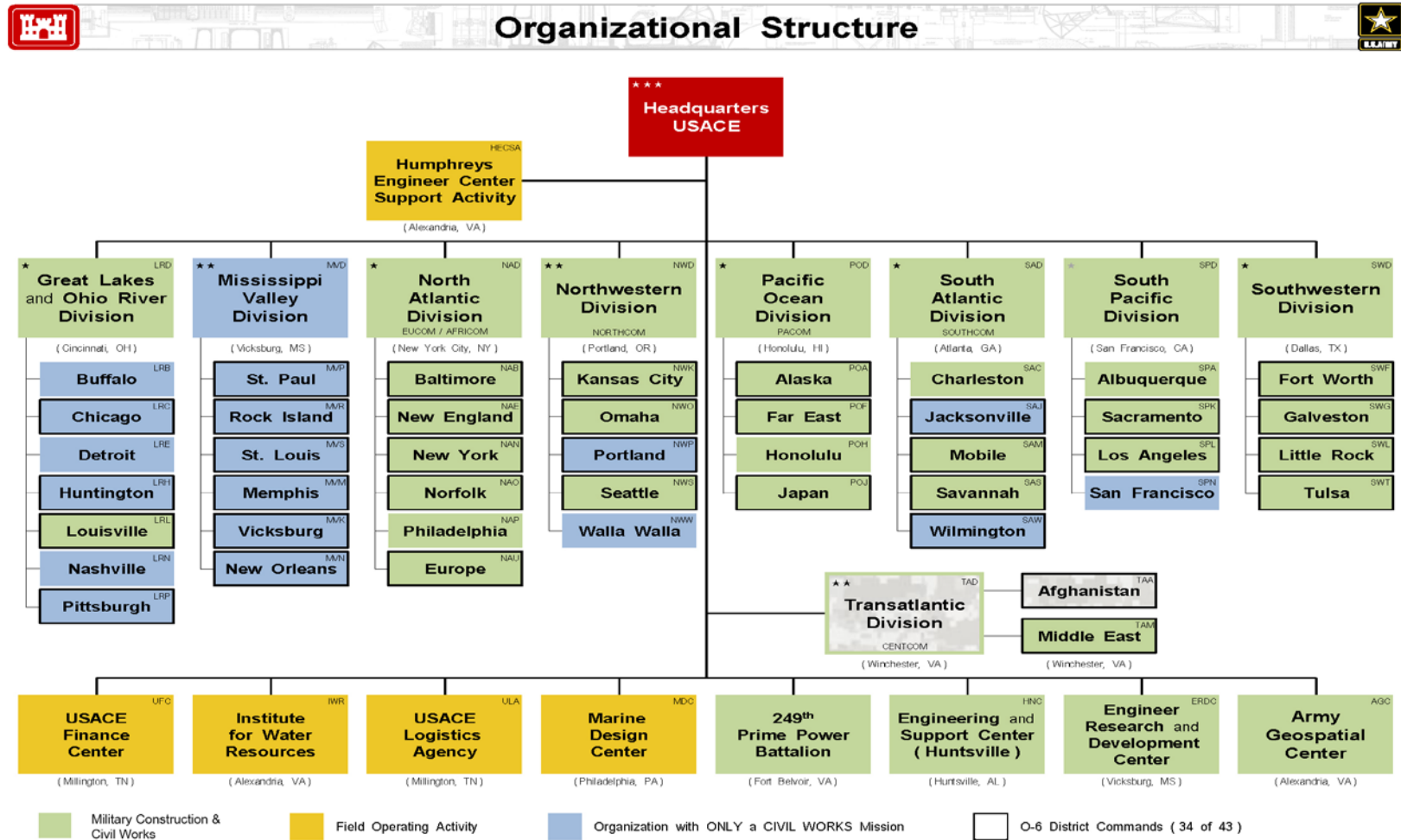
This was given the status of a statement of the managers accompanying an appropriations act as follows:

Section 4: The explanatory statement regarding this Act, printed in the House section of the Congressional Record on or about May 2, 2017, and submitted by the Chairman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of divisions A through L of this Act as if it were a joint explanatory statement of a committee of conference.

