

W.7.a.

AGENDA COVER MEMO

DATE: September 17, 2003

TO: Lane County Board of Commissioners

DEPT: Public Works

PRESENTED BY: Oliver Snowden, Public Works Director

AGENDA ITEM TITLE: IN THE MATTER OF APPROVING A FEASIBILITY COST SHARING AGREEMENT (FCSA) FOR THE METROPOLITAN WATERWAYS GENERAL INVESTIGATION, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH EUGENE AND SPRINGFIELD AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENTS

I. MOTION

Move approval of Board Order.

II. ISSUE OR PROBLEM

Should Lane County agree to sponsor, along with Eugene and Springfield, the Feasibility Phase Study of the Metropolitan Waterways General Investigation by the Corps of Engineers, subject to executing an intergovernmental agreement with Eugene and Springfield to limit the County's obligations?

III. DISCUSSION

A. Background

On December 18, 2002, I reported that the Corps had completed the Reconnaissance Phase of the Metropolitan Waterways Project. A copy of the Agenda Cover Memo from that Board meeting is attached. It provides a more detailed discussion of the Corps project development process and the various study phases associated with it.

The Feasibility Study Phase follows the completed Reconnaissance Phase. The Corps has now finalized a Project Management Plan (PMP) and from that, prepared a Feasibility Cost Sharing Agreement (FCSA). The FCSA is a formal agreement between the Corps and local sponsors that establishes the cost, responsibilities, roles and schedule for completing the Feasibility Study.

B. Analysis

The most recent Corps estimate for the full scope of work for the Feasibility Study is \$8,000,000 over several years. Corps regulations require that local sponsors provide a 50% non-federal match. Currently, the cities of Eugene and Springfield each have proposed a \$100,000 cash match per year for three years. The Corps is working with the cities to define any in-kind match that would meet eligibility standards. The Corps is optimistic that in-kind services will be a substantial sum – perhaps more than the cities' cash match. Nevertheless, the cities are concerned about the sheer magnitude of the \$4,000,000 match.

Following recent discussions between Eugene and the Corps, the Corps agreed to modify the PMP and FCSA to reflect that the local sponsors prefer to focus initial feasibility work on three specific projects identified in the Reconnaissance Phase – the Amazon Channel, the main stem of the Willamette and the Springfield Waterways Projects (Cedar Creek, Keizer Slough and other waterways and features along the McKenzie River; the lower Springfield Millrace; the Q Street Waterways) – rather than starting with a basin-wide assessment of all potential Corps projects. This scaled-down, first phase work plan should cost approximately \$2.8 million, including \$1.4 million local match.

County staff proposed using \$100,000 in Title III money for each of three years as the County's match for the FCSA. Neither the Finance and Audit Committee nor the Board supported this proposal. I know of no other source of available funds to provide a cash match for this study. I have provided that information to the Corps and the cities.

Despite the lack of a County match, the cities believe that the completed feasibility study will be a superior product if the County agrees to serve as a study sponsor. Serving as a sponsor will essentially get the County to the table during the study so that County issues/positions and data can be presented effectively. Although I will be available to participate in higher level meetings, staff participation in working meetings will have to come from the LMD long-range planning program. This participation will be limited to attending meetings, reviewing material, and supplying selected data unless otherwise directed by the Board.

A draft FCSA is attached. Legal Counsel attempted to modify the FCSA language to limit the County's obligations as a sponsor. The Corps would not permit these modifications. As an alternate approach, Legal Counsel has worked with the cities to craft a proposed intergovernmental agreement (IGA) between the three local agencies to limit the County's obligations under the FCSA. A copy of the proposed IGA language is attached.

Legal believes that the IGA will provide the maximum amount of coverage for the County under the circumstances. No language of this type provides as much certainty as if the Corps would allow the County to have a more limited role as a sponsor and define that role in the FCSA. Consequently, some risk remains that should the Board enter a three party IGA with the with the attached limitation language, the Corps, and others, could still look to the County under the FCSA. While the County could then look to the other sponsors, risk remains that would not exist were the Corps to allow a modification of the FCSA as we originally attempted.

City staff has agreed in concept to the IGA, but the Springfield Council will not review the FCSA or the IGA until September 15th.

C. Alternatives/Options

1. Approve the Order as proposed, agreeing to serve as a project sponsor, subject to execution of an IGA with Eugene and Springfield limiting the County's obligations as a sponsor.
2. Agree to serve as a project sponsor, but on the condition that the FCSA be modified to limit the County's obligations as a sponsor.
3. Agree to serve as a project sponsor, but with direct financial participation.
4. Do not sponsor the project, but request that County staff be given the opportunity to monitor the study progress.
5. Do not sponsor the project and do not allocate staff resources to monitor the study.

