



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

CECW-PC

APR 09 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Model Feasibility Cost Share Agreement (FCSA) for Cost Shared Feasibility Studies Following the 3x3x3 Rule Established by Planning Bulletin 2014-01

1. Reference is made to the enclosed CECW-PC memorandum dated 15 June 2007, Subject: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization; and for Studies of Projects Authorized Without a Feasibility Study (enclosure 1).
2. Effective immediately, the enclosed model FCSA (enclosure 2) must be used for cost shared feasibility studies (following the 3x3x3 rule established by Planning Bulletin 2014-01) that are undertaken for studies that will require specific authorization, for studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a completed feasibility study.
3. The FCSA provides that within 15 days of execution of the agreement, the non-federal sponsor must provide \$25,000 for initiation of the study, with the requirement to provide additional funds if needed to develop the project management plan (PMP). For those studies for which there is already a PMP, as well as once the PMP is developed for studies that are new starts, the non-federal sponsor must provide its proportional funding and/or in-kind contributions consistent with federal funding.
4. Note that both the Government's and the non-federal sponsor's costs for participation on the Study Coordination Team and costs of audits are not included in the shared study costs for cost sharing purposes. While not included in shared study costs, the Government's costs for audits and participation on the Study Coordination Team are funded with study funds and included in calculating the maximum federal study cost of \$1.5 million under the 3x3x3 rule.
5. Note also that the Government's full-federal costs of the independent external peer review panel are funded with study funds but are not included in shared study costs or in the calculation of the maximum federal study cost.
6. The Attachment to the FCSA includes optional language. Use of this optional language, as appropriate, is not considered a deviation.

CECW-PC

SUBJECT: Model Feasibility Cost Share Agreement (FCSA) for Cost Shared Feasibility Studies Following the 3x3x3 Rule Established by Planning Bulletin 2014-

7. The procedures for coordinating, review, approval, and execution of FCSAs and FCSA amendments are addressed in paragraph 3, 4 and 5 of the referenced 15 June 2007 memorandum. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability for the FCSA should be included as a part of the FCSA package. These documents can found at the following Corps website:

http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/ppa_for_ms.aspx

8. The Headquarters Regional Integration Team should be advised of any signing ceremony requested by the non-federal sponsor, particularly if the presence of the Assistant Secretary of the Army for Civil works is requested. Any signing ceremony should not be scheduled until the FCSA has been approved.



Theodore A. Brown, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works

2 Encls
as

CECW-PC

SUBJECT: Model Feasibility Cost Share Agreement (FCSA) for Cost Shared Feasibility Studies Following the 3x3x3 Rule Established by Planning Bulletin 2014-

DISTRIBUTION:

COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION

COMMANDER, MISSISSIPPI VALLEY DIVISION

COMMANDER, NORTH ATLANTIC DIVISION

COMMANDER, NORTHWESTERN DIVISION

COMMANDER, PACIFIC OCEAN DIVISION

COMMANDER, SOUTH ATLANTIC DIVISION

COMMANDER, SOUTH PACIFIC DIVISION

COMMANDER, SOUTHWESTERN DIVISION

CECW-LRD

CECW-MVD

CECW-NWD

CECW-SAD

CECW-NAD

CECW-POD

CECW-SPD

CECW-SWD

CECC-G



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

CECW-PC

JUN 15 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study

1. Reference: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 05 June 2007, Subject: Model Feasibility Cost Sharing Agreement for Studies of Proposed Projects That Will Require Specific Authorization and for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization (enclosure 1).
2. Effective today, the enclosed model feasibility cost sharing agreement (FCSA) (enclosure 2) shall be used for cost shared feasibility studies being undertaken in accordance with Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, for studies of proposed projects that will require specific authorization; for studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. The new model includes: (a) general updates of the language in most articles, similar to those incorporated into the other recently approved models; (b) additional language on determining the value of, and limitations on affording credit for, non-Federal in-kind contributions; and (c) a reduction in the non-Federal sponsor's cost share requirement pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662. Selection and use of the optional language is not considered a deviation from the model. If you have already substantially completed negotiations with a non-Federal sponsor using the model FCSA dated March 1997, please contact your HQUSACE Regional Integration Team (RIT) in Washington for guidance on how to proceed.
3. The basis for delegating authority to execute FCSAs, as provided for in this memorandum, is the use of models, whenever it is practical to do so. The use of a model in the development of individual FCSAs should help to streamline study implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of study sponsors. While these attributes favor the use of models, it is also recognized that deviations from the model may be appropriate in certain cases. The Project Manager should work collaboratively and expeditiously with the non-Federal sponsor to develop a FCSA using the subject model without deviation or adapt it, as necessary, for the particular study. District offices are encouraged to coordinate early resolution of deviations from the subject model through the vertical team so that studies can be implemented on schedule.

