

PLANNING ASSISTANCE TO STATES AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

ROCK-KOSHKONONG LAKE DISTRICT

AND THE

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

**FOR THE SECTION 22 LAKE KOSHKONONG
COMPREHENSIVE STUDY PLANNING PROJECT**

THIS AGREEMENT is entered into this ¹²⁻¹⁴~~25~~ day, of ^{MARCH}~~February~~ 2010 by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Wisconsin Department of Natural Resources and Rock-Koshkonong Lake District (hereinafter the "Sponsors"), represented by Matthew Frank, Secretary of the Wisconsin Department of Natural Resources ("WDNR") and Brian Christianson, Chair of the Rock-Koshkonong Lake District 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 established by WRDA of 1974, Section 22;

WHEREAS, the Sponsors have 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 Sponsors have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in the study cost-sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, Section 2013 of the Water Resources Development Act of 2007, Public Law 110-114, (codified at 42 U.S.C. 1962d-16(b) (2)), authorizes the Sponsors to contribute up to 100% 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 Sponsors and all negotiated costs of work performed by the Sponsors 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 U.S. Army Corps of Engineers Rock Island District Of Initial Federal Funds Following The Execution Of This Agreement And Ending When The Rock Island District provides the planning report to the Sponsors.

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 Sponsors.

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 Sponsors 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 Sponsors 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 Sponsors shall contribute cash or in-kind services equal to fifty (50) percent of Study Costs. Except as otherwise agreed by the parties in writing, one hundred percent (100%) of the Sponsors' contributions under this Agreement shall be made through the performance of in-kind services. The in-kind services to be provided by each 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. Notwithstanding any provision of this Agreement to the contrary, the failure of either Sponsor to perform all or any part of its obligations under this agree shall not have the effect of requiring the other Sponsor

to perform any such obligation. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsors understands that the schedule of work may require the Sponsors to provide cash or in-kind services at a rate that may result in the Sponsors 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 Sponsors would exceed \$450,000, the Government and the Sponsors 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 Sponsors agree to proceed. Should the Government and the Sponsors 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 Sponsors 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 Sponsors' 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 Sponsors with a third party in furtherance of the Agreement which obligates funds of the Sponsors and does not obligate Federal appropriations shall be exclusively within the control of the Sponsors, 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 Rock Island 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 Sponsors a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$ 418,780_ and the Sponsors' shares of the estimated Study Costs are \$ 160,340 for RKLD and \$ 49,050 for WDNR. There is no requirement for a Sponsors' cash payment for its cash share estimated is zero. In-kind-work of a comparable amount is estimated to be \$ 209,390. 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 Sponsors.

B. The Sponsors 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 Sponsors by August 5th of each year of the estimated funds that will be required from the Sponsors to meet the Sponsors' share of Study Costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the scheduled date of 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 Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet its required share of Study Costs for the first fiscal year of the Study. No later than 30 calendar days thereafter, the Sponsors shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Rock Island District" to the District Engineer or verifying to the satisfaction of the Government that the Sponsors has deposited the required funds in an escrow account or other account acceptable to the Government, with interest accruing to the Sponsors, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or providing an Electronic Funds Transfer in accordance with the procedures established by the Government.

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

4. The Government shall draw from the funds provided by the Sponsors such sums as the Government deems necessary to cover the Sponsors' 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 Sponsors must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsors in writing. No later than 60 calendar days after receipt of such notice, the Sponsors shall make the full amount of the additional required funds available through any of the funding mechanisms specified in paragraph B.2. of this Article.

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 Sponsors, and credits for the negotiated costs of the Sponsors, and shall furnish the Sponsors with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsors for the excess, if any, of cash contributions and credits given over its required share of Study Costs, or the Sponsors shall provide the Government any cash contributions required for the Sponsors 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 Sponsors' 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. Within 60 days of the effective date of this Agreement, the Government and the Sponsors 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 Sponsors 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 Sponsors 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 Sponsors is required to conduct under the Single Audit Act. 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 Sponsors 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 the Sponsors' rights and obligations under this Agreement, the Sponsors 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 5500.11 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 Sponsors 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 Sponsors 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

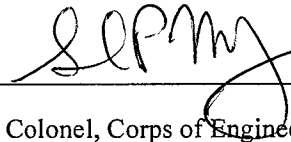
In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$500,000 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 for the U.S. Army Corps of Engineers, Rock Island District.

DEPARTMENT OF THE ARMY

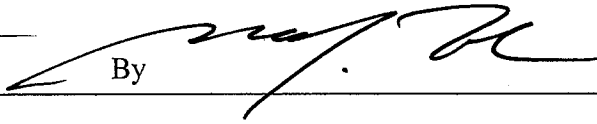
WISCONSIN DEPARTMENT OF
NATURAL RESOURCES

By



Colonel, Corps of Engineers
District Engineer
Rock Island District

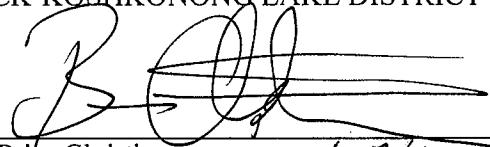
By



Matthew Frank, Secretary

ROCK-KOSHKONONG LAKE DISTRICT

By



Brian Christianson
Chair

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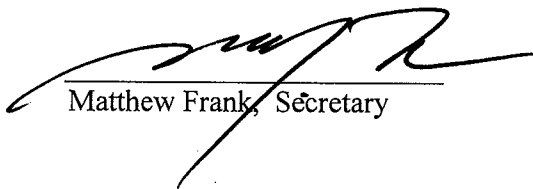
Attachment - Scope of Work

CERTIFICATE OF AUTHORITY

I, Matthew Frank, do hereby certify that I am the Secretary of the Wisconsin Department of Natural Resources, that the Wisconsin Department of Natural Resources 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 Wisconsin Department of Natural Resources in connection with the Lake Koshkonong Comprehensive Study Project, and that the person who has executed this Agreement on behalf of the Wisconsin Department of Natural Resources has acted within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 25th day of February, 2010.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES


Matthew Frank, Secretary

CERTIFICATE OF AUTHORITY

I, Brian Christianson, do hereby certify that I am the Chair of the Rock-Koshkonong Lake District and that the Rock-Koshkonong Lake District 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 Rock-Koshkonong Lake District in connection with the Lake Koshkonong Comprehensive Study Project, and that the person who has executed this Agreement on behalf of the Rock-Koshkonong Lake District has acted pursuant to the statutory authority of the District's Board of Commissioners.

IN WITNESS WHEREOF, I have made and executed this certification this 27th day of FEBRUARY, 2010.



BRIAN CHRISTIANSON
Chair
Rock-Koshkonong Lake District