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**Walla Walla Corps of
Engineers**

Letter of Transmittal

To: Ray Pankopf

From: Margie McGill

Facilities Management
Architectural and Engineering Services

University of Idaho
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Date: May 6, 2010

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Pages: 3

Re: Amendment No. 1 – PPA Paradise Creek **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments:

Ray, here is the signed version of the Amendment No. 1 of the PPA for Paradise Creek. Electronic copy was sent earlier.

Thanks for seeing this through,

Margie

AMENDMENT NO. 1
TO
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE UNIVERSITY OF IDAHO
FOR
CONSTRUCTION
OF THE
PARADISE CREEK ECOSYSTEM RESTORATION, MOSCOW, IDAHO

THIS AMENDMENT NO. 1 is entered into this 6th day of May 2010, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer, Walla Walla District (hereinafter the "District Engineer"), and the University of Idaho (hereinafter the "Non-Federal Sponsor"), represented by the University of Idaho Vice President for Finance and Administration.

WITNESSETH, THAT:

WHEREAS, construction of the Paradise Creek Ecosystem Restoration, Moscow, Idaho for aquatic ecosystem restoration (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Moscow, Idaho was approved by Northwestern Division on March 5, 2009 pursuant to the authority contained in Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330; hereinafter "Section 206");

WHEREAS, Section 206 provides that \$50,000,000 in Federal funds are authorized to be appropriated for each *fiscal year* to carry out projects pursuant to Section 206 and no more than \$5,000,000 in Federal funds may be allotted for a project at any single locality;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for construction of the *Project*;

WHEREAS, Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, the Non-Federal Sponsor desires to perform certain work (hereinafter the "*non-Federal work*" as defined in Article I.N. of this Agreement) which is a part of the *Project* and receive credit toward the amount of its required contributions for the *Project* for the costs of such work;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until

each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

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

1. Article II.B.7 is deleted and replaced with the following:

Notwithstanding paragraph A.2. and paragraph A.4. of this Article, if the award of any contract for construction of the Project, or continuation of construction of the Project using the Government's or the Non-Federal Sponsor's own forces, would result in total project costs exceeding \$7,182,000 the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for construction of the Project, and continuation of 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 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 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 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 construction of the Project using the Government's own forces.

2. Article VI.A.1 is deleted and replaced with the following:

As of the effective date of this Agreement, *total project costs* are projected to be \$7,182,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$160,000; the costs included in *total project costs* for the *non-Federal work* determined in accordance with Article II.B.4. of this Agreement are projected to be \$160,000; the *non-Federal proportionate share* is projected to be 3 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 \$2,173,000; 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 \$370,000. 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. 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.

THE DEPARTMENT OF THE ARMY

UNIVERSITY OF IDAHO

BY: 
LTC MICHAEL J. FARRELL
District Engineer
Walla Walla District

BY: 
LLOYD E MUES
Vice President for Finance and Administration
University of Idaho

DATE: 6 MAY 2010

DATE: 04 May 2010

CERTIFICATE OF AUTHORITY

I, Kent E Nelson, do hereby certify that I am the General Counsel of The University of Idaho, that The University Of Idaho is a legally constituted *public body* with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and The University Of Idaho in connection with the Paradise Creek Ecosystem Restoration-Moscow, Idaho and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this 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 Agreement on behalf of The University Of Idaho have acted within their corporate authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of ~~April~~ May 2010.


Kent E. Nelson
General Counsel