

APPENDIX X

MODEL

LOCAL COOPERATION AGREEMENT
AQUATIC PLANT CONTROL OPERATIONS
BETWEEN THE DEPARTMENT OF THE ARMY

AND

(THE SPONSORING STATE)
FOR AQUATIC PLANT CONTROL IN
(NAME OF STATE OR OTHER AREA)

THIS AGREEMENT, entered into this _____ day of _____, 19____, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the District Commander, _____ District, and the (SPONSORING STATE) (hereinafter referred to as "the State"), acting by and through (designated State agency).

WITNESSETH, THAT:

WHEREAS, a comprehensive program to provide for control and progressive eradication of undesirable aquatic plants in the navigable waters, tributary streams, connecting channels, and other allied waters of the United States in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes; and was authorized by Section 104 of the Rivers and Harbors Act of 1958 (PL 85-500), codified as amended at 33 USC 610; and

WHEREAS, studies conducted by the Government under this authority have led to development of a program (hereinafter referred to as the "Program") for the control of undesirable aquatic plants in (name of State or area); and

WHEREAS, Section 103(c)(6) of the Water Resources Development Act of 1986, PL 99-662, specifies the cost-sharing requirements applicable to the Program; and

WHEREAS, the parties recognize that the non-Federal portion of the required cost share shall be provided entirely by the (designated state governmental unit); and

WHEREAS, the State has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in Program cost-sharing and financing 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 "Total Annual Operation Program Costs" and "Program" shall mean all planning, engineering, design, and control operations related to the implementation of the control plan described in the ____ Work Plan (Appendix A).

b. The term "Total Annual Operation Program Costs" and "Program Costs" shall mean all costs incurred by the State and the Government directly related to the Total Annual Operation Program, as described in the ____ Work Plan. Such costs shall include, but not necessarily be limited to, the costs of actual control costs, costs of applicable engineering and design, supervision and administration costs, costs associated with the provision of necessary transfer and disposal sites for harvested materials, costs associated with Government inspection of program activities, and all costs for preparing the ____ Work Plan.

c. The term "Contracting Officer" shall mean the Commander of the U.S. Army Engineer District, _____, or his designee.

d. The term "fiscal year" (FY) shall mean the fiscal year of the Federal Government (October 1 through September 30).

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The performance of all activities and the provision of any lands, easements, or rights-of-way required for all activities covered by this Agreement shall be accomplished by the State in accordance with the ____ Work Plan, subject to the appropriation of funds. Contracting responsibilities (i.e., contracting for control operations by the Government, the State, or both) are established in the ____ Work Plan.

b. As further specified in Article VI, the Government and the State shall each provide 50 percent of the total annual operational program costs incurred under the Aquatic Plant Control Program by the Government and the State in performing the approved effort identified, assigned and undertaken pursuant to this Agreement as described in the ____ Work Plan.

c. If applicable, prior to issuing invitations for bids, the State shall submit to the Contracting Officer for approval the detailed plans, specifications, data for analysis of design, and a general program outlining the order, rate of prosecution and method (contract or hired labor) of accomplishing the major items of work and setting forth the estimated cost thereof. In the event the State prosecutes the work herein by contract, all bids received and the proposed provisions of any contract shall be subject to review by the Government prior to award. Any such contract shall contain all applicable provisions required by Federal law and regulations, including, but not limited to, applicable labor and equal opportunity provisions.

(1) The State shall secure competitive bids, by advertising, for all work to be performed by contract, or with approval of the Contracting Officer, perform the necessary control operations with its own forces or those of their local governmental unit designee.

(2) The State shall submit to the Contracting Officer a detailed estimate of costs, a tabulation of all bids received, and a request for approval of award of a contract to the lowest qualified bidder and furnish such copies of the contract as may be required and submit to the Contracting Officer, for approval, any amendments or modifications thereof.

(3) The State shall provide adequate continuous operations inspection, and submit monthly progress reports showing the work done throughout the Program.

(4) The State shall provide necessary facilities and access for inspection of the Program by the Contracting Officer.

(5) The State shall keep accurate and adequate cost accounts and records, open at all times for inspection and audit by the Contracting Officer.

d. No Federal funds may be used to meet the State's share of project costs under this Agreement unless the expenditures of such funds is expressly authorized by statute and verified in writing by the granting agency.

ARTICLE III - LANDS, FACILITIES, AND RELOCATION ASSISTANCE

a. The State agrees to provide all lands, easements, rights-of-way, including dredged or disposal areas and appropriate transfer sites for harvested materials, determined to be necessary for the work covered by the ____ Work Plan. Such costs shall be apportioned in accordance with the terms of Article VI, with the State bearing 50 percent of such costs.

b. The State shall comply with the applicable provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended, in acquiring any necessary lands, easements and rights-of-way for the control operations, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

In the event any lands, easements, and rights-of-way, including dredged or harvested material disposal areas and appropriate transfer sites for harvested material, are needed for the Program, the value of the lands, easements, and rights-of-way to be included in Total Annual Program Costs and credited toward the State's share of Total Annual Program Costs will be determined in accordance with the following procedures:

a. If the lands, easements, or rights-of-way are owned by the State as of the date this Agreement is signed, the credit shall be the fair market value of the interest at the time such interest is made available to the Government for the Program. The fair market value shall be determined by an appraisal, to be obtained by the State, which has been prepared by an independent and qualified appraiser who is acceptable to both the State and the Government. The appraisal shall be reviewed and approved by the Government.

