

AMENDMENT NO. 1 TO
LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
TETON COUNTY, WYOMING
FOR OPERATION AND MAINTENANCE OF THE
JACKSON HOLE, WYOMING
LOCAL PROTECTION PROJECT

THIS AMENDMENT TO THE AGREEMENT is entered into this 22nd day of January, 19 99, by and between the Department of the Army (hereinafter referred to as the "Government") represented by the Assistant Secretary of the Army (Civil Works), and Teton County, Wyoming (hereinafter referred to as the "Local Sponsor") represented by the Chairman of the Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, construction of the Jackson Hole Snake River local protection and levees project (hereinafter the "Authorized Project") at Jackson Hole, Wyoming was authorized by the River and Harbor Act of 1950, Public Law 81-516;

WHEREAS, the Government and the Local Sponsor entered into a local cooperation agreement (hereinafter the "Agreement") pursuant to Section 840 of the Water Resources Development Act of 1986 (hereinafter "WRDA 86"), Public Law 99-662, on September 4, 1990 for operation and maintenance of the Authorized Project;

WHEREAS, the Agreement requires the Local Sponsor to make an annual payment towards operation and maintenance costs of the Project (as defined in Article I.A. of the Agreement);

WHEREAS, the Section 362 of the Water Resources Development Act of 1996 (hereinafter "WRDA 96"), Public Law 104-303, modifies Section 840 of WRDA 86 to allow the Local Sponsor to provide in-kind services to fulfill the cost sharing requirement;

WHEREAS, the Section 362 of the WRDA 96, Public Law 104-303, modifies Section 840 of WRDA 86 to allow the Secretary to enter into agreements with the Local Sponsor to perform operation and maintenance of the Project on a cost-reimbursable basis;

WHEREAS, the Government and the Local Sponsor desire to amend the Agreement to allow the Local Sponsor to provide in-kind services to fulfill the cost sharing requirement and to perform operation and maintenance of the Project on a cost-reimbursable basis in accordance with the modifications authorized by Congress in WRDA 96; and

WHEREAS, the Assistant Secretary of the Army (Civil Works) has assigned to the U. S. Army Engineer for the Walla Walla District (hereinafter the "District Engineer") the responsibility for carrying out the provisions of this Agreement with the Local Sponsor relating to the operation and maintenance of the Project on a cost-reimbursable basis.

NOW, THEREFORE the parties agree to the following:

1. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

a. Delete paragraph g. and replace with the following paragraph.

"g. The term "annual payment" shall mean the Local Sponsor's required annual contribution for the operation and maintenance of the Project, consisting of one or more of the following: credit afforded for in-kind services, or materials and cash."

2. ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. Revise title of Article to be the following:

"ARTICLE IV - VALUE OF LANDS, FACILITIES, AND IN-KIND SERVICES"

b. Add a new paragraph c. as follows:

"c. Credit towards the Local Sponsor's annual payment shall be afforded for in-kind services performed or materials provided by the Local Sponsor that the Government determines are required for the operation and maintenance of the project. The value of the credit shall be determined in accordance with the provisions of this paragraph.

1. No credit shall be provided until the District Engineer has certified that the in-kind services have been completed and performed in accordance with the operation and maintenance requirements of the Project and is subject to an audit in accordance with Article XII of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. No credit shall be provided until the District Engineer has certified that the materials provided are in accordance with the operation and maintenance requirements of the Project and is subject to an audit in accordance with Article XII of this Agreement to determine reasonableness, allocability, and allowability of costs.

3. Not later than 90 days after the in-kind services or materials for operation and maintenance related to the Project have been provided, the Local Sponsor shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of the in-kind services performed or the materials provided to determine the credit allowed. Upon receipt of such documents the Government shall conduct an accounting for the

in-kind services performed or the materials provided, to determine the amount eligible for credit, subject to an audit in accordance with Article XII of this Agreement to determine reasonableness, allocability, and allowability of costs.

4. Subject to the limitations in paragraph c. of this Article, the Government shall credit towards the Local Sponsor's annual payment an amount equal to the actual costs for accomplishment of the in-kind services performed or the costs of accomplishment of the service had the Government performed service, whichever is less.

5. Subject to the limitations in paragraph c. of this Article, the Government shall credit towards the Local Sponsor's annual payment an amount equal to the actual costs for materials provided or the costs of materials had the Government provided them, whichever is less.

6. The amount of credit afforded in accordance with this paragraph c. of this Article is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the in-kind services are completed or the materials provided and the time that the credit is afforded."

3. ARTICLE VI - METHOD OF PAYMENT

a. In the first sentence of paragraph c., insert the phrase "and before fiscal year 1999" after the phrase "For each fiscal year after fiscal year 1991".

b. Delete paragraph d. and replace with the following paragraphs. Reletter remaining paragraph e. as paragraph f..

