

GREGORY F. MURPHY, M.D.
3RD DISTRICT, NORTH CAROLINA

COMMITTEE ON WAYS & MEANS

COMMITTEE ON VETERANS' AFFAIRS

COMMITTEE ON HOUSE ADMINISTRATION

CO-CHAIR, DOCTOR'S CAUCUS



Congress of the United States
House of Representatives
Washington, DC 20515-3303

June 16, 2023

The Honorable Chairman Robert Woodard
954 Marshall C Collins Drive
Manteo, N.C. 27954

Dear Chairman Woodard:

Thank you for contacting my office in support of federal funding to perform a beach renourishment project in the Village of Rodanthe on Hatteras Island.

Erosion is a serious issue that I have witnessed first-hand during my visits to Dare County. It is an unfortunate reality that our beautiful beaches are constantly being whittled away. As much as I wish there was a simple way to address this issue, there is a required process to follow.

As you know, a feasibility study must be conducted by the U.S. Army Corps of Engineers before a beach nourishment project in the Village of Rodanthe can be undertaken. The minimum cost of the feasibility study is \$3 million. Per the Water Resources Development Act of 1986, half of the cost of the study must be incurred at the state and local levels.

Attached is the U.S. Army Corps of Engineers Feasibility Study process for your information. Additionally, I have attached the Model Agreement for Cost Shared Feasibility Studies and the template for the Letter of Intent that must be sent to Colonel Benjamin Bennett, USA, Commander, U. S. Army Corps of Engineers, Wilmington District.

My point of contact on this important matter is Ray Celeste, Jr. at Raymond.Celeste@mail.house.gov; work 202/225-3415 or cell phone 703/819-5203.

Many thanks for your consideration and leadership on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Gregory F. Murphy".

Gregory F. Murphy, M.D.
Member of Congress

Attachments

Cc: Governor Cooper; Colonel Bennett

WASHINGTON OFFICE:
407 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3415

DISTRICT OFFICES:
1105 CORPORATE DRIVE, SUITE C
GREENVILLE, NC 27858
(252) 931-1003

954 MARSHALL C.
COLLINS DR. ROOM 194
MANTEO, NC 27954
(252) 230-3549

815 NEW BRIDGE ST.
JACKSONVILLE, NC 28540
(910) 937-6929

2402 DR. M.L.K. JR BLVD.
NEW BERN, NC 28562
(252) 636-6612

SAMPLE Letter of Intent for a Investigation (Feasibility) Study

(LETTERHEAD OF LOCAL SPONSOR)

(CURRENT DATE)

Colonel xxxx xxxx
Commander, Wilmington District
U.S. Army Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403

Dear Colonel xxxx:

The **(Name of Sponsor)** is willing and able to participate as the Sponsor for the **(name of study)**, in partnership with the U.S. Army Corps of Engineers (USACE), to cooperatively investigate **(briefly state the water resources problems and opportunities)** in the **(name of location, such as watershed or city/county)**.

Our agency **(or Name of Sponsor)** understands that a study cannot be initiated unless it is selected as a new start study with associated allocation of Federal funds provided through the annual Congressional appropriations process. If selected, we intend to sign a Feasibility Cost Sharing Agreement (FCSA) to initiate the study with USACE. It is our understanding the FCSA targets completion of the feasibility study within 3 years at a total cost of no more than \$3 million. After signing the FCSA, a Project Management Plan will be developed and agreed upon by our agency **(or Name of Sponsor)** and USACE. The study will be conducted and managed by USACE. The cost-sharing for the study is based on a 50% contribution by the Federal government, with our agency's 50% contribution provided in cash, or by a portion or all of the contribution provided through in-kind non-monetary services.

Our agency **(or Name of Sponsor)** is aware that this letter constitutes an expression of intent to initiate a study partnership to address the specified water resources problems and is not a contractual obligation. We understand that work on the study cannot commence until it is included in the Administration's budget request, funds are appropriated by the Congress, and an FCSA is signed. It is understood that we or USACE may opt to discontinue the study at any time after the FCSA is signed but will commit to work together as partners from the scoping phase, and subsequent decision points throughout the feasibility study, on providing the necessary support to risk-informed decision making. If it is determined that additional time or funding is necessary to support decisions to be made in order to complete the study, our agency will work with USACE to determine the appropriate course of action.