D. Recommendations

Option 1.

E. Timing

The Corps wishes to have the FCSA executed before October 1, 2003.

IV. IMPLEMENTATION/FOLLOW-UP

Legal Counsel will work with the Corps and/or Eugene and Springfield to modify the agreements as required by the Board prior to execution by the County Administrator

V. ATTACHMENTS

- A. Board Order
- B. December 4, 2002 Board Agenda Cover Memo
- C. Draft Feasibility Cost Sharing Agreement
- D. Draft IGA Language

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY STATE OF OREGON

ORDER NO.

)In the Matter of Approving a Feasibility Cost
)Sharing Agreement (FCSA) for the Metropolitan
)Waterways General Investigation, Approving an
)Intergovernmental Agreement with Eugene and
)Springfield and Authorizing the County Administrator
)to Execute the Agreements

WHEREAS, the United Front lobbied the Oregon Congressional delegation and the Corps of Engineers to fund the Metropolitan Waterways Project General Investigation; and

WHEREAS, the Corps of Engineers has completed the Reconnaissance Study (Phase 1) of the General Investigation; and

WHEREAS, the Feasibility Study (Phase 2) requires local sponsors to sign a Feasibility Cost Sharing Agreement and to provide a non-federal match of 50% of the Feasibility Study Costs; and

WHEREAS, the full scope of the Feasibility Study is estimated to cost \$8 million, and the scaled-down, project level initial stage of the Feasibility Study is estimated to cost \$2.8 million; and

WHEREAS, the cities of Eugene and Springfield desire for Lane County be a co-sponsor of the Feasibility Study; and

WHEREAS, the County desires to be a co-sponsor, but has no available funding to provide the required 50% non-federal match; and

WHEREAS, the Corps of Engineers will not modify the FCSA to eliminate a County match requirement should the County otherwise choose to sponsor the study; and

WHEREAS, the cities have agreed to enter into a separate Intergovernmental Agreement holding the County harmless from any of the County's obligations as a sponsor; NOW
THEREFORE BE IT

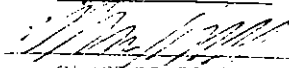
ORDERED that the County agrees to be a local sponsor of the Feasibility Study phase of the Metropolitan Waterways Project General Investigation by signing the Feasibility Cost Sharing Agreement, contingent on the County first signing an Intergovernmental Agreement with Eugene and Springfield that limits the County's obligations under the Feasibility Cost Sharing Agreement; and

BE IT FURTHER ORDERED that the County Administrator be authorized to execute both agreements.

DATED this _____ day of September, 2003

APPROVED AS TO FORM

Date 9-8-03 lane county.


OFFICE OF LEGAL COUNSEL

Peter Sorenson, Chair
Lane County Board of Commissioners

AGENDA COVER MEMO

DATE: December 4, 2002

TO: Lane County Board of Commissioners

DEPT: Public Works

PRESENTED BY: Oliver Snowden, Public Works Director
Rick Hayes, US Army Corps of Engineers

AGENDA ITEM TITLE: Status Report –Metropolitan Waterways Project Report

I. MOTION

N/A

II. ISSUE OR PROBLEM

The Metropolitan Waterways Project Section 905(b) Analysis report was completed in October 2002. United Front supported funding for this study in February 2002. The report concludes that there is a federal interest in potential waterway projects in the study area. This conclusion opens the door for the next phase of the project, the feasibility analysis. The feasibility phase requires local sponsors and local funding match. This decision as to whether to participate in the feasibility phase will be presented to the Board in the spring of 2003.

III. DISCUSSION

A. Background

During the February 2001 United Front lobbying effort, local staff met with Corps staff in Washington, DC to promote funding for several specific waterway projects in the Eugene/Springfield metropolitan area. The Corps suggested that a better approach would be to study future water-related projects in the urban watershed comprehensively first, before specific projects are selected for funding. In February 2002, the United Front successfully pursued appropriations for the first phase of such a study -- the reconnaissance phase of a Corps General Investigation (GI) study. The Metropolitan Waterways Project Section 905 (b) Analysis is the product of that reconnaissance phase. A copy of the report is attached. It is the first step towards developing, and then implementing, a watershed capital improvement program in the study area (see the map on page 3 of the report). Projects could include water quality improvements, floodplain protection and restoration, habitat protection and enhancement, watershed management, recreation and education opportunities,

scenic and open space protection, bank erosion protection and other restoration activities.

