



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET NW  
WASHINGTON, D.C. 20314-1000

NOV 25 2009

CEMP-SPD

MEMORANDUM FOR Commander, South Pacific Division, ATTN: CESPDPDC

SUBJECT: Glenwood Springs, Colorado – Section 14 Emergency Streambank Protection Project – Project Partnership Agreement Amendment Approval

1. Reference: CESPDPDC email transmittal of 6 November 2009, which requested approval to execute the subject Amendment.
2. The PPA Amendment has been reviewed at Headquarters and changes from the model agreement have been coordinated with ASA(CW) and Army General Counsel staff. The PPA Amendment is approved for execution by the District Commander. A copy of the approved version of the agreement is enclosed.
3. If you have any questions concerning this matter, please contact Ken Zwickl of my staff, telephone (202) 761-4085.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "S. L. Stockton".

STEVEN L. STOCKTON, P.E.  
Director of Civil Works

Encl



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 JEFFERSON PLAZA NE  
ALBUQUERQUE NM 87109-3435

CESPA-PM-C

5 November 2009

MEMORANDUM THRU South Pacific Division, 1455 Market Street, San Francisco, CA  
94103-1399 (Attn: Paul Devitt)

FOR Commander, South Pacific Division, 1455 Market Street Street, San Francisco, CA 94103-  
1399

SUBJECT: Submittal for Amendment No. 1 for the 27th Street Bridge, Glenwood Springs, CO  
Section 14 Emergency Streambank Protection Project.

1. Enclosed for your review and processing is the Draft Amendment No. 1, copy of the original agreement, the Certificate of Legal Review signed by District Counsel, the PPA Checklist, the signed Sponsor's Self-Certification of Financial Capability, the Federal/non-Federal Allocation Table, and the approved Integral Determination Report.
2. The purpose of this project is to protect the existing bridge piers by placing riprap and select rock for erosion protection. The bridge is in imminent threat of damage or failure by natural erosion and the piers of the bridge need to be stabilized. The estimated total project cost for this project is \$925,000.
3. The original agreement is being amended to increase the total project cost and to afford the Sponsor credit for in-kind contributions. The draft model Project Partnership Agreement for Section 205 was used as the model for the in-kind contributions revisions.
4. The letter report for integral determination was approved by SPD on 30 Sep 09.
5. HQ approval of this amendment is requested by COB 18 Nov 09 to allow the contractor to perform within the construction window, which ends in February 10.
6. If there are any questions or concerns, please call Mr. Felton Prosper, Project Manager at (505) 342-3270.

A handwritten signature in cursive script, reading "Jorge R. Colberg".

Jorge R. Colberg  
Deputy District Engineer for Project  
Management

Encls

AMENDMENT NO. 1  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CITY OF GLENWOOD SPRINGS, CO  
FOR DESIGN AND CONSTRUCTION  
OF THE  
27<sup>TH</sup> STREET BRIDGE

THIS AMENDMENT NO. 1 is entered into this 30<sup>th</sup> day of NOVEMBER, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Albuquerque District, and the City of Glenwood Springs, CO (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement for design and construction of erosion protection for the 27<sup>th</sup> Street Bridge on July 3, 2008 (hereinafter the "Agreement");

WHEREAS, design and construction of erosion protection for the 27<sup>th</sup> Street Bridge for emergency streambank and shoreline protection (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Glenwood Springs, Garfield County, Colorado was approved by the Commander, South Pacific Division on April 21, 2008, pursuant to the authority contained in Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r; hereinafter "Section 14");

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b(a)(4)), authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the *Project* for the value of in-kind contributions that the Secretary of the Army determines are integral to the *Project*; and

WHEREAS, the Non-Federal Sponsor desires to receive credit toward its required contribution of funds for the *Project* in accordance with the provisions of this Agreement for certain work (hereinafter the "*in kind contributions*" as defined in Article I.O. of this Agreement) that were determined to be integral to the *Project* on September 30, 2009.

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

1. The second Whereas Clause of the Agreement is amended by striking the clause and replacing it with the following:

“WHEREAS, the Secretary of the Army is authorized by Section 14 to allot from certain appropriations an amount not to exceed \$15,000,000 per year for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works; provided that not more than \$1,500,000 shall be allotted for this purpose at any single locality from the appropriations for any one *fiscal year*.”