If you require additional information, please contact: **(Designee)** at **(Telephone Number and/or Email)**.

(Signed by Individual or Group with Appropriate Decision Making Authority)



**MODEL AGREEMENT
FOR
COST SHARED FEASIBILITY STUDIES
APRIL 2, 2015
(with updates as of FEBRUARY 17, 2022)**

APPLICABILITY AND INSTRUCTIONS:

1. 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. In addition, it will be used, with Option 4 or Option 5, as applicable, for cost shared feasibility studies under the Tribal Partnership Program for construction of water resources development projects or for the construction of projects for the preservation of cultural and natural resources related to water resources development.
2. Authority to approve a FCSA that does not deviate from the approved model, or for an amendment to this model for the purpose of including an approved option to the model, has been delegated to the MSC Commander and may be further delegated to the District Commander. Division Counsel concurrence that the FCSA does not deviate from the subject model, and is appropriate for use for the particular study, is required prior to approval. In addition, authority to approve non-substantive deviations to the model FCSA also has been delegated to the MSC Commander. Division Counsel concurrence that a deviation is non-substantive, with the recommendation to approve the deviation, is required prior to approval by the MSC Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT and the Headquarters Agreements Team (DLL-HQ-Agreements-Team@usace.army.mil), with MSC Division Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the FCSA after its approval.
3. The following options, including language for the FCSA, are addressed in the Attachment:
 - a. Option 1: Not An Obligation of Future Appropriations (page A-1).
 - b. Option 2: Multiple Sponsors (page A-2).
 - c. Option 3: Study in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (except a study under the Tribal Partnership Program eligible for the ability to pay adjustment, in which case Option 4 will be used) (page A-3).
 - d. Option 4: Tribal Partnership Program ability to pay adjustment (page A-5).
 - e. Option 5: Accelerated Funds (page A-7).
 - f. Option 6: Contributed Funds, following Committee notification (page A-8).
4. 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 page numbering, spacing, and page breaks throughout the FCSA are appropriate; if more than one option is used, ensure the Article and paragraph numbering and references therein are correct; and delete the Attachment.
5. 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 be found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[NON-FEDERAL SPONSOR'S NAME]
FOR THE
[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 District Commander for [Name of USACE District, e.g., New Orleans District] (hereinafter the "District Commander") and the [Non-Federal Sponsor's Name] (hereinafter the "Non-Federal Sponsor"), represented by the [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 (WRDA) of 1986, 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 "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 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, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Study Coordination Team to discuss significant issues and actions; audits; an Independent External Peer Review panel, if required; or 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. 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, if applicable, Section 601 of the Civil Rights Act of 1964, 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.

B. The Non-Federal Sponsor shall contribute 50 percent of the 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, if any, 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 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 in accordance with Article III.C.

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 to meet its cost share. 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 in accordance with Article III.C.

C. The Government shall include in 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 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 contract solicitations 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. 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 study costs or the maximum Federal study cost.

H. In addition to the ongoing, regular discussions between the parties regarding Study delivery, 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 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 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, 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 \$ _____, which includes creditable in-kind contributions projected to be \$ _____, and the amount of funds required to meet its cost share 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 monthly reports setting forth the estimated 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 Commander, 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 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 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 completion of the Study and resolution of all relevant claims and appeals, 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 by delivering a check payable to “FAO, USAED, [**Insert District and EROC code, e.g., New Orleans (B2)**]” to the District Commander, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government. 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 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 may 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 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 the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Study. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Study shall not be included in study costs, but shall be included in calculating the maximum Federal study cost.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[TITLE (NOT the name of the individual)]
[NON-FEDERAL SPONSOR'S NAME]
[ADDRESS]

If to the Government:

District Commander

U.S. Army Corps of Engineers, _____ District

[ADDRESS]

B. A party may change the recipient or address to which such communications are to be directed 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 Commander.

DEPARTMENT OF THE ARMY

[NON-FEDERAL SPONSOR'S NAME]

BY: _____

BY: _____

[TYPED NAME]

[TYPED NAME]

[Insert Rank], U.S. Army

[Full Title]

District Commander

DATE: _____

DATE: _____

Attachment

Option 1: 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]**. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.”

Option 2: Multiple Non-Federal Sponsors.

