

PLANNING ASSISTANCE TO STATES AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

(FULL NAME OF NON-FEDERAL SPONSOR)

THIS AGREEMENT is entered into this \_\_\_\_\_ day, of \_\_\_\_\_, 20\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the (Full Name of Non-Federal Sponsor) (hereinafter the "Non-Federal Sponsor"), represented by, (Title of the Non-Federal Sponsor), executing the Agreement.

WITNESSETH, that

WHEREAS, Section 22 of the Water Resources Development Act ("WRDA") of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the States, as therein defined, in the preparation of comprehensive plans for the development, utilization and conservation of water and related resources of drainage basins, watersheds or ecosystems located within the boundaries of such State;

WHEREAS, Section 319 of the WRDA of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect fees from States and other Non-Federal governmental entities for the purpose of recovering 50 percent of the cost of the program;

WHEREAS, the Non-Federal Sponsor has reviewed the State's comprehensive water plans and identified the need for planning assistance as described in the Scope of Work incorporated into this agreement;

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

WHEREAS, Section 208(1) of WRDA of 1992, Public Law 102-580 (codified at 42 U.S.C. Section 1962d-16(b)(2)), authorizes the Non-Federal Sponsor to contribute up to one hundred (100) percent of the non-Federal contribution for preparation of the Scope of Work incorporated into this Agreement by the provision of services, materials, supplies or other in-kind services necessary to prepare the Scope of Work.

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 Non-Federal Sponsor and all negotiated costs of work performed by the Non-Federal 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 participation in Study Management and Coordination in accordance with Article IV of this Agreement; 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 "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the USAED (\_\_\_\_\_) District of initial Federal funds following the execution of this Agreement and ending when the USAED (\_\_\_\_\_) District provides the Planning Report to the Non-Federal Sponsor.

D. The term "Scope of Work"(SOW) means a description of the work to be performed. The SOW will be attached to this Agreement and not be considered binding on either party and is subject to change by the Government, in consultation with the Non-Federal Sponsor.

E. 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.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.

## ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, subject to receiving funds appropriated by the Congress of the United States (Congress), using funds and in-kind services provided by the Non-Federal Sponsor and funds appropriated by the Congress, 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.A., III.B. and III.C. of this Agreement, the Sponsor shall contribute cash and/or in-kind services equal to fifty (50) percent of Study Costs. If agreeable to all parties, in-kind services may comprise one hundred (100) percent of the Non-Federal Sponsor's contributions. The in-kind services to be provided by the Non-Federal Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the Scope of Work. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Non-Federal 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 Non-Federal Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of the 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 the 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, cumulative financial obligations of the Government and the Non-Federal Sponsor would exceed (\$XX, XXX.XX), the Government and the Non-Federal 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 Non-Federal Sponsor agree to proceed. Should the Government and the Non-Federal Sponsor require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the Non-Federal Sponsor have not reached an agreement to proceed by the end of their 6-month period, the Agreement may be subject to termination in accordance with Article X.

E. No Federal funds may be used to meet the Non-Federal 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 Non-Federal Sponsor with a third party in furtherance of the Agreement which obligates funds of the Non-Federal Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Non-Federal Sponsor, but shall be subject to applicable Federal laws and regulations.

G. Notwithstanding any provision of this Agreement, this Agreement and the Government's obligations hereunder shall not be effective and will not commence until Federal funds have been appropriated and allocated to the District Engineer, U.S. Army Corps of Engineers ( ) District for the implementation of this study. In the event that Federal funds are allocated to the District Engineer for this study after the date that the parties hereto execute this Agreement, the effective date of this Agreement shall be the date that funding approval is provided to the District Engineer.

### ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs. At least quarterly, the Government shall provide the Non-Federal Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are (\$XX, XXX.XX) and the Non-Federal Sponsor's share of estimated Study Costs is (\$XX, XXX.XX). In order to meet the Non-Federal Sponsor's cash payment requirements for its share of estimated Study Costs, the Non-Federal Sponsor must provide a cash contribution currently estimated to be (\$XX,XXX.XX). The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the SOW, 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 Non-Federal Sponsor.

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

1. No later than 30 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 Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its share of Study Costs. No later than 15 days thereafter, the Non-Federal Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "**FAO, USAED, ( ) District & EROC**" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Non-Federal Sponsor's share of contractual and in-house financial obligations attributable to the Study as they are incurred.

3. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Non-Federal Sponsor in writing. No later than 60 days after receipt of such notice, the Non-Federal Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

C. Within 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 Non-Federal Sponsor, and credits for the negotiated costs of the Non-Federal Sponsor, and shall furnish the Non-Federal Sponsor with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for the excess, if any, of cash contributions and credits provided over its required share of Study Costs, or the Non-Federal Sponsor shall provide the Government any cash contributions required for the Non-Federal Sponsor to meet its required share of Study Costs.

#### ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

To provide for consistent and effective communication, the Government's Project Manager for the Study and the Non-Federal Sponsor's designated representative shall communicate regularly until the end of the Study Period.

#### ARTICLE V - DISPUTES

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 both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as

such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. 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 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 and for a minimum of three years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 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. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in 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 cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Non-Federal 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.

#### 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 their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall 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 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, 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 conclusion of the Study Period, and neither the Government nor the Non-Federal Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon 30 days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon the failure of the parties to extend the study under Article II.D. of the Agreement, or upon failure of the Non-Federal Sponsor to fulfill its obligation 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.

ARTICLE XI – LIMITATION ON GOVERNMENT EXPENDITURE

In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$2,000,000 in any one year in any one State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which, subject to the provisions of Article II.G. of this Agreement, shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

(FULL NAME OF NON-FEDERAL SPONSOR)

BY: \_\_\_\_\_  
(TYPED NAME)  
(Commander Rank),  
U.S. Army Corps of Engineers  
District Engineer

BY: \_\_\_\_\_  
(TYPED NAME)  
(Title in Full)

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer for (Non-Federal Sponsor) and 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 (Non-Federal Sponsor) in connection with the (Study Name), and that the persons who has executed this Agreement on behalf of the (Non-Federal Sponsor) have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Signature: \_\_\_\_\_  
Typed Name:  
Title in Full:

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.

**[SIGNATURE OF PAS SIGNATORY]**

**[TYPED NAME]**

**[TITLE IN FULL]**

DATE: \_\_\_\_\_