## 2. ARTICLE I – DEFINITIONS

Article I is amended by striking all the paragraphs in the Article and replacing them with the following:

“A. The term “*Project*” shall mean design and construction of protection of the existing bridge piers by placing riprap and select rock for erosion protection as generally described in the Feasibility Report and Environmental Assessment, 27<sup>th</sup> Street Bridge, Section 14 Emergency Streambank Protection, Glenwood Springs, Garfield County, Colorado, dated March 2008 and approved by the Commander, South Pacific Division on April 21, 2008.

B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s design costs; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government’s engineering and design costs during construction; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.C.1. of this Agreement; the Government’s actual construction costs; the amount of credit that the Government affords for *in-kind contributions* in accordance with Article II.B.6. of this Agreement; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government’s costs for data recovery activities associated with historic preservation in accordance with Article XVII.C.3. and Article XVII.C.4. of this Agreement; or the Non-Federal Sponsor’s costs of negotiating this Agreement.

C. The term “*period of design and construction*” shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the

Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

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

E. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total project costs* for the *in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor’s total contribution of funds required by Article II.B.1., Article II.B.3.b., and Article II.C.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

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

G. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

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

I. The term “*betterment*” shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

K. The term “*Section 14 Project Limit*” shall mean the \$1,500,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the *Project* as specified in Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r).

L. The term “*Section 14 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual allotment for planning, design, and construction of all projects implemented pursuant to Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r). As of the effective date of this Agreement, such limitation is \$15,000,000.

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

N. The term “*pre-Agreement planning costs*” shall mean all costs in excess of \$100,000 that were incurred by the Government prior to the effective date of this Agreement for planning of the *Project*.

O. The term “*in-kind contributions*” shall mean the provision of 350 cy of riprap, 309 cy of select rock, and performance of seeding and watering of disturbed areas that will be performed or provided after the effective date of this Agreement and that were determined to be integral to the *Project* on September 30, 2009.

P. The term “*sufficient invoice*” shall mean documentation provided by the Non-Federal Sponsor containing the following: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for performance of work on the *Project* or a *functional portion of the Project* in accordance with this Agreement; (2) copies of all relevant invoices and evidence of such payments; (3) written identification of costs that have been paid with *Federal program funds*; and (4) a written request for credit of a sum certain amount not in excess of such specified payments.”

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

a. Paragraphs A. and .A.1. – A.5. are amended by striking the paragraphs and replacing them with the following paragraphs A. and A.1. – A.7.:

“A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project*, except for the *in-kind contributions*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *in-kind contributions* that will be performed or provided after the effective date of this Agreement in accordance with applicable Federal, State, and local laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project*, commence design of the *Project* using the Government’s own forces, or commence review of any design provided by the Non-Federal Sponsor as *in-kind contributions* that will be used by the Government in constructing the *Project*, until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter “NEPA”). The Government shall not issue the solicitation for the first Government construction contract for the *Project* or commence construction of the *Project* using the Government’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). In addition, the Non-Federal Sponsor shall not issue any solicitations for, or commence construction using its own forces of, *in-kind contributions* that will be performed after the effective date of this Agreement until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). Further, the Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *in-kind contributions* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, State, and local laws, regulations, ordinances, and policies including the laws and regulations specified in Article X of this Agreement.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts and the relevant plans and specifications prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. In the event the Government performs all or some of the construction for the *Project* using its own forces, the Government shall afford the Non-Federal the opportunity to review and comment on the relevant plans and specifications prior to the commencement of such work using the Government’s own forces. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, plans and specifications, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *in-kind contributions*, shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

5. The Non-Federal Sponsor shall not commence activities required to provide provision of *in-kind contributions* until the designs, detailed plans and specifications, and arrangements for the prosecution of such *in-kind contributions* have been approved by the Government. Changes proposed by the Non-Federal Sponsor to approved designs and plans and specifications also must be approved by the Government in advance of the related construction.

The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations. The Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *in-kind contributions*, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies.

6. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government. Upon completion of the *in-kind contributions*, the Non-Federal Sponsor shall furnish to the Government a copy of all final as-built drawings for the construction portion of such work.

7. Notwithstanding paragraph A.3. and paragraph A.5. of this Article, if the award of any contract for design or construction of the *Project*, or continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces, would result in *total project costs* exceeding \$925,000 the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for design or construction of the *Project*, and continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *Project* or the continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces, but in no event shall the award of contracts or the continuation of design or construction of the *Project* using the Government's or the Non-Federal Sponsor's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of design or construction of the *Project* using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with design or construction of the *Project* using the Government's own forces."

b. Paragraphs B and B.1. – B.4. are amended by striking the paragraphs and replacing them with the following paragraphs B. and B.1. – B.7.:

“B. The Non-Federal Sponsor shall contribute minimum of 35 percent, but not to exceed 50 percent, of *total project costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article VI.B. of this Agreement. The Non-Federal Sponsor may not fulfill this requirement by providing *in-kind contributions*.

