

APPENDIX G
Draft Feasibility Cost-Sharing Agreement

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DRAFT FEASIBILITY COST SHARING AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE CALIFORNIA STATE DEPARTMENT OF WATER RESOURCES
FOR
THE SAN JOAQUIN RIVER MAINSTEM AND TRIBUTARIES, CALIFORNIA

THIS AGREEMENT, entered into this _____ day of _____, 1993, by and between the United States of America (hereinafter called the "GOVERNMENT"), represented by the Contracting Officer executing this Agreement, and The DEPARTMENT OF WATER RESOURCES FOR THE STATE OF CALIFORNIA (hereinafter called the "Sponsor").

WITNESSETH, that

WHEREAS, the Congress has authorized the Corps of Engineers to conduct a study of Sacramento-San Joaquin Basin Streams pursuant to the 1964 Congressional Resolution of the House Committee on Public Works; and

WHEREAS, the Corps of Engineers has conducted a reconnaissance study of alternative means of providing flood control/environmental restoration for the area known as the San Joaquin River Basin pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter called the "Study") for the San Joaquin River Basin is required to fulfill the intent of the study authority and to complete the determination of the extent of the Federal interest in a flood control/environmental restoration project in this area; and

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

WHEREAS, the Sponsor and the Government both understand that entering into this agreement in no way obligates either party to implement a project and that whether a project is supported for authorization and budgeted for implementation depends upon the outcome of this feasibility study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration, and that at the present time, favorable budget priority is being assigned to projects providing primarily commercial navigation and flood or storm damage reduction outputs; and

WHEREAS, The Water Resources Development Act of 1986 (P.L. 99-662) specifies the cost sharing requirements applicable to the study;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

a. The term "Study Cost" shall mean all disbursements by the Government pursuant to this Agreement, whether from Federal appropriations or from funds made available to the Government by the Sponsor, and all Negotiated Costs of work performed by the Sponsor pursuant to this Agreement. Such costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; and 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 "Study Period" shall mean the time period for conducting the Study, commencing with the issuance of initial Federal feasibility funds following the execution of this Agreement, and ending when the report is submitted to the Office of Management and Budget (OMB) by the Assistant Secretary of the Army for Civil Works (ASA(CW)) for review of consistency with the policies and programs of the President.

c. The term "Negotiated Cost" is the fixed fee for a work item to be accomplished by the Sponsor as in-kind services as specified in the Initial Project Management Plan (IPMP) incorporated herein and which is acceptable to both parties.

ARTICLE II - OBLIGATIONS OF PARTIES

a. The Sponsor and the Government, using funds contributed by the Sponsor and appropriated by the Congress, shall expeditiously prosecute and complete the Study, currently estimated to be completed in ?? months from the date of this Agreement, substantially in compliance with Article III herein and in conformity with applicable Federal laws and regulations, the Principles and Guidelines, and mutually acceptable standards of engineering practice.

b. The Government and the Sponsor shall each contribute, in cash and in-kind services, fifty (50) percent of all Study Costs, which total cost is currently estimated to be \$3.1 Million, as specified in Article IV herein; provided, that the Sponsor may, consistent with applicable Federal statutes and regulations, contribute up to 25 percent of the Study Costs as in-kind services; provided further,

the Government shall not obligate any cash contribution by the Sponsor toward Study Costs until such cash contribution has actually been made available to it by the Sponsor.

c. No Federal funds may be used to meet the Sponsor's share of Study Costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified by the granting agency.

d. The award of any contract with a third party for services in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award of any contract by the Sponsor with a third party for services in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal statutes and regulations.

e. The Government and the Sponsor shall each endeavor to assign the necessary resources to provide for the prompt and proper execution of the Study and shall, within the limits of law and regulation, conduct the study with maximum flexibility as directed by the Executive Committee established by Article V, herein.

f. The Government will not continue with the Study if it determines that there is no solution in which there is a Federal interest or which is not in accord with current policies and budget priorities unless the Sponsor wishes to continue under the terms of this Agreement and the Department of Army grants an exception. If a study is discontinued, it shall be concluded according to Article XII, and all data and information shall be made available to both parties.

g. The Sponsor may wish to conclude the Study if it determines that there is no solution in which it has an interest or which is not in accord with its current policies and budget priorities. When such a case exists, the Study shall be concluded according to Article XII, and all data and information shall be made available to both parties.

ARTICLE III - INITIAL PROJECT MANAGEMENT PLAN

APPENDIX H, the IPMP, is hereby incorporated into this Agreement. The parties to this Agreement shall substantially comply with the IPMP in prosecuting work on the Study. The following modifications, to be approved by the Executive Committee, shall require an amendment to this Agreement:

a. any modification which increases the total Study Costs by more than 15 percent (see Appendix H, Table 1);

b. any modification in the estimated cost of a Study work item or any obligation for a Study work item, which changes the total cost of that work item by more than 15 percent (see Appendix H, Table 1);

c. any extension of the completion schedule for a Study work item of more than thirty (30) days;

d. any reassignment of work items between the Sponsor and the Government (see Appendix H).