1. It is strongly preferred that there is one party only as the Non-Federal Sponsor for the FCSA. Nonetheless, it is permissible to have more than one Non-Federal Sponsor if the Non-Federal Sponsors are jointly and severally responsible for all non-Federal obligations and responsibilities under the FCSA. **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.** In addition, insert into the FCSA as the last Article the following:

**“ARTICLE XI – JOINT AND SEVERAL RESPONSIBILITY OF THE
NON-FEDERAL SPONSORS**

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.”

2. If one of the Non-Federal Sponsors is a non-profit entity, in accordance with ASA(CW) Memorandum, dated April 5, 2012, Subject: Implementation Guidance for Section 2003(b) of the Water Resources Development Act of 2007 - Definition of Non-Federal Interest, confirm eligibility of the non-profit entity to serve as one of the Non-Federal Sponsors and ensure that a legally constituted public body is also serving as one of the Non-Federal Sponsors on the agreement. This memorandum can be found on the Corps’ “Project Partnership Agreements” website under the “Guidance” tab. Also, for the non-profit entity that is serving as one of the Non-Federal Sponsors, use the Certificate of Authority for a Non-Profit Entity as provided on the Corps’ PPA website under the “Forms” tab.

In addition to the FCSA changes in paragraph 1. above, when one of the Non-Federal Sponsors is a non-profit entity also make the following changes to the FCSA:

Delete the “and” at the end of the second WHEREAS clause and insert the following WHEREAS clauses after the second WHEREAS clause in the agreement:

“WHEREAS, the **[FULL NAME OF NONPROFIT ENTITY]** is an organization that is incorporated under the applicable laws of the **[State of _____ or Commonwealth 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 **[MONTH DAY, YEAR]**, the **[FULL NAME OF AFFECTED LOCAL GOVERNMENT]**, the affected local government has consented to the **[FULL NAME OF NON-PROFIT ENTITY]**, serving as a Non-Federal Sponsor for the Study; and”

Option 3: Study in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304). This option will be used for a study under the Tribal Partnership Program, Section 203 of WRDA 2000, as amended (33 U.S.C. 2269), unless the tribe qualifies for the ability to pay adjustment provided by 33 U.S.C. 2269(d)(1), in which case Option 4 will be used. In accordance with Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), up to \$200,000 at FY 1987 price levels (with such amount adjusted annually for inflation) in non-Federal cost-sharing is waived. For FY 2022, the waiver amount adjusted for inflation is \$530,000. For a FCSEA executed after FY 2022, the updated waiver amount will be provided in an Economic Guidance Memorandum that will be released each fiscal year (typically in mid to late October).

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; participation by the Government and Non-Federal Sponsor in the Study Coordination Team to discuss significant issues and actions; audits; 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.I.”

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

“B. The Non-Federal Sponsor shall contribute 50 percent of 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.I. and the estimated amount of credit for in-kind contributions, if any, 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 in accordance with Article III.C.

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 to meet its cost share. 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 in accordance with Article III.C.”

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 study costs.”

Attachment

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

“I. Pursuant to Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), the Government shall waive up to \$**[Insert Section 1156 waiver amount for current FY]** in non-Federal cost sharing of the Study. The amount of the waiver shall not be included in study costs, but shall be included in calculating the maximum Federal study cost.”

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

“B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated 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.I.; and the estimated remaining cost of the Study.”

Option 4: Tribal Partnership Program (TPP) Ability to Pay Adjustment: In accordance with Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), up to \$200,000 at FY 1987 price levels (with such amount adjusted annually for inflation) in non-Federal cost-sharing is waived. For FY 2022, the waiver amount adjusted for inflation is \$530,000. For a FCSA executed after FY 2022, the updated waiver amount will be provided in an Economic Guidance Memorandum that will be released each fiscal year (typically in mid to late October). If a tribe qualifies for the ability to pay adjustment as described in the TPP Implementation Guidance dated February 5, 2018 and after application of the above waiver, the following changes to the FCSA should be made:

1. Substitute the following three WHEREAS clauses for the first two WHEREAS clauses in the FCSA:

“WHEREAS, Section 203 of WRDA 2000, as amended (33 U.S.C. 2269) establishes the Tribal Partnership Program and authorizes the Secretary to carry out studies for construction of water resources development projects and projects for the preservation of cultural and natural resources related to water resources development;

WHEREAS, Section 105(a) of WRDA 1986, as amended (33 U.S.C. 2215(a)) specifies the cost-sharing requirements;

WHEREAS, Section 203(d)(1) of WRDA 2000, as amended (33 U.S.C. 2269(d)(1)) requires that cost share agreements under the Tribal Partnership Program shall be subject to the ability of the non-Federal interest to pay in accordance with procedures established by the Secretary, and the Non-Federal Sponsor has met the applicable criteria for the ability to pay adjustment consisting of the application of a 25 percent factor to the otherwise applicable 50 percent non-Federal share, resulting in a non-Federal share of 12.5 percent of study costs; and”

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

“The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Study Coordination Team to discuss significant issues and actions; audits; 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.I.”