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

3. The Non-Federal Sponsor shall provide an additional contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than 30 percent of *total project costs*, the Government shall determine the amount of funds that would be necessary to meet 30 percent of *total project costs* prior to the Government affording credit for the *in-kind contributions* pursuant to paragraph B.6. of this Article. To determine such amount, the Government shall subtract from an amount equal to 30 percent of *total project costs* the collective value of the following: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

b. The Non-Federal Sponsor shall provide a contribution of funds in the amount determined by this paragraph in accordance with Article VI.B. of this Agreement. To determine such required contribution of funds, the Government shall reduce the amount determined in accordance with paragraph B.3.a. of this Article by the amount of credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.6. of this Article.

4. The Government, subject to the availability of funds and as limited by paragraph B.7. of this Article, the *Section 14 Project Limit*, and the *Section 14 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following has exceeded 45 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; (b) the Non-Federal Sponsor's contribution of funds required by paragraph B.3.b. of this Article; (c) the amount of credit afforded for the *in-kind contributions* pursuant to paragraph B.6. of this Article; and (d) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in

its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

5. The Government, in accordance with the conditions and limitations of this paragraph, shall determine the amount of the costs for *in-kind contributions* that may be eligible for credit.

a. The Non-Federal Sponsor in a timely manner shall provide the Government with *sufficient invoices* and any other documents required by the Government to enable the Government to determine the costs of *in-kind contributions* that may be eligible for credit.

b. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement shall be subject to an audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* were or are completed and the time the credit is afforded.

d. None of the costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* are eligible for credit pursuant to this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

e. Costs for *in-kind contributions* that are in excess of the Government's estimate of the costs for the Government to have performed or provided such work or materials are not eligible for credit pursuant to this Agreement.

f. Costs for *betterments*, the provision of lands, easements, rights-of-way, *relocations*, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are not eligible for credit as *in-kind contributions*.

g. In the performance of the construction portion of the *in-kind contributions*, the Non-Federal Sponsor must comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40

U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Government may determine that costs for the construction portion of the *in-kind contributions*, in whole or in part, are not be eligible for credit pursuant to this Agreement, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

h. Costs for *in-kind contributions* are not eligible for credit pursuant to this Agreement unless the Government determines through a review or on-site inspection, as applicable, performed by the Government that the work was accomplished in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government and the provisions of this Agreement.

i. No costs for *in-kind contributions* performed prior to compliance with all applicable environmental laws and regulations covering such work, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341) are eligible for credit pursuant to this Agreement.

j. No costs for *in-kind contributions* performed after the effective date of this Agreement are eligible for credit pursuant to this Agreement unless the Government has approved the detailed plans, including the plans and specifications and arrangements for the accomplishment of such work, prior to initiation of such work.

6. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.3.a. of this Article for the costs of the *in-kind contributions* determined in accordance with paragraph B.5. of this Article. However, the maximum amount of credit afforded shall not exceed the lesser of the following amounts as determined by the Government: (a) the amount of funds determined in accordance with paragraph B.3.a. of this Article; or (b) the costs of the *in-kind contributions* determined in accordance with paragraph B.5. of this Article.

7. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for *in-kind contributions* that exceed the amount of credit afforded pursuant to paragraph B.6. of this Article."

c. The first sentence of both paragraph C.1. and paragraph C.3. is amended by replacing "Article XVII.B.2. and Article XVII.B.3." with "Article XVII.C.3. and Article XVII.C.4."

d. Paragraph C.4. is amended by replacing "this Agreement, \$254,000" with "Amendment No.1 to this Agreement, \$644,000".

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

a. Paragraph C.1. is amended by striking the paragraph and replacing it with the following:

“1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the *in-kind contributions*, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the *in-kind contributions*, or, if the Non-Federal Sponsor performs the construction with its own forces, the date that the Non-Federal Sponsor begins construction of the *in-kind contributions*. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.”