CECW-PC

SUBJECT: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study

4. The following procedures should be used for review and approval of FCSAs and FCSA amendments for cost shared feasibility studies of proposed projects that will require specific authorization; for cost shared feasibility studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. The documentation, including, but not necessarily limited to, the Non-Federal Sponsor's Self-Certification of Financial Capability for Agreements, and the Certificate of Legal Review, that is necessary for the MSC to review and approve the agreement in accordance with the following paragraphs, shall be prepared and forwarded for review to the MSC. A copy of all of the necessary documentation shall be placed in the project file prior to approval by the MSC or District Commander.

a. The responsibility for review and approval of a FCSA that does not deviate from the subject model is delegated to the MSC Commander and may be further delegated to the District Commander. Division Counsel concurrence, or District Counsel concurrence if the approval authority is further delegated to the District Commander, that the FCSA does not deviate from the subject model is required prior to approval.

b. The MSC Commander also is delegated the responsibility for review and approval of non-policy and non-substantive deviations from the subject model. This authority may not be further delegated. Division Counsel review of any such deviations and a Division Counsel recommendation to approve such deviations are required prior to approval by the MSC Commander. Where there is a question whether the deviation is policy related or substantive, HQUSACE is available for informal consultation.

c. Feasibility Cost Sharing Agreements with substantive deviations or deviations involving policy issues, unique circumstances, or controversial matters shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed FCSA with the deviations indicated, the rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. FCSAs with these types of deviations require approval by HQUSACE in Washington. Early coordination of these proposed deviations with the vertical team is encouraged.

d. Review and approval of any amendment to an existing FCSA to address non-policy and non-substantive changes, such as a revision of total study costs or revision of study tasks and costs due to one of several sponsors electing to terminate its responsibilities under the FCSA, is delegated to the MSC Commander and may not be further delegated. Division Counsel review of any such amendment and a Division Counsel recommendation to approve such amendment is required prior to approval by

CECW-PC

SUBJECT: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study

the MSC Commander. Where there is a question whether the changes to the existing FCSA are policy related or substantive, HQUSACE is available for informal consultation.

e. If a FCSA amendment incorporates substantive revisions to an existing FCSA or any revisions to an existing FCSA that involve policy issues, unique circumstances, or controversial matters, the amendment shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed amendment, the rationale for the amendment, and the written concurrence of District and Division Counsel via e-mail. These FCSA amendments require approval by HQUSACE in Washington. Early coordination of the proposed amendment with the vertical team is encouraged.

f. The District Commander is authorized to execute each FCSA and FCSA amendment after its approval, including agreements that require MSC or HQUSACE approval. However, the ASA(CW) retains the authority to sign any agreement of his or her choosing.

5. The following procedures should be used for execution of FCSAs and FCSA amendments for cost shared feasibility studies of proposed projects that will require specific authorization; for cost shared feasibility studies of modifications that are beyond the scope of the existing project authorization; and for studies of projects authorized without a feasibility study. After approval of the FCSA or FCSA amendment by the appropriate authority, the district should prepare a minimum of four final originals for signature by the non-Federal sponsor. After signature by the non-Federal sponsor, the District Counsel shall review the non-Federal signatures on the FCSA or FCSA amendment, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the FCSA or FCSA amendment has been signed and dated by the non-Federal sponsor in all the appropriate locations. After completion of such review and a recommendation to proceed with signature by the District Counsel, the District Commander shall execute the FCSA or FCSA amendment. The FCSA or FCSA amendment shall be dated with the date the District Commander executes the agreement. The district shall retain two copies of the executed FCSA or FCSA amendment and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed FCSA or FCSA amendment, with all appropriate signatures, should be provided to the MSC and the appropriate HQUSACE RIT within 14 days after execution.