The Corps project development process includes several phases: Reconnaissance (to determine federal interest); Feasibility; Pre-construction Engineering & Design; Construction; and Operations & Maintenance. Attachment A illustrates the Project Development process. Although the Metro Waterways project is atypical because it is not a large single purpose project, it does satisfy the requirements for a GI study because of its broad geographic scope, complexity, duration and cost.

The Section 905 (b) Analysis concludes that there is a federal interest in potential waterway projects in the study area. Consequently, it provides justification for implementing the next phase of the GI study – the feasibility phase. The Corps is now developing a Project Management Plan (PMP) and a Feasibility Cost Sharing Agreement (FCSA). The FCSA is a formal agreement between the Corps and local sponsors that establishes the cost, responsibilities, roles and schedule for completing the feasibility study.

B. Analysis

The feasibility phase will examine a number of stream reaches in the unincorporated portions of the metro area, as well as waterways inside the city limits. These are shown on page 3 of the report and are listed on page 77. The feasibility phase will complete the comprehensive watershed analysis and develop improvement project descriptions. This will also include phasing, responsibility and scheduling matrices, and cost estimates for proposed projects. The feasibility phase is generally followed by Congressional project authorization and appropriations for pre-construction engineering and design and construction.

Two potential projects are already identified in the Section 905(b) Analysis, and are of particular interest to Lane County. They are the Willamette Greenway Improvement Projects in the vicinity of Howard Buford Recreation area and Short Mountain Landfill, described on page 60, and the Cedar Creek waterway project, described on pages 63 and 64.

The Corps work on the Section 905(b) Analysis was entirely funded by federal monies, as requested by United Front. The feasibility phase requires local sponsors and a 50% non-federal match. Preliminary estimates place the cost of the feasibility study at \$3 to \$5 million over the next 5 to 6 years. The local match can be by in-kind services as well as through other arrangements. The details of the match requirements will be developed in the next few months in the FCSA. No commitment has been made that obligates the County to participate in the feasibility study.

C. Alternatives/Options

N/A

D. Recommendations

N/A

IV. IMPLEMENTATION/FOLLOW-UP

The Project Management Plan, with a final estimate of the study cost and proposed cost responsibilities of the sponsors, will be completed this spring. At that time, the Board will determine whether it wants to be a sponsor for the feasibility study. Staff participation in the reconnaissance phase does not obligate the County to participate in the feasibility phase. The Corps prefers that all three local governments be parties to the Feasibility Cost Sharing Agreement.

V. ATTACHMENTS

A. Project Development Process

B. Eugene/Springfield, Oregon Metropolitan Waterways Project Section 905(b)
Analysis

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AGREEMENT
 BETWEEN THE DEPARTMENT OF THE ARMY
 AND
 THE CITY OF EUGENE
 AND
 THE CITY OF SPRINGFIELD
 AND
 LANE COUNTY
 FOR THE
 EUGENE-SPRINGFIELD, OREGON
 METROPOLITAN WATERWAYS
 GENERAL INVESTIGATION, FEASIBILITY STUDY

THIS AGREEMENT is entered into this _____ day, of _____, 2003, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Portland District (hereinafter the "District Engineer"), and the City of Eugene, Oregon, represented by _____, and the City of Springfield, Oregon, represented by _____, and Lane County, Oregon represented by _____ (hereinafter the "Sponsors").

WITNESSETH, that

WHEREAS, the Congress has authorized the Secretary of the Army, acting through the Chief of Engineers, to complete a reconnaissance study of Amazon Creek, to include a comprehensive watershed review of the Willamette River Basin with particular emphasis on the watersheds in and around the Eugene-Springfield Metropolitan Area, in accordance with Senate Report 107-39, Energy and Water Resources Development Act of 2001, the Senate Committee on Public Works resolution for the Willamette River Basin Comprehensive Study, adopted November 15, 1961, and House Committee on Public Works resolution for the Willamette Basin Review Study, adopted September 8, 1988; and

WHEREAS, the Government has conducted a reconnaissance study of Amazon Creek and a comprehensive review of the Willamette River Basin with particular emphasis on the watersheds in and around the Eugene-Springfield Metropolitan Area, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the "Study") is required to fulfill the intent of the study authority and to assess the extent of the Federal interest in participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost sharing requirements applicable to the Study; and

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

WHEREAS, the Sponsors and the Government understand that entering into this Agreement in no way obligates any party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends

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upon, among other things, the outcome of the 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.

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsors, and all negotiated costs of work performed by the Sponsors pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsors.

D. 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, Wilmington District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.