## 5. ARTICLE V – PROJECT COORDINATION TEAM

a. Paragraph C. is amended by striking the paragraph and replacing it with the following:

“C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*, improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, and the construction portion of the *in-kind contributions*; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the performance of, scheduling for, and determining eligibility of costs of *in-kind contributions*; the Government’s cost projections for the *Project*; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.”

b. Paragraph D. is amended by striking the paragraph and replacing it with the following:

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

Team's recommendations. On matters related to the *in-kind contributions*, that the Project Coordination Team generally oversees, the Project Coordination Team may make recommendations to the Non-Federal Sponsor including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design and construction of the *in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations."

## 6. ARTICLE VI -- METHOD OF PAYMENT

a. Paragraphs A. and A.1. – A.2. are amended by striking the paragraphs and replacing them with the following:

"A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement, and the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6. of this Agreement.

1. As of the effective date of Amendment No. 1 to this Agreement, *total project costs* are projected to be \$925,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement is projected to be \$46,250; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be \$0; the amount of funds determined in accordance with Article II.B.3.a. of this Agreement is projected to be \$277,500; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6. of this Agreement is expected to be \$72,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.3.b. of this Agreement is projected to be \$205,500; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$0; the *non-Federal proportionate share* is projected to be 35 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.C.4. of this Agreement is projected to be \$0; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$0; *pre-Agreement planning costs* are projected to be \$20,000; the Non-Federal Sponsor's contribution of funds required by Article II.I. of this Agreement is projected to be \$10,000; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By November 30, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement; the amount of funds determined in accordance with Article II.B.3.a. of this Agreement; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.6. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.B.3.b. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.C.4. of this Agreement; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; *pre-Agreement planning costs*; the Non-Federal Sponsor's contribution of funds required by Article II.I. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement."

b. Paragraph B. is amended by replacing "Article II.B.1., Article II.B.3., Article II.C.2., and Article XVII.B.3." with "Article II.B.1., Article II.B.3.b., Article II.C.2., Article XVII.C.4."

c. The first sentence of paragraph B.1. is amended by replacing ", after consideration of any amount that will be waived by the Government pursuant to Article II.J. of this Agreement, to meet its projected share under Article II.B.1., Article II.B.3., Article II.C.2., and Article XVII.B.3." with "to meet its projected share under Article II.B.1., Article II.B.3.b., Article II.C.2., Article XVII.C.4."

d. The first sentence of paragraph B.2. is amended by inserting "after consideration of the credit the Government projects will be afforded for the *in-kind contributions* pursuant to Article II.B.6. of this Agreement," after "necessary" and before "to cover"; and by replacing "Article XVII.B.3." with "Article XVII.C.4."

e. The first sentence of paragraph C.2. is amended by replacing "subject to the availability of funds and as limited by the *Section 14 Project Limit* and the *Section 14 Annual Program Limit*" with "subject to the availability of funds and as limited by Article II.B.7. of this Agreement, the *Section 14 Project Limit*, and the *Section 14 Annual Program Limit*".

f. The first sentence of paragraph E.2. is amended by deleting ", after consideration of any amount that will be waived by the Government pursuant to Article II.J.1. of this Agreement".

## 7. ARTICLE XIII – TERMINATION OR SUSPENSION

a. Paragraph B. is amended by replacing "Article XVII.B.2. and Article XVII.B.3." with "Article XVII.C.3. and Article XVII.C.4."

b. The second sentence of paragraph B. is amended by replacing “Article II.B.1., Article II.B.3., Article II.C.2., and Article XVII.B.3.” with “Article II.B.1., Article II.B.3.b., Article II.C.2., and Article XVII.C.4.”.

## 8. ARTICLE XVII – HISTORIC PRESERVATION

Article XVII is amended by striking all the paragraphs in the Article and replacing them with the following:

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

B. In the event that the Government determines that any identification, survey, or evaluation of historic properties is required for construction of the *in-kind contributions*, and if the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor should perform such identification, survey, or evaluation of historic properties, the Non-Federal Sponsor shall perform such identification, survey, or evaluation in accordance with this paragraph and other written directions of the Government.

1. The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and the Non-Federal Sponsor shall be responsible for resolving any deficiencies identified by the Government.