Appendix D: USACE Organization Chart

The following image depicts the organizational structure of the USACE.

Figure 10 – USACE Organization Chart



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Appendix E: USACE Map

The image on the following page details the locations of the USACE Divisions and Districts. Civil Works Division and District boundaries are based on watershed. The headquarters location for each of the eight Civil Works Divisions and the Districts assigned to each Division are listed below. The Transatlantic Division does not have civil works responsibilities.

Pacific Ocean Division

Division HQ: Honolulu, Hawaii

District Locations: Honolulu, Hawaii; Alaska

South Pacific Division

Division HQ: San Francisco, California

District Locations: San Francisco, California; Sacramento, California; Los Angeles, California; and Albuquerque, New Mexico

Northwestern Division

Division HQ: Portland, Washington

District Locations: Portland, Washington; Seattle, Washington; Walla Walla, Washington; Omaha, Nebraska; and Kansas City, Missouri

Southwestern Division

Division HQ: Dallas, Texas

District Locations: Ft. Worth, Texas; Galveston, Texas; Tulsa, Oklahoma; and Little Rock, Arkansas

Mississippi Valley Division

Division HQ: Vicksburg, Mississippi

District Locations: Vicksburg, Mississippi; New Orleans, Louisiana; Memphis, Tennessee; St. Louis, Missouri; Rock Island, Illinois; and St. Paul, Minnesota

Great Lakes & Ohio River Division

Division HQ: Cincinnati, Ohio

District Locations: Detroit, Michigan; Chicago, Illinois; Louisville, Kentucky; Nashville, Tennessee; Huntington, West Virginia; Pittsburgh, Pennsylvania; and Buffalo, New York

North Atlantic Division

Division HQ: New York, New York

District Locations: New York, New York; New England, Concord, Massachusetts; Philadelphia, Pennsylvania; Baltimore, Maryland; and Norfolk, Virginia

South Atlantic Division

Division HQ: Atlanta, Georgia

District Locations: Wilmington, North Carolina; Charleston, South Carolina; Savannah, Georgia; Mobile, Alabama; and Jacksonville, Florida

Figure 11 – Map of locations of USACE Divisions and Offices



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Appendix F: Project Development Process

The following table details the phases of the USACE project development process as described in the report.

Figure 12 – Project Development Phases

PROJECT DEVELOPMENT PHASES				
	Feasibility Phase	Preconstruction Engineering & Design Phase	Construction Phase	Operation & Maintenance Phase
Duration	2 - 3 years	Approx. 2 years	Varies by Project	As long as Project Remains Authorized
Funding Activities	<i>Feasibility Funding 50% Fed-50% non-Fed</i> FEAS. ANALYSIS	<i>Project purpose cost sharing</i> GENERAL or LIMITED REEVALUATION (If Needed) DESIGN DOCUMENTATION (If Needed) PLANS & SPECS. for 1st Significant Constr. Contract	<i>Construction Funding Project purpose cost sharing</i> CONSTRUCTION REAL ESTATE ACQUISITION RELOCATIONS ENGR. & DESIGN (If Needed) PLANS & SPECS. (If Needed)	<i>O&M Funding normally 100% non-Fed</i> OPERATION .. MAINTENANCE .. REPAIR .. REPLACEMENT .. REHABILITATION
Agreements	Feasibility Cost Sharing Agreement Signed	Design Agreement Signed	Project Partnership Agreement Signed	
Decision Documents		Chief of Engineers Report		
Significant Reports/Manuals		Feasibility Report and NEPA Documentation	Engineering Design Report (If Needed)	O&M Manual

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Appendix G: Sample PPA Model

Most PPAs include the following major components:

- Title, name of project
- Date of execution
- Authorization for the project and authorization for cost sharing
- Capability to perform – statement that both the federal government and nonfederal sponsor have full authority and capability to perform and cites the legislative authority for the PPA to be enforceable in the appropriate district court
- Obligations of the parties – establishes the division of responsibilities, cost shares and annual payment terms, responsibilities for O&M, opportunity for sponsor review and comment on contract actions, establishment of a Project Coordination Team, treatment of historic preservation costs, treatment of real property transactions and relocations, relocations of utilities in keeping with state laws, removal of obstructions, risk reduction, compliance with floodplain management and insurance programs, inspection by the federal government, and compliance with federal laws
- Hazardous substances – assigns responsibility for investigation and liability in the event hazardous substances are identified
- Credit for real property interests, relocations, and in-kind contributions – provides the procedures for crediting real property and relocations to the nonfederal sponsor share of project costs and prescribes the process and requirements for eminent domain proceedings, appraisals, and in-kind contributions⁵³
- Payment of funds – identifies total project costs, the government’s share, and the sponsor’s share; funds to be provided during construction ; commits the government to quarterly reports on project costs; describes the process for payment of funds, the government’s draw down of funds, resolution of claims and appeals, accounting, and audit
- Termination or suspension – defines the terms under which the government may suspend or terminate work
- Hold and save – directs the nonfederal sponsor to hold and save the government from damages except those due to the fault or negligence of the government or its contractors

⁵³ In-kind contributions consist of work completed by the nonfederal sponsor that may or may not be counted toward the sponsor’s cost-share and include design related to construction and construction management, mitigation, and construction materials and services.

- Dispute resolution – describes the process for dispute resolution to be conducted in advance of suit for breach of the PPA
- Maintenance of records and audits – provides the requirements for records retention, audits, and inspection of records
- Relationship of parties – directs that the government and sponsor shall act in an independent capacity
- Notices – instructions for written notifications by both parties
- Confidentiality – holds both parties to maintaining the confidentiality of information that is exchanged
- Third party rights, benefits, or liabilities – states that the PPA does not confer any rights to persons that are not a party to the agreement

A sample PPA model begins on the next page.

**MODEL AGREEMENT FOR SECTION 107 – CONTINUING AUTHORITIES PROGRAM SMALL
RIVER AND HARBOR NAVIGATION PROJECTS**

JANUARY 19, 2018

APPLICABILITY AND INSTRUCTIONS:

1. The attached model project partnership agreement (PPA) is for a small river and harbor navigation project with a channel depth of 45 feet or less undertaken pursuant to Section 107 of the River and Harbor Act of 1960, as amended (33 U.S.C. 577). Any additional channel depths to provide for allowable over-depth, advanced maintenance, and entrance channel wave allowances are excluded in determining the channel depths for calculating cost sharing. For a Section 107 project that has channel depth in excess of 45 feet, the PPA must be submitted to the Headquarters for review and approval.
2. The PPA should include, if applicable, in the definition of the Project in Article I.A., construction of new dredged material placement facilities (DMPFs) or expansion of existing DMPFs that will be undertaken as part of initial construction of the Project. A separate Memorandum of Agreement will be developed and should be used for cost sharing of later phased expansions of, or construction of additional, DMPFs after initial construction of the Project. However, both the Federal costs of initial construction and the Federal costs for later phased expansions or construction of additional DMPFs count toward the per-project Federal participation limit.
3. The responsibility for review and approval of a Section 107 PPA that does not deviate from the approved model, or for an amendment to the January 19, 2018 model to include an approved option to the model, has been delegated to the MSC Commander. Division Counsel concurrence that the PPA does not deviate from the subject model, and is appropriate for use for the particular project, is required prior to approval. In addition, the MSC Commander has been delegated authority to approve nonsubstantive deviations to the model PPA. Division Counsel review of such deviations, with a recommendation to approve such deviations, is required prior to approval by the MSC Commander.
4. The following options, including language for the agreement, are addressed in the Attachment:
 - a. Option 1: Not an Obligation of Future Appropriations (page A-1).
 - b. Option 2: Multiple Sponsors (page A-2).
 - c. Option 3: Additional 10 percent provided during construction (page A-3).
5. Reminder: Make all required insertions, including language associated with an option; remove this cover page; remove the open and close brackets and any instructional text; ensure the spacing and page breaks throughout the agreement are appropriate; and delete the Attachment.

6. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability should be included as a part of the agreement package. These certificates can found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

SAMPLE

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR
[FULL NAME OF THE PROJECT]

THIS AGREEMENT is entered into this ____ day of _____, __, by and between the Department of the Army (hereinafter the “Government”), represented by the [INSERT TITLE] and the [FULL NAME OF THE NON-FEDERAL SPONSOR] (hereinafter the “Non-Federal Sponsor”), represented by its [INSERT TITLE].

WITNESSETH, THAT:

WHEREAS, Section 107 of the River and Harbor Act of 1960, as amended (33 U.S.C. 577) (hereinafter “Section 107”), authorizes the Secretary to undertake construction of small river and harbor navigation projects not specifically authorized by Congress;

WHEREAS, pursuant to the authority provided in Section 107, design and construction of the [Insert Full Name of the Project] (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was approved by the Division Commander for [Insert Name of USACE Division, e.g., Mississippi Valley Division] (hereinafter the “Division Commander”) on [Month Day, Year]; WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 107 may not exceed \$10,000,000; 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 general navigation features, which includes [DESCRIBE FEATURES OF THE PROJECT, INCLUDING CONSTRUCTION OF NEW DREDGED MATERIAL PLACEMENT FACILITIES (DMPFS) OR EXPANSION OF EXISTING DMPFS THAT WILL BE UNDERTAKEN AS PART OF INITIAL CONSTRUCTION OF THE PROJECT], as generally described in the [FULL TITLE OF DECISION DOCUMENT], dated _____, ___ and approved by the [TITLE OF APPROVING OFFICIAL, e.g., Division Commander for Mississippi Valley Division, etc.] on [Month Day, Year].

B. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are cost shared and directly related to design and construction of the Project, including mitigation, if applicable. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any highway or railroad bridges over navigable waters of the United States); the Government’s supervision and administration costs; the Government’s costs of removing obstructions acquired by the Non-Federal Sponsor or for which no compensation is owed and no owner can be located; 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 and maintenance; dispute resolution; participation in the Project Coordination Team; audits; or additional work, if any; or the Non-Federal Sponsor’s cost for negotiating this Agreement or for providing relocations or real property interests, except for those provided for mitigation. It also does not include any costs for local service facilities or for aids to navigation.

C. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and dredged material placement facilities. Acquisition of real property interests may require the performance of relocations.

D. The term “relocation” means the alteration, lowering, raising, or replacement and attendant demolition of a utility (including privately and publicly owned pipelines, cables, and related facilities located in or under navigable waters of the United States, regardless of whether they serve the general public), cemetery, highway, railroad (including any bridge thereof), or public facility, excluding any highway or railroad bridges over navigable waters of the United States and any structure determined to be an “obstruction” as that term is defined in paragraph I. of this Article. E. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, waste weirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

E. The term “dredged material placement facilities” means the improvements required on real property interests to enable the placement of dredged or excavated material during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, waste weirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

F. 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. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

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

H. The term “Federal Participation Limit” means the \$10,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the Project.

I. The term “obstruction” means any structure located in or under navigable waters of the United States that must be removed to construct, operate, and maintain the Project but that does not require replacement because it is no longer needed.

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

ARTICLE II - OBLIGATIONS OF THE PARTIES

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

B. The Non-Federal Sponsor shall provide the following, in accordance with the provisions of this paragraph:

1. The Non-Federal Sponsor shall provide 10 percent of construction costs assigned to a channel depth not in excess of 20 feet; and 25 percent of construction costs assigned to a channel depth in excess of 20 feet but not greater than 45 feet.

a. In providing in-kind contributions, if any, as part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

b. After considering the estimated amount of credit for in-kind contributions, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year. No later than 30 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 VI.C. c. No later than August 1st prior to each subsequent fiscal year of construction, 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 VI.C. 2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, acquire or compel the removal of obstructions, and perform or ensure the performance of relocations required for construction, operation, and maintenance of the Project.

