

APPENDIX A  
MODEL SECTION 101 PLANNING  
ASSISTANCE COST SHARING  
AGREEMENT  
(PLANNING)

PLANNING ASSISTANCE AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
<Name of non-Federal Sponsor>  
FOR PLANNING OF THE  
<Name of Facility>  
<Location of Facility>

THIS AGREEMENT is entered into this \_\_\_\_\_ day, of \_\_\_\_\_, 19\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the [SPONSOR NAME] (hereinafter the "Sponsor"),

WITNESSETH, that

WHEREAS, the Secretary of the Army was authorized to provide planning, design and construction assistance for environmental infrastructure projects pursuant to Section 101 of the Energy and Water Development Appropriations Act of 1998 (Public Law 105-62);

WHEREAS, the <Name of Facility> at <Location of Facility> has been identified as a project of the type authorized Section 101 of the Energy and Water Development Appropriations Act of 1998, Public Law 105-62;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Planning Assistance Agreement for the planning of, the <Name of Facility> at <Location of Facility> (hereinafter the "Project," as defined in Article I.A. of this Agreement);

WHEREAS, Section 101 of the Energy and Water Development Appropriations Act of 1998, Public Law 105-62 specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 101 of the Energy and Water Development Appropriations Act of 1998, Public Law 105-62 provides that the Secretary of the Army shall not provide assistance in the form of planning, design and construction for any water-related environmental infrastructure and resource protection and development projects, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

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

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 Sponsor. 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 Alaska District of initial Federal funds following the execution of this Agreement and ending when the Alaska District providing the planning report to the Sponsor.

D. The term "SOW" shall mean the Scope of Work, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the 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.

## ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds provided by the Sponsor and funds appropriated by the Congress of the United States, 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 equal to fifty (50) percent of Study Costs.

C. 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 Sponsor would exceed \$\_\_\_\_\_ [TO BE NEGOTIATED, BUT NOT MORE THAN 115 PERCENT OF THE CURRENT ESTIMATED STUDY COST.], the Government and the 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 Sponsor agree to proceed. Should the Government and the 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 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.

D. No Federal funds may be used to meet the 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.

E. 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.

**[USE PARAGRAPH G. WHEN, IAW ER 1165-2-132, WHEN IT IS BELIEVED THAT THERE IS A POTENTIAL FOR HTRW CONCERNS REGARDING LANDS THAT MAY BE NECESSARY FOR THE PROJECT]**

F. The Sponsor shall be responsible for the total cost of developing a response plan for addressing any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, (codified at 42 U.S.C. Sections 9601-9675), as amended, existing in, on, or under any lands, easements or rights-of-way that the Government determines to be required for the construction, operation, and maintenance of the project. Such costs shall not be included in total study costs.

**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 Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$\_\_\_\_\_ and the Sponsor's share of estimated Study Costs is \$\_\_\_\_\_. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$\_\_\_\_\_. 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 Sponsor.

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

1. No later than **[AT LEAST 30]** calendar 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 Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its share of Study Costs. No later than **[HALF THE ABOVE NUMBER]** calendar days thereafter, the Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, Alaska" to the District Engineer.

2. The Government shall draw from the funds provided by the Sponsor such sums as the Government deems necessary to cover the 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 Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than **[NORMALLY 60]** calendar days after receipt of such notice, the Sponsor shall provide the Government with a check for the full amount of the additional required funds.

C. Within ninety (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 and cash contributions by the Sponsor and shall furnish the Sponsor with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions given over its required share of Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs.

#### ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsor and the Government shall appoint named senior representatives to an Executive Committee. **[THE EXECUTIVE COMMITTEE SHALL NORMALLY INCLUDE THE DISTRICT'S CHIEF, PLANNING DIVISION, AND THEIR COUNTERPARTS FROM THE SPONSOR.]** Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PSP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PSP.

#### 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 sixty (60) calendar 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 Non-Federal 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. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and 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 any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total cost of project design work and cost shared in accordance with the provisions of this Agreement.

C. 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. 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 performed in accordance with this paragraph shall be included in total cost of project design work and cost shared in accordance with the provisions of this Agreement.

## ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the 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 the Sponsor's rights and obligations under this Agreement, the Sponsor 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 Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article II.E. of this Agreement, or upon the failure of the 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 - FUTURE AGREEMENTS

Nothing in this Agreement is intended to obligate either party to enter into further agreements for engineering and design, construction or implementation of the Study that is the subject of this Agreement. However, subject to the availability of appropriations, and subject to mutual agreement of the parties, further such activities may be undertaken, in accordance with policies of the Government in effect at the time.

## ARTICLE XII - LIMITATION ON GOVERNMENT OBLIGATIONS

The Government's financial obligation for all activities undertaken under Section 101 of Public Law 105-62 is limited to \$5,000,000. Notwithstanding any other provision of this Agreement, the Sponsor shall be responsible for all Study Costs if Government funds for all Section 101 activities are exhausted. The Government shall provide a written notice to the Sponsor if it determines that this eventuality may occur. Should all Government funds appropriated pursuant to Section 101 be exhausted, in lieu of completing the Study at its own expense, the Sponsor may, at its option, elect to terminate the Study in accordance with Article X of 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 for the U.S. Army Corps of Engineers, Alaska District.

DEPARTMENT OF THE ARMY

[SPONSOR]

BY \_\_\_\_\_  
Colonel, Corps of Engineers  
District Engineer  
Alaska District

BY \_\_\_\_\_  
(Title)

Attachment - Scope of Work