6. The other model for cost shared feasibility studies for use on Continuing Authority Program and other program authorities that do not require additional authorization to implement a project and its accompanying implementation memo will be provided in separate correspondence as it is approved.

CECW-PC

SUBJECT: Approval of Model Feasibility Cost Sharing Agreement and Delegation of Approval and Execution Authority for Feasibility Cost Sharing Agreements for Studies of Proposed Projects That Will Require Specific Authorization, for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization, and for Studies of Projects Authorized Without a Feasibility Study

7. The districts and the MSC shall advise HQUSACE of any signing ceremonies requested by the non-Federal sponsor, and in particular whether the presence of the ASA(CW) is requested. A signing ceremony should not be scheduled until the FCSA has been approved.

8. Although the new model agreement has been designed to provide the districts and non-Federal sponsors maximum flexibility in negotiating these agreements, there may be additional opportunities to improve upon the models, in particular where a provision is repeatedly requested or needed by non-Federal sponsors. The districts and MSC shall provide this information to HQUSACE so that consideration can be given to revising the model or providing pre-approved deviations.

FOR THE COMMANDER:


for DON T. RILEY
Major General, USA
Director of Civil Works

2 Encls
as

DISTRIBUTION:

COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION
COMMANDER, MISSISSIPPI VALLEY DIVISION
COMMANDER, NORTH ATLANTIC DIVISION
COMMANDER, NORTHWESTERN DIVISION
COMMANDER, PACIFIC OCEAN DIVISION
COMMANDER, SOUTH ATLANTIC DIVISION
COMMANDER, SOUTH PACIFIC DIVISION
COMMANDER, SOUTHWESTERN DIVISION
CECW-LRD
CECW-MVD
CECW-NWD
CECW-SAD
CEMP-NAD
CEMP-POD
CEMP-SPD
CEMP-SWD
CECC-G



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JUN 05 2007

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Model Feasibility Cost Sharing Agreement for Studies of Proposed Projects That Will Require Specific Authorization and for Studies of Modifications That Are Beyond the Scope of the Existing Project Authorization

This responds to Mr. Waters' memorandum dated May 4, 2007, requesting approval of the subject model agreement and delegation of authority to approve and execute individual agreements.

The model agreement is approved. Approval and execution of individual agreements and amendments thereto (within the parameters specified below) are delegated to the Headquarters of the Army Corps of Engineers. Re-delegation of these authorities to the Major Subordinate Commanders or the District Commanders is approved, in accordance with the draft implementation memorandum enclosed with Mr. Waters' memorandum of May 4, 2007.

Proposed deviations involving policy issues, unique circumstances, or controversial matters should be forwarded to Corps Headquarters for resolution. You should consult with my office in those cases where a policy has not yet been established, or if existing policy is unclear, or if there is any uncertainty about unique or controversial issues. The Major Subordinate Command may approve non-policy and non-substantive deviations. Corps Headquarters is encouraged to pre-approve selected variations from the model that, based on experience gained in negotiating individual agreements, are deemed appropriate. This office remains available to sign agreements and participate in signing ceremonies, depending upon the wishes of the non-Federal sponsor, or in those cases where this office so desires.

A handwritten signature in cursive script that reads "John Paul Woodley, Jr.".

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

**MODEL AGREEMENT
FOR
COST SHARED FEASIBILITY STUDIES
APRIL 2, 2015
REVISED MAY 7, 2015**

APPLICABILITY:

1. Effective April 2, 2015, the attached model feasibility cost sharing agreement (FCSA) must be used for all cost shared feasibility studies of proposed projects that will require specific authorization from Congress; for cost shared general reevaluation studies; and for cost shared feasibility studies of projects authorized without a completed Corps feasibility study.
2. The following options, including language for the FCSA, are addressed in the Attachment:
 - a. Option 1: Sponsor is a Non-Profit Entity (page A-1)
 - b. Option 2: Not An Obligation of Future Appropriations (page A-2)
 - c. Option 3: Sponsor is a Federally Recognized Indian Tribe (page A-3)
 - d. Option 4: Multiple Sponsors (page A-4)
 - e. Option 5: Study in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, or the Trust Territory of the Pacific Islands (page A-5).
 - f. Option 6: Project Management Plan prepared prior to execution of the FCSA (page A-7).
3. Reminder: Make all required insertions, including language associated with an option; remove this cover page; remove the open and close brackets and any instructional text; ensure the spacing and page breaks throughout the FCSA are appropriate; and delete the Attachment.
4. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability should be included as a part of the FCSA package. These certificates can found at the following Corps website:
http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/ppa_for_ms.aspx

