

COOPERATIVE AGREEMENT
between
U.S. FISH AND WILDLIFE SERVICE
and
THE NATURE CONSERVANCY

I. RECIPIENT:

The Nature Conservancy
with its Wisconsin Offices at
633 West Main Street
Madison, Wisconsin 53703

with its Upper Michigan Offices at
125 West Washington Street, Suite G
Marquette, Michigan 49855

II. FINANCIAL DATA:

AGREEMENT NUMBER: 301813J184

AMOUNT FUNDED: No funds have been allocated under this Agreement, but such funds may be committed by task specifications issued under this Agreement.

APPROPRIATION DATA: This information will be provided on individual task specification forms issued under this Agreement, which require government funding

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NO.: 15.FFB

TAX IDENTIFICATION NO.: 53-0242652

DUNS NO.: 072656630

III. BACKGROUND, AUTHORITY AND PURPOSE:

This Agreement between the U.S. Fish and Wildlife Service, Department of the Interior, hereafter referred to as "FWS", and The Nature Conservancy, hereafter referred to as "TNC", is hereby entered into under the authority of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), as amended, and the Federal Water Pollution Control Act ("FWPCA"), as amended, 33 U.S.C. 1251 et seq., the Fish & Wildlife Coordination Act of 1934 as amended, 16 U.S.C. 661-666, and the Federal Grant & Cooperative Agreement Act of 1977 P.L. 95-224 dated 2/3/78. These authorize the federal government, states and Indian tribes to recover damages for injuries to natural resources and their supporting ecosystems, belonging to, managed by, appertaining to, or otherwise controlled by them and to enter into cooperative agreements with non-profit conservation organizations, as necessary, to restore those natural resources. Through Executive Orders and the National Contingency Plan ("NCP"), the President has designated the Secretary to act on behalf of the public as trustee for natural resources and their supporting ecosystems, managed or controlled by the Department.

The purpose of this Agreement is to facilitate the cooperation between the two parties for the purpose of fulfilling the restoration activities outlined in the “Joint Restoration Plan for the Lower Fox River and Green Bay area” (the “Restoration Plan), attached and incorporated herein as Attachment C. Particularly, TNC will assist the FWS, in cooperation with other Trustees of the Lower Fox River and Green Bay area, in identifying and protecting habitat that will assist in restoring, replacing or acquiring the equivalent of natural resources injured by hazardous substance releases.

This Agreement provides for the limited exchange of personnel, equipment, facilities and funds to obtain this goal.

IV. **SCOPE OF WORK:**

TNC and the FWS will provide the necessary personnel, materials, services, facilities and funds to perform all things necessary for or incidental to the performance of this Agreement.

A. Description of Work/Objectives:

The FWS and TNC have entered into this Agreement to restore, replace and/or acquire the equivalent of natural resources injured by PCBs as is consistent with the attached restoration plan. Each mutually agreed to task specification, also called task order by Federal officials, issued by FWS to TNC under this Agreement will be described separately. FWS will ensure that each task specification has the support of the Fox River/Green Bay Natural Resource Trustee Council (per the 2002 memorandum of Agreement (as amended in 2003) between the Wisconsin Department of Natural Resources, the Oneida Tribe of Indians of Wisconsin, the Menominee Indian Tribe of Wisconsin, the Michigan Attorney General, the Michigan Department of Environmental Quality, and the FWS). Each project will be described in detail and a budget will be provided for that particular task specification, which will be signed by FWS and TNC.

B. The FWS will:

1. Provide, by means of this agreement, a mechanism for the FWS to fund TNC to implement specific restoration activities (i.e. land acquisition, habitat restoration, etc.) consistent with the criteria set forth in the Joint Restoration Plan for the Lower Fox River and Green Bay Area, and supported by the Trustees.
2. Designate a Project Officer for each approved task specification issued under this Agreement and will inform TNC of any change in assigned Project Officer by providing written notification.
3. Provide intermittent oversight to confirm that all habitat restorations are completed in a timely manner and according to the terms of the task specification applicable to

subject project. The FWS will maintain written records and will provide timely copies of same to TNC.