ARTICLE IV - METHOD OF PAYMENT

a. The Government shall endeavor to obtain during each fiscal year the appropriation for that fiscal year at least in the amounts specified in the IPMP incorporated herein. Subject to the enactment of Federal appropriations and the allotment of funds to the Contracting Officer, the Government shall then fund the Study at least in the amounts specified in the IPMP herein.

b. The Sponsor shall endeavor to obtain during each Government fiscal year the cash contribution for that Government fiscal year at least in the amounts specified in the IPMP incorporated herein and, once it has obtained funds for a cash contribution, shall make such funds available to the Government. The Government shall withdraw and disburse funds made available by the Sponsor subject to the provisions of this Agreement.

c. Funds made available by the Sponsor to the Government and not disbursed by the Government within a Government fiscal year shall be carried over and applied to the cash contribution for the succeeding Government fiscal year; provided, that upon Study termination any excess cash contribution shall be reimbursed to the Sponsor after a final accounting, subject to the availability of appropriations, as specified in Article XII herein.

d. Should either party fail to obtain funds sufficient to make obligations or cash contributions or to incur Study Costs in accordance with the schedule included in the IPMP incorporated herein, it shall at once notify the Executive Committee established under Article V herein. The Executive Committee shall determine if the Agreement should be amended, suspended or terminated under Article XII herein.

ARTICLE V - MANAGEMENT AND COORDINATION

a. Overall study management shall be the responsibility of an Executive Committee consisting of the District Engineer, District Chief of Planning, Deputy District Engineer for Project Management, and Director of the Department of Water Resources. Representatives from the Sponsor's cost sharing partners are also

members of the Executive Committee, but their approval or disapproval will be expressed collectively through the vote of the Sponsor.

b. To provide for consistent and effective communication and prosecution of the items in the IPMP, the Executive Committee shall appoint representatives to serve on a Study Management Team.

c. The Study Management Team will coordinate on all matters relating to prosecution of the Study and compliance with this Agreement, including cost estimates, schedules, prosecution of work elements, financial transactions and recommendations to the Executive Committee for termination, suspension, or amendment of this Agreement.

d. The Study Management Team will prepare periodic reports on the progress of all work items for the Executive Committee.

ARTICLE VI - DISPUTES

a. The Study Management Team shall endeavor in good faith to negotiate the resolution of conflicts. Any dispute arising under this Agreement which is not disposed of by mutual consent shall be referred to the Executive Committee. The Executive Committee shall resolve such conflicts or determine a mutually agreeable process for reaching resolution or for termination under Article XII herein.

b. Pending final decision of a dispute hereunder, or pending suspension or termination of this Agreement under Article XII herein, the parties hereto shall proceed diligently with the performance of this Agreement.

ARTICLE VII - MAINTENANCE OF RECORDS

The Government and the Sponsor shall keep books, records, documents and other evidence pertaining to study costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. The Government and the Sponsor shall maintain such books, records, documents and other evidence for inspection and audit by authorized representatives of the parties to this Agreement. Such material shall remain available for review for a period of three (3) years following the termination of this Agreement.

ARTICLE VIII - RELATIONSHIP OF PARTIES

a. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

b. To the extent permitted by applicable law, any reports, documents, data, findings, conclusions, or recommendations

pertaining to the Study shall not be released outside the Executive Committee or the Study Management Team; nor shall they be represented as presenting the views of either party unless both Parties shall indicate agreement thereto in writing.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, 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 33-352) and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XI - COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XII - TERMINATION OR SUSPENSION

- a. This Agreement shall terminate at the completion of the Study Period; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement without penalty.
- b. Within ninety (90) days of termination of this Agreement, the Study Management Team shall prepare a final accounting of Study Costs, which shall display disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for the Negotiated Costs of the Sponsor. Subject to the availability of funds, within thirty (30) days thereafter the Government shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over fifty (50) percent of total Study Costs. Within thirty (30) days thereafter, the

Sponsor shall provide the Government any cash contributions required so that the total Sponsor share equals fifty (50) percent of total Study Costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

STUDY SPONSOR

BY

Laurence R. Sadoff, Colonel
District Engineer, Sacramento
Corps of Engineers
Contracting Officer

BY

Mr. David Kennedy
Director,
California Department of
Water Resources

AND REPRESENTATIVE(S) FROM THE SPONSOR'S COST SHARING PARTNER(S)

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By _____