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL SPONSOR]
FOR THE
[INSERT FULL NAME OF FEASIBILITY STUDY]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, **[Insert Name of District]** (hereinafter the “District Engineer”) and the **[Insert Full Name of Non-Federal Sponsor]** (hereinafter the “Non-Federal Sponsor”), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, **[Insert cite to authority]** authorizes **[Insert short description of the study]**;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Study” means the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a coordinated and implementable solution for **[Insert project purpose]** at **[Insert location]**.

B. The term “shared study costs” means all costs incurred by the Government and Non-Federal Sponsor after the effective date of this Agreement that are directly related to performance of the Study and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to, the Government’s costs for preparing the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer

Review; and the Non-Federal Sponsor's creditable costs for in-kind contributions. The term does not include any costs for dispute resolution; for participation in the Study Coordination Team; for audits; for an Independent External Peer Review panel, if required; or for negotiating this Agreement.

C. The term "PMP" means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for Study activities and tasks, including the Non-Federal Sponsor's in-kind contributions, and that guides the performance of the Study.

D. The term "in-kind contributions" means those planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the Study and that are identified in the PMP and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the PMP.

E. The term "maximum Federal study cost" means the \$1,500,000 Federal cost limit for the Study, unless the Government has approved a higher amount.

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

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies.

B. The Non-Federal Sponsor shall contribute 50 percent of the shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsor shall provide funds in the amount of \$25,000, for the Government to initiate the Study, including preparation of the PMP. In the event more funds are needed to develop the PMP, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor, and no later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. As soon as practicable after completion of the PMP, and after considering the estimated amount of credit for in-kind contributions that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-

Federal Sponsor to meet its share of the shared study costs for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

3. No later than August 1st prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. The Government shall include in the shared study costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor's share of the shared study costs less the amount of funds provided pursuant to paragraph B.1. of this Article.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study. Federal program

funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

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

H. If Independent External Peer Review (IEPR) is required for the Study, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in the shared study costs or the maximum Federal study cost.

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

ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, the shared study costs are projected to be \$_____, with the Government's share of such costs projected to be \$_____ and the Non-Federal Sponsor's share of such costs projected to be \$_____. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated shared study costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Study.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to “FAO, USAED, [Insert District and EROC code, e.g., New Orleans (B2)]” to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of the shared study costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s required share of the shared study costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

E. Upon conclusion of the Study and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of shared study costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE IV - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an extension is approved by the Assistant Secretary of the Army (Civil Works), the Study will be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

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

C. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal

Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for maintaining books, records, documents, or other evidence pertaining to Study costs and expenses in accordance with 33 C.F.R. 33.20 for a minimum of three years after the final accounting. To the extent permitted under applicable Federal laws and regulations, the parties shall each allow the other to inspect such books, records, documents, or other evidence.

B. The Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). To the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. Pursuant to 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. The Government's costs of audits for the Study shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost.

ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and

neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[Insert Title and Address of Sponsor representative to receive notices]

If to the Government:

[Insert Title and Address of Government representative to receive notices]

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

ARTICLE IX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

[INSERT FULL NAME OF SPONSOR]

BY: _____
[INSERT TYPED NAME]
[Insert Colonel, U.S. Army or
Lieutenant Colonel, U.S. Army, as
applicable]
District Engineer

BY: _____
[INSERT TYPED NAME]
[Insert Full Title]

DATE: _____

DATE: _____

Attachment

Option 1: Sponsor is a Non-Profit Entity that has the consent of the Local Government. Use the Certificate of Authority for a non-profit entity as provided on Corps' PPA website. Insert the following two WHEREAS clauses after the first WHEREAS clause in the FCSA:

“WHEREAS, the **[FULL NAME OF NONPROFIT ENTITY]** is an organization that is incorporated under the applicable laws of the State of _____ as a non-profit organization, exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501);

WHEREAS, by letter dated _____, the **[FULL NAME OF AFFECTED LOCAL GOVERNMENT]**, the affected local government has consented to the **[FULL NAME OF NON-FEDERAL SPONSOR]**, serving as a non-Federal sponsor for the study;”

Option 2: Not An Obligation of Future Appropriations. Section 221(a) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that an agreement may reflect that it does not obligate future appropriations when doing so is inconsistent with constitutional or statutory limitations of a State or political subdivision thereof. However, section 221(a) does NOT provide that the Non-Federal Sponsor's performance and payments are subject to appropriations of funds. The Government retains the right to exercise any legal rights it has to protect the Government's interests. If applicable and requested by the Non-Federal Sponsor, insert into the FCSA as the last Article the following:

“ARTICLE XI - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the **[Insert name of the legislative body that makes the appropriations, e.g., legislature of the State of New York or the New York City Council]**, where creating such an obligation would be inconsistent with **[Insert the specific citation to the constitutional or statutory limitation on committing future appropriations].”**

Attachment

Option 3: Sponsor is a Federally Recognized Indian Tribe. Insert into the FCSA as the last Article the following:

“ARTICLE XI – TRIBAL SOVEREIGN IMMUNITY

By **[Insert resolution, ordinance, etc.]** dated **[Month Day, Year]**, the Non-Federal Sponsor waived any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court related to the provisions, terms, and conditions contained in this Agreement. Further, such **[Insert resolution, ordinance, etc.]** authorized **[Insert Title of Non-Federal Sponsor’s Representative]** to include such waiver as part of this Agreement. Accordingly, the Non-Federal Sponsor hereby waives any sovereign immunity that it may possess from suit by the United States in an appropriate Federal Court to: (1) enforce the terms and conditions of this Agreement; and (2) recover damages for any breach of the terms and conditions of this Agreement.”

Attachment

Option 4: Multiple Non-Federal Sponsors. While it is preferable that there is one party only as the Non-Federal Sponsor for the FCSA, it is permissible to have more than one Non-Federal Sponsor and in such case, the FCSA should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural. The Non-Federal Sponsors need to understand that they will be jointly and severally liable for all non-Federal obligations and responsibilities under the agreement. Any proposal to allow for a division of responsibilities between Non-Federal Sponsors will require approval of the HQUSACE.

Option 5: Study in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, or the Trust Territory of the Pacific Islands. In accordance with Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2310), up to \$455,000 in non-Federal cost sharing is waived. The following changes to the FCSEA should be made:

1. Replace the last sentence in Article I.B. with the following:

“The term does not include any costs for dispute resolution; for participation in the Study Coordination Team; for audits; for an Independent External Peer Review panel, if required; or for negotiating this Agreement. It also does not include any costs funded at full Federal expense based on the waiver of non-Federal cost sharing in accordance with Article II.J.”

2. Replace Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute 50 percent of the shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. As soon as practicable after completion of the PMP, and after considering the cost sharing waiver in accordance with Article II.J. and the estimated amount of credit for in-kind contributions that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.”

3. Replace the last sentence in Article II.C.1. with the following:

“The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor’s share of the shared study costs.”

4. Add a new paragraph J. to Article II as follows:

“J. Pursuant to Section 1156 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2310), the Government shall waive up to \$455,000 in non-Federal cost sharing of the Study. The amount of the waiver shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost.”

Attachment

5. Replace Article III.B. its entirety with the following:

“B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated shared study costs and the Government’s and Non-Federal Sponsor’s estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; costs funded at full Federal expense based on the waiver of non-Federal cost sharing in accordance with Article II.J.; and the estimated remaining cost of the Study.”

Attachment

Option 6: Project Management Plan prepared prior to execution of the FCSA. The following changes to the FCSA should be made:

1. In Article I.B., replace “preparing the PMP” with “updating the PMP”.
2. Replace Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute 50 percent of the shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.”

3. Replace the last sentence in Article II.C.1. with the following:

“The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor’s share of the shared study costs.”