C. TNC will:

1. Assist the FWS in identifying lands that meet the acquisition and habitat restoration criteria for natural resource restoration plans.
- 2) Use its best efforts to acquire the real estate identified in task specifications issued by FWS and accepted by TNC, in furtherance of the natural resource restoration goals set forth in the Restoration Plan for the Lower Fox River and Green Bay Area. If TNC is holding title, it should be subject to any restrictions, limitations, obligations or other interests specified in the relevant task specification for any lands purchased with funds for restoration. Notice of this requirement shall be approved by FWS and TNC, and recorded by TNC in the County where the real estate is located.
3. Designate a Project Officer for each task specification issued under this Agreement and inform the FWS of any changes in said Project Officer by providing written notification.

D. TNC and FWS mutually agree:

1. To meet as necessary to identify tracts for funding and coordinate and expedite the land acquisition process, and to coordinate habitat restoration projects as may be deemed necessary, acceptable, and appropriate.
2. Nothing in this agreement shall be construed as obligating the FWS or TNC to expend funds, provide services, or to involve the United States or TNC in any contracts or other obligations for future payment of money, in excess of the funds specified in the task specification.
3. To cooperate in the final inspection of each site development prior to its acceptance unless it is mutually deemed to be unnecessary.
4. To cooperate in recognizing all parties who have made contributions to the Sites' developments in all written or verbal references thereto. Additional recognition may involve signs, plaques, or cairns.
5. Each party shall be responsible for its own acts and omissions and any liability arising there from, to the extent authorized by law, and shall not be responsible for the acts and omissions of the other party. Each party shall be liable for injuries to third parties or property only to the extent that such injuries or damage was occasioned by negligence of that party's employees, and to the extent provided by law.
6. TNC is responsible for only these obligations which it specifically assumes pursuant to this Cooperative Agreement and individual task specifications issued

pursuant to this Agreement. FWS is responsible for ensuring that this Agreement and the task specifications are authorized under the terms of any judicial or administrative decree, the Restoration Plan, and its agreements with the other Trustees. FWS remains responsible for all obligations it has assumed as Trustee pursuant to these documents and with respect to the initial legal action undertaken by FWS under CERCLA.

V. **REPORTS**

The project officer for each task specification issued under this Agreement will determine the extent of reports required for the project. This requirement will be addressed within each task specification under this Agreement.

VI. **PERIOD OF PERFORMANCE:**

The period of performance of this Cooperative Agreement is from the effective date of signature by the TNC representative and the FWS Contracting Officer (or authorized FWS official) until terminated by either party as described in Section XII of this agreement and/or funds available for this Restoration Plan have been depleted. At the end of a five (5) year period after signature, this agreement will be reviewed by both parties and a determination will be made at the point if all terms and conditions remain the same.

VII. **FINANCIAL ADMINISTRATION:**

- 1) The funding contributed by the FWS is shown on each individual task specification issued under this Agreement. TNC must not accrue expenditures to be charged to the FWS nor will the FWS be obligated to reimburse the TNC for expenditures in excess of the obligated amount. Should excess costs be expected, TNC shall contact the FWS Program Officer for mutual approval and to determine the availability of funding for the excess costs by TNC and the FWS.
- 2) TNC's cost-sharing contribution to the Agreement, whether in actual dollars or in-kind services, personnel, etc., will be shown on each individual task specification issued under this Agreement, which will include a budget accompanying the project description. TNC will not be obligated to contribute funding to the task in excess of its' obligated amount.
- 3) Pre-award costs under this Agreement include direct and indirect expenses incurred by TNC prior to the actual award date of the Agreement. All pre-award costs are incurred at TNC's risk (i.e., the FWS is under no obligation to reimburse such costs if for any reason TNC does not receive a task specification or if the award is less than anticipated and inadequate to cover such costs).
- 4) Should TNC be unable to complete the provisions of this Agreement, all monies provided by the FWS which prove to be cancelable obligations or unallowable in accordance with OMB Circular A-122 ("Cost Principles for Nonprofit Organizations") or the approved budget, shall be refunded to the FWS.

- 5) Upon acceptance of the terms and conditions of this agreement and modifications as they occur TNC may submit requests for payment using Standard Form 270, Request for Advance or Payment or TNC's invoicing system to the Project Officer listed in Section VI of this agreement. All Recipients, which are not currently receiving funds electronically from the Department of the Interior or FWS, are responsible for completing a SF 3881(ACH Vendor/Miscellaneous Payment Enrollment Form) and forwarding it to the FWS Program Officer. The Division of CGS will provide a SF 3881(ACH) upon request. TNC shall submit an original and two copies of invoices to the FWS Program Officer for approval and transmittal to the paying office. All invoices shall include a reference to the Cooperative Agreement Number and the Task Specification Number.
- 6) Any portion of funds not expended at the completion of the period of performance of this Agreement shall be returned to the FWS, along with any interest earned on that amount.
- 7) TNC must furnish the following minimum information in support of all costs invoiced:
 - a) The period of performance for the costs claimed.
 - b) Current and cumulative expenditures by cost categories in the approved budget, and any other supporting data for unusual expenditures.

