

REIMBURSABLE AGREEMENT
BETWEEN

AND

UNITED STATES FISH AND WILDLIFE SERVICE

Agreement numbers:

U.S. Fish and Wildlife Service

THIS AGREEMENT is made and entered into by and between the

hereinafter

referred to as "

" and the U.S. Fish and Wildlife Service,

, hereinafter referred to as

" ."

1. LEGAL AUTHORITIES (*see instructions*)

This agreement is authorized by the following laws, regulations, ordinances, bylaws, or other documents:

A. U.S. Fish and Wildlife Service:

B.

:

(1) Program authority(ies):

(2) Authority to accept funds:

2. BACKGROUND AND PURPOSES. [*Insert relevant background information and state the objective s/purposes of the agreement. See instruction s for example.*]

3. STATEMENT OF WORK. [*Detail the specific obligations of each party. See instruction s for example.*]

4. PERIOD OF PERFORMANCE. *[Identify performance period, budget period, and project period for the agreement. See Instructions.]*

5. PRICE/COSTS. *[Several basic pricing alternatives are possible. Select one of the following alternatives or discuss other possibilities with the Contracting Officer.]*

Fixed price: The total fixed price for the performance of the statement of work shall be \$ _____.

Cost reimbursement: The parties have estimated the cost of accomplishing the work herein at \$ _____ as shown in the cost estimate in attachment _____. The Fish and Wildlife Service will make a good faith effort to accomplish the work within that estimate, and it will promptly notify _____ as soon as it appears that additional funding will be necessary to complete the project. The Fish and Wildlife Service will not incur costs or request reimbursement above this stated cost level unless the agreement is first modified as provided herein.

Cost-share: The parties agree to split the total costs of this project with the Fish and Wildlife Service paying _____% and the requesting party paying _____. This project is currently estimated to cost \$ _____ total, so the requesting party therefore agrees to pay its share of \$ _____.

6. BILLING PROCEDURES AND PAYMENT TERMS. *[For State, local, and tribal agreements, payment terms and schedules that comply with 267 FW 1 must be included in the agreement. See Instructions.]*

7. MODIFICATIONS TO THE AGREEMENT. *[Insert terms for modifying the agreement. See Instructions.]*

8. TERMINATION. *[Insert termination provisions. See Instructions.]*

12. RIGHTS IN DATA.

13. ALL RELATED UNDERSTANDINGS AND AGREEMENTS CONTAINED HEREIN.

The parties intend to include in this agreement and any modifications to it all prior and all future understandings or agreements regarding this subject matter. In particular, any understandings or agreements--whether oral or written, currently existing or yet to be made--regarding the subject matter of this agreement but contrary to a plain reading of its terms, shall not be deemed to exist or to bind any of the parties hereto.

14. WAIVER.

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original agreement.

15. SEVERABILITY.

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this agreement are declared to be severable.

16. ASSIGNMENT.

The work to be provided under this agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

17. INDEPENDENT CAPACITY.

The parties to this agreement are independent entities. The employees or agents of each party who are engaged in the performance of this agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

18. NO ENDORSEMENTS IMPLIED. ADVANCE APPROVAL OF ADVERTISING.

The parties agree that the involvement of the U.S. Fish and Wildlife Service in this project shall not be used in any way by the requesting party to imply an endorsement by the USFWS of the that party's actions, products, or services. All advertising or other publicity for the project by either party which mentions the participation of the other party shall first be approved for release by both parties, and approval may be withheld for any reason sufficient to either party. If either party should appear to have violated this clause, the aggrieved party may request the immediate cessation of those actions plus further action to effectively counteract any mistaken impressions in the public mind. If the violating party fails to comply fully with the request, the aggrieved party may unilaterally take any action it considers necessary to correct the mistaken impression and charge the other party for the reasonable costs of that action. Failure to promptly pay those reasonable costs shall be treated as a dispute under the terms of this agreement.

19. PUBLIC INFORMATION.

This agreement is subject to the Freedom of Information Act (FOIA). Identify and provide justification for any information contained within this agreement that could cause competitive harm and may therefore be exempt under 5. U.S.C. 552c(4) (confidential business information).