E. The term "PMP" shall mean the Project Management Plan, which is attached to this Agreement and which shall not be considered binding on any party and is subject to change by the Government, in consultation with the Sponsors.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsors in accordance with the PMP.

G. 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

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A. The Government, using funds and in-kind services provided by the Sponsors 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 Articles III.A., III.B. and III.C. of this Agreement, the Sponsors shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsors may, consistent with applicable law and regulations, contribute up to 50 percent of Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsors, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PMP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsors shall pay a fifty (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsors understand that the schedule of work may require the Sponsors to provide cash or in-kind services at a rate that may result in the Sponsors temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsors, cumulative financial obligations of the Government and the Sponsors would result in excess Study Costs, the Government and the Sponsors agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsors agree to proceed. Should the Government and the Sponsors require time to arrive at a decision, this Agreement shall be suspended in accordance with Article X of this Agreement, for a period of not to exceed six months. In the event the Government and the Sponsors have not reached an agreement to proceed by the end of their 6 month period, this Agreement may be subject to termination in accordance with Article X of this Agreement.

F. No Federal funds may be used to meet the Sponsors' share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

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

ARTICLE III - METHOD OF PAYMENT

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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, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsors a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$8,000,000 and the Sponsors' share of estimated Study Costs is \$4,000,000. 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 PMP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsors.

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

1. For purposes of budget planning, the Government shall notify the Sponsors by _____ **[Any month convenient for the Sponsors]** of each year of the estimated funds that will be required from the Sponsors to meet the Sponsors' share of Study Costs for the upcoming fiscal year.

2. No later than 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 Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsors shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, Portland" to the District Engineer, or verifying to the satisfaction of the Government that the Sponsors have deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Sponsors, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds, or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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

4. The Government shall draw from the funds provided by the Sponsors such sums as the Government deems necessary to cover the Sponsors' share of contractual and in-house financial obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsors must provide additional funds to meet their share of Study Costs, the Government shall so notify the Sponsors in writing. No later than 60 calendar days after receipt of such notice, the

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Sponsors shall make the full amount of the additional required funds available through any of the payment mechanisms specified in paragraph B.2. of this Article.

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, cash contributions by the Sponsors, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsors, and shall furnish the Sponsors with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsors for the excess, if any, of cash contributions and credits given over their required share of Study Costs, other than excess Study Costs, or the Sponsors shall provide the Government any cash contributions required for the Sponsors to meet their required share of Study Costs other than excess Study Costs by delivering a check payable to "FAO, USAED, Portland" to the District Engineer or providing an Electronic Funds Transfer in accordance with the procedures established by the Government.

D. The Sponsors shall provide their cash contribution for excess Study Costs as required under Article II.C. of this Agreement by either: delivering a check payable to "FAO, USAED, Portland" to the District Engineer; or providing an Electronic Funds Transfer in accordance with procedures established by the Government; as follows:

1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years after the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the Study, the Sponsors shall pay their share of excess Study Costs on that date (5 years after the date of the final report of the Chief of Engineers or 2 years after the date of the termination of the Study).

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsors and the Government shall appoint named senior representatives to an Executive Committee. 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 PMP.

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

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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 PMP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in Study Costs and shared in accordance with the provisions of this Agreement.

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 parties 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 all parties. The parties shall each pay an equal share 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

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsors shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsors shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsors are required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in Study Costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsors act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise there from.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsors' rights and obligations under this Agreement, the Sponsors agree 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 Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsors shall have any further obligations hereunder, except as provided in Article III.C. of this Agreement; provided, that prior to such time and upon thirty (30) days written notice, any 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 Sponsors to fulfill their obligation under Article III of this Agreement. In the event that any party elects to terminate this Agreement, the parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. and III.D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to all 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.

C. In the event that either of the Sponsors elects to terminate its own responsibilities under this Agreement, and the remaining Sponsor elects to continue to participate in the Study, the Government shall negotiate in good faith with the remaining Sponsor to effect a timely and productive conclusion to that portion of the Study pertaining to the remaining Sponsor's area of statutory authority. The Government shall prepare a revised PMP and revised estimated Study Costs, including the remaining Sponsor's share, to complete that portion of the Study of interest to the remaining Sponsor. If the remaining Sponsor elects to complete the Study, this Agreement shall be amended to reflect the negotiated revisions to the PMP and Study Costs. Cost amendments to this Agreement made pursuant to this paragraph shall reflect credits for the previous cash and in-kind contributions of all Study Sponsors and shall reflect task reductions made as a result of withdrawal of any Study Sponsor.