H. Notice to U.S. Fish and Wildlife Service Contractors/Vendors. The Debt Collection Improvement Act of 1996 (P.L. 104-134) was signed into law on April 26, 1996. The law requires Federal agencies to convert from issuing checks to making electronic fund transfer to pay contractors and vendors for goods and services. All recipients of Federal payments (except IRS tax refunds and credit card orders) who become eligible to receive those payments on or after July 26, 1996, must receive them electronically unless they certify that they do not have an account with a financial institution or authorized payment agent. If you do not have an account with a financial institution or authorized payment agent, you must so certify in a letter addressed to the Fish and Wildlife Fiscal Services Unit, referencing the contract/order number. The Fiscal Services Unit will have final authority on the method of payment.

VIII. GOVERNMENT FURNISHED PROPERTY

(Equipment means tangible non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.) TNC may use its own definition of equipment if such definition would at least include all equipment as defined above.

The FWS has not authorized TNC to incur expenses for capital equipment and/or property to be chargeable to the FWS.

IX. **PROGRAM OFFICERS**

- A. The FWS Program Officer is responsible for administering the performance of work under this Agreement. However, no oral understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement or any task specifications issued pursuant to the Agreement shall be effective or binding upon the Government unless formalized in writing and executed by the FWS Contracting Officer and TNC.

On all matters that pertain to the Agreement's terms, TNC shall communicate with the Contracting Officer. Whenever, in the opinion of TNC, the Program Officer requests effort outside the scope of the Agreement, the TNC shall so advise the Program Officer. If there still exists a disagreement as to proper work coverage, TNC shall notify the Contracting Officer in writing immediately. Proceeding with work outside the terms and conditions of the Agreement could result in nonpayment of invoices.

- B. Program Officer for the U.S. Fish and Wildlife Service (for the basic Agreement, individual task specifications may have other project officers assigned)

Colette S. Charbonneau
U.S. Fish and Wildlife Service
2661 Scott Tower Drive
New Franken, WI 54229
(920) 866-1726

- C. Program Officers for Recipient (for the basic Agreement, individual projects may have other project officers assigned)

The Nature Conservancy:

1. Derek Johnson
633 West Main Street
Madison, Wisconsin 53703
(608) 251-8140 x 140
2. Jeff Knoop
Upper Peninsula Conservation Center
125 West Washington Street, Suite G
Marquette, MI 49855

X. **ADMINISTRATIVE OFFICERS**

- A. Administrative/Contracting Officer for the U.S. Fish and Wildlife Service.

Christine Opheim
U.S. Fish and Wildlife Service
Bishop Henry Whipple Federal Bldg.

Room 652
1 Federal Drive
Fort Snelling, MN 55111-4056
(612) 713-5277

B. Administrative Officers for the Recipient.

Ricki Disdier
The Nature Conservancy
1101 West River Parkway, Suite 200
Minneapolis, MN 55415

XI. **AMENDMENTS AND MODIFICATIONS**

Mutual agreement may amend this agreement. Either party may propose modifications or renewals anytime during performance which shall become effective upon written approval of both parties.

XII. **TERMINATION**

Either party may terminate this agreement after providing thirty (30) days written notification to the other party of its intent to withdraw support. In which case, the parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. In any event, TNC shall be compensated for costs incurred or otherwise committed to prior to the date of termination in connection with any task specifications.

XIII. **GENERAL PROVISIONS** (See Attachment A)

IX. **CERTIFICATIONS**

The Certifications Applicable to Federal Domestic Grants and Cooperative Agreements executed by TNC is a part of this Agreement and incorporated as Attachment B.

In witness whereof, each party has caused this Agreement to be executed by an authorized official on the day and year set forth below their signature.

U.S. FISH AND WILDLIFE SERVICE

Signature

Date

**Christine Opheim
Contracting Officer**

THE NATURE CONSERVANCY

By: _____
Mary Jean Huston **Date**
Wisconsin State Director

By: _____
Helen Taylor **Date**
Michigan State Director