

AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF THE ARMY
AND
TETON COUNTY
FOR THE JACKSON HOLE, WYOMING, FEASIBILITY STUDY COST SHARING
AGREEMENT AND PROJECT STUDY PLAN

THIS AGREEMENT is entered into this 23 day of July, 1996, by and between the United States Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Teton County (hereinafter the "Sponsor").

WITNESSETH, that

WHEREAS, the Jackson Hole River and Wetland Restoration Study, Wyoming, was authorized by the U.S. Senate Committee on Environment and public Works in a Study Resolution of June 12, 1990, which stated:

“The Secretary of the Army is hereby requested to review the report of the Chief of Engineers dated 28 June 1949, printed as House Document Numbered 531, Eighty-First Congress, Second Session, and other pertinent reports, with a view of determining the advisability of mitigating for fish and wildlife impacts resulting from construction, operations and maintenance of the Jackson Hole, Snake River, Wyoming project authorized by Public Law 516, Flood Control Act of 1950 and modified by Section 840 of Public Law 99-662, the Water Resources Development Act of 1986, including levees constructed by non-Federal interests.”

The *Snake River in Wyoming Interim, Upper Snake River and Tributaries Study* was authorized by a March 1954 resolution of the U.S. Senate Committee on Public Works. It stated:

“Resolved by the committee on Public Works of the United States Senate, that the Board of Engineers for Rivers and Harbors, created under Section 3 of the Rivers and Harbors Act, approved June 13, 1902, be, and is hereby, requested to review the report of the Chief of Engineers on the Columbia River and Tributaries, Northwestern United States, submitted in House Document Numbered 531, Eighty-First Congress, Second Session, with a view to determine whether any modification of the recommendations contained therein is advisable at this time, with particular reference to the Upper Snake River Basin above Weiser, Idaho.”

WHEREAS, the U.S. Army Corps of Engineers has conducted a Reconnaissance Study to determine if there is Federal interest in: 1) extending or improving the current flood protection system; and 2) “...determining the advisability of mitigating for fish and wildlife impacts resulting from construction, operation, and maintenance of the existing project,” pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the

"Study") is required to fulfill the intent of the Study authority and to assess the extent of the Federal interest in participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in Study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsor and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

- A. The term "Study costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor, and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.
- B. The term "Study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers, Walla Walla District, of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the Feasibility Report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.
- C. The term "PSP" shall mean the Project Study Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government.
- D. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the PSP.

E. The term "contracting officer" shall mean a representative of the Government with the authority to enter into, administer and/or terminate contracts and make related determinations and findings.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of total. The Sponsor may, consistent with applicable law and regulations, contribute up to twenty-five (25) percent of total Study costs through the provision of in-kind services. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PSP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B of this Article or the obligations concerning payment specified in Article III of this Agreement.

D. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsor, cumulative financial obligations of the Government and the Sponsor would exceed **\$350,000 annually (\$175,000 Corps, \$175,000 Sponsor combination of cash and in kind)**, the Government and the Sponsor agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsor agree to proceed, but in no event shall such a deferral exceed two (2) years.

E. No Federal funds may be used to meet the Sponsor's share of Study costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

F. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of

this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor but shall be subject to applicable Federal laws and regulations.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of total Study costs, and current projections of each party's share of total Study costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. Total Study costs are currently estimated to be **\$1,399,198 (\$1,400,000)**, and the Sponsor's share of total Study costs is currently estimated to be **\$700,000**. In order to meet the Sponsor's cash payment requirements, the Sponsor must provide a cash contribution estimated to be **\$350,000**. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II. B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsor by March 15 of each year of the estimated funds that will be required from the Sponsor to meet the Sponsor's share of total Study costs for the upcoming fiscal year.

2. No later than **sixty (60) calendar days** prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of total Study costs for the first fiscal year of the Study. No later than thirty (30) calendar days thereafter, the Sponsor shall **verify to the satisfaction of the Government that the Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Sponsor.**

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than sixty (60) calendar days prior to the beginning of the fiscal year, notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its required share of total Study costs for that fiscal year, taking into account any temporary divergences identified under Article II.C. of this Agreement. No later than thirty (30) calendar days prior to the beginning of the fiscal year, the Sponsor shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the **escrow account** provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study costs, the Government shall so notify the Sponsor in writing. No later than **sixty (60) calendar days** after receipt of such notice, the Sponsor shall make the full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of total Study costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of total Study costs.

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsor and the Government shall appoint named senior representatives to an Executive Committee: **Deputy District Engineer Project Management, Chief of Planning, Chief of Operations, Teton County Commissioner, and Teton County Natural Resource District Board Member**. Thereafter, the Executive Committee shall meet regularly until the end of the Study period.

B. Until the end of the Study period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the Government on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions and shall prepare periodic reports on the progress of all work items identified in the PSP.

ARTICLE V - DISPUTES

Before a party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, the party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding, alternative dispute resolution mutually acceptable to the parties.

ARTICLE VI - MAINTENANCE OF RECORDS

A. Within sixty (60) days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 Code of Federal Regulations (C.F.R). Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three (3) years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 United States Code (U.S.C.) Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in Office of Management and Budget (OMB) Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other. The Sponsor shall hold and save the Government free from all damages arising from performance of the Study as described in the Jackson Hole Wyoming Environmental Restoration Feasibility Phase Project Study Plan and appendix A thereto, attached hereto and incorporated by reference herein, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

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

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.1 issued pursuant thereto and published in 32 C.F.R. Part 300~ as well as Army

Regulations 600-7, entitled *Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army*.

ARTICLE X - TERMINATION OR SUSPENSION

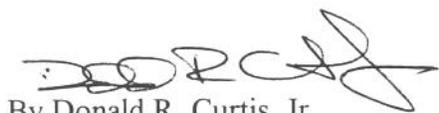
A. This Agreement shall terminate at the end of the Study Period; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the Sponsor to fulfill its obligations under Article III of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

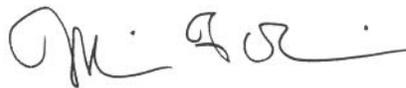
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Walla Walla District.

DEPARTMENT OF THE ARMY

TETON COUNTY, WYOMING



By Donald R. Curtis, Jr.
Lieutenant Colonel
Corps of Engineers
District Engineer
Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876



Mike Gierau
Chairperson
Teton County Commission
Teton County, Wyoming

Attachment - Project Study Plan

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 Section 1352, Title 31, U.S. Code. 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.



Mike Gierau, Chairperson
Teton County Commission
Teton County, Wyoming