3. The Non-Federal Sponsor shall pay an additional 10 percent of construction costs (hereinafter the "additional 10 percent payment"), less any credit afforded by the Government for the real property interests and relocations, over a period not to exceed 30 years in accordance with Article VI.D.

4. The Non-Federal Sponsor shall construct, operate, and maintain, at no cost to the Government, the local service facilities, including obtaining all applicable licenses and permits necessary for construction, operation, and maintenance of such work.

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 effects of construction are determined 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 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 Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

E. The Government, as it determines necessary and subject to the availability of funds, shall operate and maintain the Project, which includes operation and maintenance of dredged material placement facilities, using funds appropriated by the Congress and, if applicable, funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the Project. In addition, the Government shall have the full authority and right to operate and maintain or manage dredged material placement facilities including the right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government. The Non-Federal Sponsor shall ensure that use of any additional capacity provided by the Government as additional work under 33 U.S.C. 2326a(a) complies with the operations plan approved by the Government. Except for such additional capacity, the Non-Federal Sponsor shall not place or authorize placement of material in the dredged material placement facilities unless the Government authorizes the placement under 33 U.S.C. 2326a(b) or 33 U.S.C. 1341(c), whichever is applicable. The Non-Federal Sponsor shall not otherwise modify or improve the dredged material placement facilities unless the Government approves the modification or improvement under 33 U.S.C. 408.

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

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

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

I. The Non-Federal Sponsor may request in writing that the Government perform 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 VI.E., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

J. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the Federal Participation Limit.

**ARTICLE III - REAL PROPERTY INTERESTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC
LAW 91-646, AS AMENDED**

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall identify obstructions to construction, operation, and maintenance of the Project and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such obstructions and shall provide the Non-Federal Sponsor with a written notice to proceed with acquiring or compelling the removal of such obstructions. The Non-Federal Sponsor shall acquire or compel the removal of such obstructions in accordance with the Government's construction schedule for the Project. If the owner of an obstruction cannot be located, the Government shall remove the obstruction during construction of the Project after following all applicable procedures in Parts 325 and 326 of Title 33 of the Code of Federal Regulations.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, perform the necessary relocations, or invoke navigation servitude to compel utility relocations or removal of obstructions under navigable waters of the United States.

1. In General. If the Government agrees to such a request, the Nonfederal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of such work in advance

of the Government performing the work. The Government shall acquire the real property interests, perform the relocations, or invoke navigation servitude to compel utility relocations or removal of obstructions under navigable waters of the United States, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

2. Relocations of Utilities Located in or under Navigable Waters of the United States. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude to compel relocation of utilities located in or under navigable waters of the United States, the Non-Federal Sponsor must demonstrate that it has made a good faith effort to negotiate with the owner(s) for relocation of the utilities; that it lacks authority to compel relocation of the utilities through eminent domain or other legal proceedings; and that payment obligations for relocation costs, as between the Non-Federal Sponsor and the utility owner(s), are clear under the laws of the [State of _____ or Commonwealth of _____] and the terms of applicable non-Federal permits, licenses, or agreements. The Non-Federal Sponsor must also obtain a letter from the [State of _____ or Commonwealth of _____], signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude. The Government's exercise of the navigation servitude to compel relocation of utilities does not negate or otherwise affect the Non-Federal Sponsor's payment obligations for relocation costs under the laws of the [State of _____ or Commonwealth of _____]; or the terms of applicable non-Federal permits, licenses, or agreements.

3. Removal of Obstructions. If the Non-Federal Sponsor requests that the Government exercise the navigation servitude to compel removal of obstructions, the Non-Federal Sponsor must demonstrate that the owner of the obstruction has no compensable interest under the laws of the [State of _____ or Commonwealth of _____] or the terms of applicable non-Federal permits, licenses, or agreements; that it has made a good faith effort to negotiate with the owner(s) for removal of the obstructions; and that it lacks authority to compel removal of obstructions through eminent domain or other legal proceedings. The Non-Federal Sponsor must also obtain a letter from the [State of _____ or Commonwealth of _____], signed by the governor or a duly authorized state official, concurring in the Non-Federal Sponsor's request that the Government exercise the navigation servitude to compel removal of the obstructions.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor

assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander for the [Insert Name of USACE District, e.g., New Orleans District] (hereinafter the "District Commander") provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate

response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. 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 liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government, in accordance with the following procedures, requirements, and conditions, shall credit the value of real property interests and relocations required for the Project against the additional 10 percent payment. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. **General Procedure.** The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall

provide the Government with documents sufficient to determine the amount of credit to be provided for such real property interest.