20. WARRANTY OF SERVICES.

The U.S. Fish and Wildlife Service will make every reasonable effort to provide the services and deliverables as described in this agreement. However, as a Federal agency, it cannot provide either an express or implied warranty for its services or products.

21. TAXES.

The prices or cost estimates in this agreement are intended to include all applicable Federal, State, and local taxes. The parties understand and agree that the U.S. Fish and Wildlife Service is required by law to pay many of these taxes, including Federal taxes. However, the U.S. Fish and Wildlife Service will exercise any tax exemptions which are lawfully available to it in the performance of this work.

[The agreement must be signed by individuals authorized by their respective entities to enter into contractual agreements.]

IN WITNESS WHEREOF, the parties have executed this agreement.

UNITED STATES FISH AND WILDLIFE SERVICE
APPROVED FOR CONTRACTUAL SUFFICIENCY:

Name and signature, Contracting Officer (Date)

Warrant No.

EXECUTED:

Signature of FWS authorized representative

Signature of other party's representative

Name/Title

Name/Title

Date

Date

Warrant No. (Optional)

INSTRUCTIONS FOR COMPLETING THE REIMBURSABLE AGREEMENT

Heading. Enter the name of State, tribal, or local government, or private entity and the name of the Fish and Wildlife Service field or program office. Example:

REIMBURSABLE AGREEMENT
BETWEEN
STATE OF WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
AND
YYYYYYYYY NATIONAL WILDLIFE REFUGE
UNITED STATES FISH AND WILDLIFE SERVICE

THIS AGREEMENT is made and entered into by and between the State of Washington Department of Fish and Wildlife, hereinafter referred to as "DFW" and the U.S. FISH AND WILDLIFE SERVICE, YYYYYYYY National Wildlife Refuge, hereinafter referred to as "YYYYYYYYY Refuge."

Section 1 Legal Authorities. Cite a minimum of two authorities for the Fish and Wildlife Service: (1) The program authority to perform the requested work and (2) the authority to accept the funds. Authority to perform the work would include program/resource authority(ies). Authority to accept the funds would include all applicable authorities for reimbursable agreements listed in 267 FW 1. In addition, the paying entity may require their own authorities to be cited here. Agreement review is necessary to assure that paying entity authorities are consistent with Service policy and do not preclude the recovery of all Service costs. Example:

A. U.S. Fish and Wildlife Service: B. State of Washington Department of Fish and Wildlife

(1) Program authority(ies): (1) Chapter 39.34 Revised Code of Washington

- a. Section 1, Fish and Wildlife Coordination Act 49 Stat/401 as amended; 16 USC 661 et seq.)
b. Section 7, Fish and Wildlife Act of 1956 16 USC 742f(a)(4)
c. North American Wetlands Conservation Act (16 USC 4401 et seq.)
d. North American Waterfowl Management Plan (31 USC 6305);

(2) Authority to accept funds:

- a. 31 USC 6505 (Intergovernmental Cooperation Act of 1968)
b. Public Law 106-113 (Appropriations Act for the Department of the Interior and Related Agencies, 2000)
c. House Report 106-222 and Senate Report 106-99.

Section 2 Background and Purposes. Include relevant background information and state the objectives/purposes of the agreement. Example:

It is the purpose of this agreement to facilitate the cooperation between the parties in restoring and enhancing wetlands, riparian areas, and adjacent uplands on the Tri-county Wildlife Management Area located in . The USFWS and [name of other party] have a common interest in protecting, enhancing and restoring wetlands and other habitats for the benefit of migratory waterfowl, other migratory birds, and other wildlife, hereafter referred to as "habitat restoration." The agreement provides for interchange of services, personnel, equipment, facilities, and funds to restore habitat to include, but not limited to, the construction of dikes and installment of water control structures.

Section 3 Statement of Work. Detail the specific obligations of each party. If the USFWS is performing all of the work, then the obligations of the other party may simply be to "make the payments as provided in [article X] of the agreement and to approve the work products within [specified period or a reasonable time]". The statement of work may also be added as an attachment; in that case insert a cross reference such as, "The statement of work in attachment A is incorporated in this agreement." Another example: The Service will furnish the personnel, equipment, and supplies and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit "A" attached hereto and incorporated herein.