"d. For each fiscal year after fiscal year 1998, the Local Sponsor shall contribute to the Government an annual payment, by providing in-kind services, cash, or materials, the value of which shall equal \$35,000 plus an adjustment for inflation occurring after 17 November 1986 using a construction cost index determined to be appropriate by the Government. The annual payment shall be required on October 1 of each fiscal year after fiscal year 1998.

e. By April 1 of each year the Government shall notify the Local Sponsor of the Local Sponsor's annual payment determined to be required for the following fiscal year; the credit to be afforded to the Local Sponsor for that fiscal year in accordance with the crediting provisions of Articles IV, VI.g., and XX.e. of this Agreement; and the cash required from the Local Sponsor in the following fiscal year to meet the annual payment. Not later than October 1 of said fiscal year the Local Sponsor shall provide the Government with a check payable to "USAED, Walla Walla" to the District Engineer for the cash amount required, which in combination with the credits afforded in accordance with Article IV, VI.g., and XX.e. of this Agreement shall meet the annual payment."

c. Replace old paragraph f. with the following.

“g. Upon completion of operation and maintenance for each fiscal year and the resolution of all relevant claims and appeals, the Government shall compute the Local Sponsor’s total contribution toward its annual payment for that fiscal year, including cash and credit afforded for in-kind services or materials, and shall provide the Local Sponsor with a final accounting of the Local Sponsor’s annual payment for that fiscal year. In the event, contributions by the Local Sponsor for that fiscal year exceed the required annual payment for that fiscal year, the Government shall, subject to the availability of funds, refund the excess contribution to the Local Sponsor no later than 90 calendar days after completion of the final accounting. In the event existing funds are not available to refund the excess contribution to the Local Sponsor, the Government shall seek such appropriations as are necessary to make the refund. The Local Sponsor may request in writing no later than 30 days after completion of the final accounting, that the Government not reimburse the Local Sponsor but instead apply the excess contribution toward the annual payment required from the Local Sponsor for the operation and maintenance of the Project performed in the next fiscal year.”

4. NEW ARTICLE

Add a new Article as follows:

“ARTICLE XX - LOCAL SPONSOR PERFORMANCE OF OPERATION AND MAINTENANCE

a. The Government has the legal authority and responsibility for operation and maintenance required for the Project. To efficiently perform the operation and maintenance of the Project, the District Engineer, in his discretion, may request in writing, the Local Sponsor to perform operation and maintenance activities on a cost-reimbursable basis in accordance with the provisions of the Article.

b. Prior to the beginning of each fiscal year, the Government, in consultation with the Local Sponsor, shall identify operation and maintenance activities that the Local Sponsor may be asked to perform.

c. The Local Sponsor, in contracting for the performance of any operation and maintenance or in performing any operation and maintenance with its own forces, shall comply with all applicable Federal laws and regulations.

d. Not later than 90 days after the completion of each operation and maintenance activity performed, the Local Sponsor shall provide the Government with such documents as are sufficient to enable the Government to conduct an accounting of the operation and maintenance activity performed and determine the reimbursement. Upon receipt of such documents the Government shall conduct an accounting for the operation and maintenance activity performed,

to determine costs eligible for reimbursement, subject to an audit in accordance with Article XII of this Agreement to determine reasonableness, allocability, and allowability of costs.

e. Subject to the limitations in this Article and subject to the availability of funds, the Government shall reimburse the Local Sponsor an amount equal to the actual costs for accomplishment of the operation and maintenance activity performed subject to an audit in accordance with Article XII of this Agreement to determine reasonableness, allocability, and allowability of costs. The Local Sponsor may request in writing no later than 30 calendar days after completion of determination of the amount available for reimbursement, that the Government not reimburse the Local Sponsor but instead apply the value of the reimbursement toward the annual payment required in the next fiscal year.

f. No reimbursement shall be made for any operation and maintenance activity, which does not, in the judgment of the District Engineer, conform to operation and maintenance requirements of the Project.

g. The amount of reimbursement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the operation and maintenance activity is completed and the time that the reimbursement is afforded.

h. The Government and the Local Sponsor may elect to enter into further agreements to reflect details regarding the accomplishment of operation and maintenance activity by the Local Sponsor. Any such agreements shall be consistent with the provisions of this Agreement. In the event of a conflict, the provisions of this Agreement shall govern.”

5. GENERAL CHANGES

a. Replace “annual cash payment” or “annual cash payments” or “annual cash share” with “annual payment” throughout the entire Agreement.

b. Replace “Contracting Officer” with “District Engineer” throughout the entire Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this amendment to the Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

TETON COUNTY, WYOMING

BY: _____
JOSEPH W. WESTPHAL
Assistant Secretary of the Army
(Civil Works)

BY: _____
ROBERT SHERVIN
Chairman
Board of County Commissioners

DATE: 22 JAN 1999

DATE: 12-15-98

CERTIFICATE OF AUTHORITY

I, Paul Vaughn, do hereby certify that I am the principal legal officer of Teton County, Wyoming, that Teton County, Wyoming is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment between the Department of the Army and Teton County, Wyoming in connection with the Jackson Hole, Wyoming Local Protection Project, and to pay damages in accordance with the terms of this Amendment, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Amendment on behalf of the Teton County, Wyoming have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
17th day of December.

Paul Vaughn
Deputy County Attorney