(1) Date of Valuation. For real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value, except for such real property interests for in-kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

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

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of

just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

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

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

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

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

2. Relocations. To the maximum extent practicable, no less frequently than on a semi-annual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such relocations.

a. For a relocation other than a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation.

b. For a relocation of a utility, or portion thereof, located in or under navigable waters of the United States, credit shall be afforded for the costs borne by the Non-Federal Sponsor but shall not exceed the total value of the relocation as determined by the Government.

c. In general, the value of a relocation shall be equivalent to the costs, documented to the satisfaction of the Government, incurred to provide the relocation. The value may not exceed the amount the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items. For the relocation of a highway or road, including any bridge thereof, that is owned by a public entity, a functionally equivalent facility may be constructed to the current design standard that the [State of _____ or Commonwealth of _____] would apply under similar conditions of geography and traffic load. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

B. The Government, in accordance with the following procedures, requirements, and conditions, shall include in construction costs, the costs for in-kind contributions determined by the Government to be integral to the Project and credit such costs against the non-Federal share of construction costs. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. 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 providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. To the maximum extent practicable, no less frequently than on a semi-annual basis, the Non-Federal

Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for such in-kind contributions. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

2. 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; for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government; or against the additional 10 percent payment.

C. If the Government exercises the navigation servitude to compel relocation of utilities and removal of obstructions located in or under navigable waters of the United States that interfere with construction, operation, and maintenance of the Project, the Government shall credit the costs incurred by the Government and paid by the Nonfederal Sponsor pursuant to Article III.D. against the additional 10 percent payment.

D. Any credit afforded under the terms of this Agreement 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. 37013708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and 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.

E. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project. In addition, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for the cost of real property interests, relocations, or the Government exercising navigation servitude in excess of the additional 10 percent payment.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs [NOTE: construction costs do not include the costs of providing relocations or real property interests, except for those provided for mitigation]are projected to be

\$_____, with the Government’s share of such costs projected to be \$_____ and the Non-Federal Sponsor’s share of such costs projected to be \$_____, which includes creditable in-kind contributions projected to be \$_____, and the amount of funds to be provided during construction projected to be \$ _____. In addition, the Non-Federal Sponsor’s additional 10 percent payment is projected to be \$_____, reduced to \$_____ after deducting creditable real property interests and relocations, which are projected to be \$ _____. 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 construction, the Government shall provide the Nonfederal Sponsor with quarterly reports setting forth the estimated construction costs and the Government’s and Non-Federal Sponsor’s estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests and relocations; 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. Payment of Funds for Construction.

1. The Non-Federal Sponsor shall provide funds by delivering a check payable to “FAO, USAED, [INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]” to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such 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 funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Nonfederal Sponsor to cover the non-Federal cost share as those costs are incurred. If the Government determines at any time that additional funds are needed from the Nonfederal Sponsor to cover the Non-Federal Sponsor’s required share of such 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 Nonfederal Sponsor shall provide the Government with the full amount of such additional required funds.

3. Upon completion of construction of the Project, 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 to meet its cost share, 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 cost share, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its cost share, the Government shall refund such excess amount, subject to the availability of funds for the refund.

D. Payment of Additional 10 Percent.

1. As a part of the final accounting conducted pursuant to Article VI.C.3., the Government shall determine the additional 10 percent payment and then deduct the creditable value, in accordance with Article V, of real property interests and relocations. If the remainder is greater than zero, the Government shall calculate initial annual installments amortized over a period of 30 years using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The payment period begins on the date the Government notifies the Non-Federal Sponsor of the amount of the initial annual installments.

2. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of this amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

3. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government's notification pursuant to paragraph D.1. of this Article, and each annual installment thereafter on the anniversary date of such notification, by delivering a check payable to "FAO, USAED, [INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]" to the District Commander or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

E. If the Government agrees to provide real property interests or relocations on behalf of the Non-Federal Sponsor; invoke the navigation servitude to compel utility relocations or removal of obstructions; or undertake additional work, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 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, [INSERT DISTRICT AND EROC CODE, e.g., New Orleans (B2)]” 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.

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

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

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

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

E. Any suspension or termination shall not relieve the parties of liability for any obligation 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.

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ARTICLE VIII - HOLD AND SAVE

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

ARTICLE IX - 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 X - 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 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 Federal Participation 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 XI - 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 XII - 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: [TITLE] [ADDRESS]

If to the Government: District Commander _____ District [ADDRESS]

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 XIII - 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 XIV - 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the [INSERT TITLE OF THE GOVERNMENT REPRESENTATIVE].

DEPARTMENT OF THE ARMY [FULL NAME OF NON-FEDERAL SPONSOR]

BY: _____	BY: _____
[TYPED NAME]	[TYPED NAME]
[FULL TITLE]	[FULL TITLE]

DATE: _____ DATE: _____

Option 1: Not an Obligation of Future Appropriations. Section 221(a) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that an agreement may reflect that it does not obligate future appropriations when doing so is inconsistent with constitutional or statutory limitations of a State or political subdivision thereof. However, Section 221(a) does NOT provide that the Non-Federal Sponsor’s performance and payments are subject to appropriations of funds. The Government retains the right to exercise any legal rights it has to protect the Government’s interests. If applicable and requested by the Non-Federal Sponsor, insert into the PPA as the last Article the following:

“ARTICLE XV - 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 [Insert name of the legislative body that makes the appropriations, e.g., legislature of the State of New York or the New York City Council], where creating such an obligation would be inconsistent with [Insert the specific citation to the constitutional or statutory limitation on committing future appropriations]. 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.”

Option 2: Multiple Non-Federal Sponsors. While it is preferable that there is one party only as the Non-Federal Sponsor for the PPA, it is permissible to have more than one Non-Federal Sponsor and in such case, the PPA should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural. The Non-Federal Sponsors need to understand that they will be jointly and severally liable for all non-Federal obligations and responsibilities under the PPA. Any proposal to allow for a division of responsibilities between Non-Federal Sponsors will require approval of the HQUSACE.

Insert into the PPA as the last Article the following:

“ARTICLE XV – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Nonfederal Sponsors.”

Option 3: Additional 10 percent provided during construction. If the Non-Federal Sponsor elects to provide the additional 10 percent during construction in lieu of making such payments over a 30-year period after completion of construction, make the following changes:

1. Add as the last sentence in Article II.B.1. the following:

“In addition, the Non-Federal Sponsor shall pay an additional 10 percent of construction costs (hereinafter the “additional 10 percent payment”), less any credit afforded by the Government for real property interests and relocations.”

2. Delete the phrase “to meet its cost share” from Article II.B.1.c.

3. Delete paragraph 3 from Article II.B., and re-number paragraph 4 as paragraph 3.

4. Replace the first and second sentences in Article VI.A. with the following:

“As of the effective date of this Agreement, construction costs [NOTE: construction costs do not include the costs of providing relocations or real property interests, except for those provided for

mitigation]are projected to be \$_____, with the Government’s share of such costs projected to be \$_____ and the Non-Federal Sponsor’s share of such costs projected to be \$_____, which includes creditable in-kind contributions projected to be \$_____, and funds projected to be \$ _____. In addition, the Non-Federal Sponsor’s additional 10 percent payment is projected to be \$_____, reduced to \$_____ after deducting creditable real property interests and relocations, which are projected to be \$_____.”

5. Delete Article VI.D., re-designate subsequent paragraph as Article VI.D., and replace references to “Article VI.E.” with “Article VI.D.” throughout the PPA.

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