Section 4 Period of Performance. Identify the performance period, budget period, and project period for the agreement. The period of performance shall begin no earlier than the date of the final signature on the agreement, but it may begin on a later date. Work must not start until the agreement is fully signed, and the Finance Center will not cash any checks received for advance payment until the agreement is fully signed. Example:

The period of performance of this agreement shall commence upon execution by both parties to this agreement and be completed not later

than [insert date] unless terminated sooner or extended by a written modification as provided herein.

Section 5 Price/Costs. Several basic pricing alternatives are possible. Select one of the alternatives or discuss other possibilities with the Contracting Officer.

Cost Share Alternative. Not-to-exceed dollar totals may also be inserted for either or both parties if agreed, and those totals may always be changed later if a modification is signed. Enter terms for payment. Example:

This project is currently estimated to cost \$1,200,000 total, so the requesting party therefore agrees to pay its share of \$ insert amount upon signing this agreement (or insert other agreed terms for payment, such as "in advance of each segment of the work," or "within 30 days of receiving an invoice."

Section 6 Billing Procedures and Payment Terms.

For agreements with Federal entities, any IPAC billings must reference this reimbursable agreement number. For State, local, and tribal agreements, payment terms and schedules that comply with 267 FW 1 may be included in the agreement. Example:

[Name of other party] will reimburse the Service for complete costs of the work performed during the billing cycle under this agreement upon receipt of an original invoice. USFWS/[program or station] will submit invoices quarterly or not more frequent than monthly to [name of other party] for actual work performed to the satisfaction of [name of other party] under this agreement. Payment to USFWS for approved and completed work will be made by warrant or account transfer by [name of other party] within 30 days [90 days for States and local and tribal governments] of receipt of the invoice.

For agreements with entities other than State, local, and tribal governments, advance payment is required, and the agreement should incorporate that requirement. The Service may request advance payment from State, local, and tribal governments. Example:

Example: Upon acceptance of this agreement by both parties, [name of other party] agrees to make an advance payment to the U.S. Fish and Wildlife Service for the total agreement amount of \$ _____. An advance payment check should be made payable to the U.S. Fish and Wildlife Service and should accompany the fully executed copy of this agreement provided to the U.S. Fish and Wildlife Service. The check and the agreement should be forwarded to the address provided in the Contract Management section of this agreement. Actual project expenditure data (FWS Reimbursable Project Status Report) will be provided to [name and address of other party] on a quarterly basis until completion of the project. If there are any remaining funds in excess of actual direct and indirect project expenditures upon completion of the project, those excess funds will be refunded to [name of other party]. If this agreement is modified and the total amount is increased, [name of other party] will submit a check for the increase with the signed copy of the modification. If the agreement is modified and the total amount is decreased, the USFWS shall refund the difference within 30 days of signing the modification.

Section 7 Modification to the Agreement. Insert terms for modifying the agreement. Example:

This agreement may be modified by mutual agreement of the parties. Such modifications shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Section 8 Termination. Insert termination provisions. Example:

Either party may terminate this agreement upon 30 days prior written notification to the other party. If this agreement should be terminated by the USFWS, its liability shall extend only to the release of its work products and related materials to [name of other party] by the termination date. If this agreement should be terminated by [name of other party], its liability shall extend only to payment for the actual and reasonable costs of services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination.

Section 10 Governance. Insert any other State, local, or tribal laws or regulations applicable to the work of this agreement.

Section 11 Disputes. Insert appropriate title and name of other party.

Section 12 Rights in Data. Insert appropriate clause, or optional clauses. This clause may be critical in some research and development agreements, and the Office of the Solicitor should be asked to review any proposed language. The distribution of these rights may span the entire spectrum from a total monopoly by one party or the other to many degrees of sharing in between. The sample language below allows both parties to exercise all rights equally without limitation, but this will not be acceptable in every situation. Example:

Any research data collected or produced under this agreement shall be jointly owned by the parties, and each party shall have complete and unlimited access to use, modify, copy, and disseminate all such data without notice to or approval from the other parties.]