ARTICLE XI - 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

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either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Sponsors: **[NOTE: Sponsors, please choose *one* point of contact to receive notices from the Government affecting all Sponsors, and provide: Name of Sponsor, title of person associated with that Sponsor that will receive the notices - NOT an individual's name - and address]**

If to the Government:

District Engineer
USAED, Portland
P.O. Box 2946
Portland, Oregon 97208-2946

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

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

Article XII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City Council of the City of Eugene, Oregon, by the City Council of the City of Springfield, Oregon, or the County Commission of Lane County, Oregon, where creating such an obligation would be inconsistent with _____ of the _____ of _____

[NOTE: Sponsors, please provide designations for the specific applicable City and County governing charters, etc., and ensure the terms 'Council', 'Commission' are correct. For purposes of this FCSEA, assume the term "appropriations" used in this paragraph is the correct term to use in the context of this Article.]

B. Each Non-Federal Sponsor intends to satisfy its obligations under this Agreement. Each Non-Federal Sponsor shall include in its budget requests or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each year, and will use all reasonable and lawful means to secure the appropriations for that year sufficient to make the payments necessary to fulfill its obligations hereunder. Each Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, each Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to satisfy their

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obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

[NOTE: By making this paragraph applicable to 'each' Sponsor the acknowledged joint and several liability of *each* Sponsor is maintained and the provisions of this Article made available to each individual Sponsors. The shift to a discussion concerning 'the Non-Federal Sponsors' and 'their' obligations (plural) in the last sentence is necessary to ensure that only in the event *all* Sponsors are unable or unwilling to continue may the Government 'exercise any legal rights it has to protect the Government's interests related to' the FCSA, thus conforming with the provisions of Article X.C., Termination. That way, so long as even one Sponsor is able and willing to continue, the Study may continue without interruption. Too, the clarification provided by this Article may facilitate the drafting of the Sponsors' intergovernmental agreement for purposes of this FCSA.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement,
which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF EUGENE, OREGON

BY: _____
Richard W. Hobernicht
Colonel, Corps of Engineers
District Engineer
Portland District

BY: _____

DATE: _____

DATE: _____

CITY OF SPRINGFIELD, OREGON

BY: _____

DATE: _____

LANE COUNTY, OREGON

BY: _____

DRAFT
12 AUGUST 03

DATE: _____

DRAFT
12 AUGUST 03

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Eugene, Oregon, that the City of Eugene is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the City of Eugene, the City of Springfield, and Lane County in connection with the Eugene-Springfield, Oregon Metropolitan Waterways General Investigation, Feasibility Study, and that the persons who have executed this Agreement on behalf of the City of Eugene have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____, _____.

Barbara Novak, Attorney for the City of Eugene

DRAFT
12 AUGUST 03

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Springfield, Oregon, that the City of Springfield is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the City of Eugene, the City of Springfield, and Lane County in connection with the Eugene-Springfield, Oregon Metropolitan Waterways General Investigation, Feasibility Study, and that the persons who have executed this Agreement on behalf of the City of Springfield have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, _____.

City of Springfield, Oregon

DRAFT
12 AUGUST 03

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the Lane County, Oregon, that Lane County is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army, the City of Eugene, the City of Springfield, and Lane County in connection with the Eugene-Springfield, Oregon Metropolitan Waterways General Investigation, Feasibility Study, and that the persons who have executed this Agreement on behalf of Lane County have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____, _____.

Lane County, Oregon

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Eugene, Oregon

DATE: _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Springfield, Oregon
DATE: _____

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Lane County Oregon

DATE: _____

Attachment D -- Intergovernmental Agreement with Eugene and Springfield

The complete IGA has not been completed as of September 4th. The draft text proposed to eliminate the County's obligations under the FCSA is as follows:

"Lane County's participation as a sponsor shall be limited. County, at its sole discretion, may provide staff participation to attend meetings, and review documents. The County will not otherwise be obligated to participate, absent a written modification of this agreement. The City of Eugene and the City of Springfield each recognize that the Metropolitan Waterways General Investigation, Feasibility Study ("study") imposes obligations upon the sponsors. In consideration of the County becoming a sponsor of the study, the City of Eugene and the City of Springfield do jointly and severally agree to save, defend, and hold Lane County harmless from any obligation, claim, or suit, under or resulting from that agreement, whether monetary or non-monetary, and whether claimed, charged, or alleged to be payable to the Government, another sponsor, or a third party. This defense, indemnification and hold harmless agreement shall be limited only to the extent required by the Oregon Constitution and the Oregon Tort Claims Act."