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

“B. The Non-Federal Sponsor shall contribute 12.5 percent of 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.I. and the estimated amount of credit for in-kind contributions, if any, 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 in accordance with Article III.C.

Attachment

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 to meet its cost share. 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 in accordance with Article III.C.”

4. 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 study costs.”

5. Add a new paragraph I. to Article II as follows:

“I. Pursuant to Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), the Government shall waive up to \$[Insert Section 1156 waiver amount for current FY] in non-Federal cost sharing of the Study. The amount of the waiver shall not be included in study costs, but shall be included in calculating the maximum Federal study cost.”

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

“B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated 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.I.; and the estimated remaining cost of the Study.”

Attachment

Option 5: Accelerated Funds. To allow the acceptance of accelerated funds, the FCSA should include the following changes:

Guidance on Accelerated Funds is provided in CECW-P (2020-01) Director's Policy Memorandum FY 2020, dated December 19, 2019, Subject: Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds. This memorandum can be found on the Corps' "Project Partnership Agreements" website.

1. Insert the following WHEREAS clause before the next to last WHEREAS clause in the FCSA:

"WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds (hereinafter "accelerated funds") for the immediate use by the Government for the Study;"

2. Add a new paragraph G. to Article I as follows:

"G. The term "accelerated funds" means non-Federal funds out of proportion with Federal funds but within the ultimate non-Federal cash contribution."

3. Add new paragraph I. to Article II as follows.

"I. In addition to providing the funds required by paragraph B. of this Article, the Non-Federal Sponsor may provide accelerated funds for immediate use by the Government. The Non-Federal Sponsor understands that use of accelerated funds shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this Study or to match any accelerated funds provided by the Non-Federal Sponsor; that any accelerated funds will be credited toward the Non-Federal Sponsor's cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsor is not entitled to any repayment for any accelerated funds obligated by the Government even if the Study ultimately is not completed."

Option 6: Contributed Funds, following Committee notification. The cost of work funded with Contributed Funds is included in study costs subject to cost sharing. Contributed Funds are applied toward the Federal cost share.

Guidance on Contributed Funds is provided in CECW-P (2020-01) Director's Policy Memorandum FY 2020, dated December 19, 2019, Subject: Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds. This memorandum can be found on the Corps' "Project Partnership Agreements" website.

Following completion of the Committee notification process, the FCSA may include the following changes:

1. Insert the following WHEREAS clause before the next to last WHEREAS clause in the FCSA:

"WHEREAS, in addition to providing the required non-Federal cost share, the Non-Federal Sponsor considers it to be in its own interest to contribute funds voluntarily (hereinafter the "Contributed Funds") to be used by the Government for the Study, as authorized pursuant to 33 U.S.C. 701h;"

2. Add as the third sentence in Article I.B. the following:

"The term also includes the cost of work funded with Contributed Funds."

3. Add a new paragraph G. to Article I as follows:

"G. The term "Contributed Funds" means those funds above any statutorily required non-Federal cost share that are provided voluntarily by the Non-Federal Sponsor for funding the Study, with no credit or repayment authorized for such funds."

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

"I. In addition to providing the funds required pursuant to paragraph B. of this Article, the Non-Federal Sponsor will be providing Contributed Funds currently estimated at \$ _____, for the Study. The Non-Federal Sponsor shall make the full amount of such funds available to the Government by delivering a check payable to "FAO, USAED, [**Insert District and EROC code, e.g., New Orleans (B2)**]" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. No credit or repayment is authorized, nor shall be provided, for any Contributed Funds provided by the Non-Federal Sponsor that are obligated by the Government. In addition, acceptance and use of Contributed Funds shall not constitute, represent, or imply any commitment to budget or appropriate funds for the Study in the future."