b. If the lands, easements, or rights-of-way are to be acquired by the State after the date this Agreement is signed, the credit shall be the fair market value of the interest at the time such interest is made available to the Government for the Program. The fair market value shall be determined as specified in subparagraph a. above. If the State pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the State has secured prior written approval from the Government of its offer to purchase such interest.

c. If the State acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions shall be included in Total Annual Program Costs and credited to the State's share.

d. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

e. For lands, easements, or rights-of-way acquired by the State within a five-year period preceding the date this Agreement is signed, or any time after this Agreement is signed, credits provided under this paragraph will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps and mapping costs, as well as the actual amounts expended for any relocation assistance provided in accordance with the obligations under this Agreement.

ARTICLE V - CONTRACT MANAGEMENT

a. To provide for consistent and effective communication between the State and the Government during the term of the control Program, the State and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to the Program.

b. The representatives appointed above shall meet as necessary during the period of construction (the contract for control operations), or the term of the Program, and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to the Program, but the Contracting Officer, having ultimate responsibility for conduct of the Program, has complete discretion to accept, reject, or modify the recommendation.

ARTICLE VI - METHOD OF PAYMENT

a. The State shall implement the Program in accordance with the _____ Work Plan and the Government shall, during the period of construction and operation, subject to appropriations, reimburse the State the amount necessary to ensure the Government's share equals 50 percent of the total project cost.

b. The Government shall pay its share of total costs in proportion to the rate of expenditures by the State in accordance with the following provisions:

(1) After initiation of the Program, the Government will, subject to paragraph b. below, make monthly payments upon receipt from the State of properly executed and duly certified invoices covering services satisfactorily performed during the preceding month. All monthly payments by the Government shall take into account any project costs incurred by the Government for the stated time period.

(2) All work for payments requested by the State must be certified by the Contracting Officer to have been performed in accordance with this Agreement before the Government shall approve the request for payment.

c. Upon completion of the ____ Work Plan and resolution of all relevant contract claims and appeals, the Government shall compute the total ____ Work Plan costs and tender to the State a final accounting of Program costs. In the event that the total reimbursement by the Government to the State results in the State contributing less than the required share of total program costs at the time of final accounting, the State shall, within 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet their share of total Program costs. In the event the State is determined at the final accounting to have provided more than 50 percent of the total Program costs, the Government shall, subject to the availability of appropriations, refund the excess to the State within 90 calendar days of the final accounting.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding dispute resolution mutually acceptable to the parties.

ARTICLE VIII - RELEASE OF CLAIMS

The State shall hold and save the Government free from all damages arising from the Total Annual Operation Program, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - MAINTENANCE OF RECORDS

The Government and the State shall maintain books, records, documents, and other evidence pertaining to hours of equipment operation and costs and expenses as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services and other costs and expenses of whatever nature involved therein. The Government and the State shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of the control program and resolution of all claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE X - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the State 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 (PL 88-352) 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 - RELATIONSHIP OF PARTIES

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

ARTICLE XII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIII - COVENANT AGAINST CONTINGENT FEES

The State 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 State 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 XIV - TERMINATION OR SUSPENSION

a. If the Government fails to receive annual appropriations for the Program in amounts sufficient to meet Program expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State. If the State or its contractor(s) fail(s) to receive appropriations for the Program in amounts sufficient to meet Program expenditures for the then-current or upcoming fiscal year, the State shall so notify the Government. After 90 days, either party may elect without penalty to terminate this Agreement or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for obligations previously incurred. In the event that either party elects to terminate this Agreement, the parties shall conclude their activities relating to the Program and proceed to a final accounting in accordance with Article VI.

b. It is understood and agreed that termination of this Agreement by any party for whatever reason shall not end the obligation of the State to hold and save the Government free from damages as provided herein in Article VIII.

ARTICLE XV - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage-prepaid), registered, or certified mail, as follows:

If to the State:

[ADDRESS]

If to the Government:

[ADDRESS]

b. A party may change the address to which such communications are to be directed by giving written notice to the other in the manner provided in this section.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or on the third business day after it is mailed, as the case may be.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed by the _____ District Commander.

THE DEPARTMENT OF THE ARMY

THE STATE

*BY: _____

BY: _____

DATE: _____

DATE: _____

*Footnote: When submitting this agreement for approval, the District Commander may sign the agreement if this model Local Cost-sharing Agreement is used as a form contract and not modified in any manner. If the model Local Cost-sharing Agreement is altered or modified in any way, this signature block will be left blank. ASA(CW) will determine who will sign for the Army.

CERTIFICATE OF AUTHORITY

I, (name of official), do hereby certify that I am the Attorney General of the State of _____, that the (State designee) is a legally constituted public body with full authority and capability to perform the terms of the Agreement between the Department of the Army and the (State designee) in connection with the (state or area) Aquatic Plant Control Program, and to pay damages, if necessary, in the event of the failure to perform in accordance with Section 221 of PL 91-611, and that the persons who have executed the Agreement on behalf of the (State designee) have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this ____ day of _____, 19__.

Attorney General of (State)