2. Any costs of identification, survey, or evaluation of historic properties incurred by the Non-Federal Sponsor pursuant to this paragraph shall be included in the costs for *in-kind contributions* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

C. Except as provided in paragraph C.2. below, the Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

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

2. In the event that the Government determines that mitigation activities or actions other than data recovery activities associated with historic preservation are required for construction of the *in-kind contributions*, and if the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor should perform such activities or actions, the Non-

Federal Sponsor shall perform such activities or actions in accordance with the written directions of the Government. The Non-Federal Sponsor shall perform the agreed upon activities or actions prior to construction of such *in-kind contributions*. Any costs incurred by the Non-Federal Sponsor in accordance with the provisions of this paragraph shall be included in the costs for *in-kind contributions* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

3. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the *Section 14 Project Limit*.

4. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph C.3. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the minimum cost sharing requirements for structural flood risk management projects, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

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

E. The Non-Federal Sponsor shall include provisions in all of its construction contracts for *in-kind contributions* for the protection of cultural resources discovered during construction. These provisions shall include, at a minimum, the requirement to cease all work in the immediate area of a discovered cultural resource until the situation is properly evaluated, and the requirement to immediately provide verbal and written notice to the Non-Federal Sponsor and the Government in the event of such discovery. Upon receipt of notice that cultural resources have been discovered, the Government, pursuant to its responsibilities under the National Historic Preservation Act, must authorize further action or study before construction may continue. If the Government concludes that such discovery warrants consultation under the National Historic Preservation Act, the Non-Federal Sponsor shall participate as a consulting party. In such a case, construction of the *in-kind contributions* shall not continue until the Government sends written notification to the Non-Federal Sponsor. Where the Non-Federal

Sponsor elects to perform the construction of the *in-kind contributions* using its own forces, the same procedures shall be followed.”

9. The following is added as Article XVIII of the Agreement.

ARTICLE XVIII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City Council of the City of Glenwood Springs, Colorado.

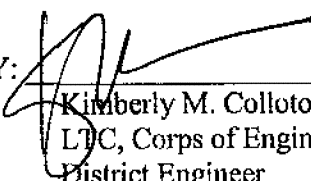
B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means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


10. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

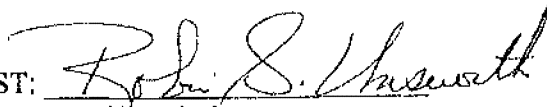
CITY OF GLENWOOD SPRINGS, CO

BY:   
Kimberly M. Colloton  
LTC, Corps of Engineers  
District Engineer

BY:   
Bruce Christensen  
Mayor

DATE: 12/5/09

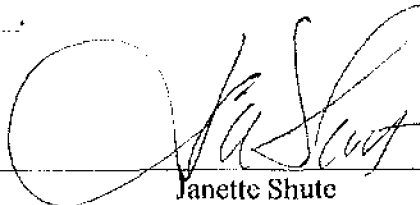
DATE: 11/30/09

ATTEST:   
City Clerk

CERTIFICATE OF AUTHORITY

I, Janette Shute, do hereby certify that I am the principal legal officer of the City of Glenwood Springs, CO, that the City of Glenwood Springs, CO is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1 to the Agreement between the Department of the Army and the City of Glenwood Springs, CO in connection with the Design and Construction of the 27<sup>th</sup> Street Bridge, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment No. 1 to the Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Amendment No. 1 to the Agreement on behalf of the City of Glenwood Springs, CO have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 30<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
Janette Shute  
City Attorney

## CERTIFICATION REGARDING LOBBYING

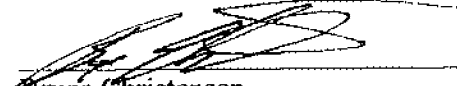
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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

  
Bruce Christensen  
Mayor

DATE: 11/30/09

**CERTIFICATION OF LEGAL REVIEW**

The Office of Counsel, USAED Albuquerque, has reviewed Amendment One to The Project Cooperation Agreement, 27<sup>th</sup> Street Bridge, Glenwood Springs, Garfield County, Colorado, as authorized by Section 14-Emergency Streambank Protection of the 1946 Flood Control Act, as amended. Based on this review, subject Project Cooperation Agreement, as amended, has been found to be legally sufficient.

*ABC*  
*Acting* District Counsel

*5 November 2009*  
Date

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, Michael J. Harman, do hereby certify that I am the Chief Financial Officer of the City of Glenwood Springs, CO (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the 27<sup>th</sup> Street Bridge Section 14 Emergency Streambank Protection Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Project Cooperation Agreement for Design and Construction of the 27<sup>th</sup> Street Bridge.

IN WITNESS WHEREOF, I have made and executed this certification this 17<sup>th</sup> day of September, 2009.

BY: Michael J. Harman

TITLE: Finance Director

DATE: September 17, 2009