



**MODEL AGREEMENT
FOR
CONDUCTING INVASIVE SPECIES ACTIVITIES
UNDER
SECTION 104(d) OF THE RIVER AND HARBOR ACT OF 1958, AS AMENDED
(WORK PERFORMED BY THE NON-FEDERAL INTEREST)
JANUARY 28, 2022**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model agreement for conducting invasive species activities as necessary to protect the Columbia, Upper Missouri, Upper Colorado, South Platte, Arkansas, and Russian (California) River Basins and to protect the basins and watersheds that adjoin an international border between the United States and Canada undertaken pursuant to Section 104(d) of the River and Harbor Act of 1958, as amended (33 U.S.C. 610). The agreement provides for Corps reimbursement of eligible costs incurred by the non-Federal interest (i.e., the State or local governmental entity where such work is located) pursuant to the cost-sharing requirements of this agreement.
2. Authority to approve an agreement that does not deviate from the approved model has been delegated to the MSC Commander. Division Counsel concurrence that the agreement does not deviate from the subject model, and is appropriate for use for the particular invasive species activities, is required prior to approval. In addition, authority to approve non-substantive deviations to the model agreement also has been delegated to the MSC Commander. Division Counsel concurrence that a deviation is non-substantive, with the recommendation to approve the deviation, is required prior to approval by the MSC Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted to CECW-CO-N, with MSC Division Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the agreement after its approval.
3. Make all required insertions; remove this cover page; remove the open and close brackets and any instructional text; and ensure the page numbers, spacing and page breaks throughout the agreement are appropriate.
4. Include the Certificate of Authority (i.e., use the Certificate of Authority for Environmental Infrastructure Assistance for this agreement), Certification Regarding Lobbying, and the Non-Federal Interest's Self-Certification of Financial Capability as a part of the agreement package submitted for approval. These certificates can be found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL INTEREST]
FOR
CONDUCTING INVASIVE SPECIES ACTIVITIES
AT
[INSERT APPLICABLE LOCATION AND RIVER BASIN OR WATERSHED]

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for **[Insert Name of USACE District, e.g., Walla Walla District]** (hereinafter the “District Commander”) and the **[FULL NAME OF THE NON-FEDERAL INTEREST]** (hereinafter the “Non-Federal Interest”), represented by its **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, Section 104 of the River and Harbor Act of 1958, as amended (33 U.S.C. 610) (hereinafter “Section 104”), authorized a comprehensive program to provide for the prevention and control of noxious aquatic plants and aquatic invasive species from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States;

WHEREAS, in carrying out Section 104(d), the Government is authorized to establish, operate, and maintain new or existing watercraft inspection and decontamination stations to protect certain river basins and watersheds, including **[INSERT APPLICABLE RIVER BASIN OR WATERSHED]**, with such stations to be placed at locations with the highest likelihood of preventing the spread of aquatic invasive species into and out of waters of the United States, as determined by the Government in consultation and coordination with State governors, Indian tribes, and other Federal agencies and to assist States with rapid response to any aquatic invasive species, including quagga or zebra mussel, infestation (hereinafter the “invasive species activities” as defined in Paragraph 1.a.);

WHEREAS, Section 104(d)(2) provides that the non-Federal share of the cost of the invasive species activities, including personnel costs, shall be 50 percent, and shall be provided by the State or local governmental entity in which such work is located;

WHEREAS, the Government and the Non-Federal Interest have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. Definitions:

a. The term “invasive species activities” means the establishment, operation, and maintenance of new or existing watercraft inspection and decontamination stations and conducting rapid response actions at the **[INSERT APPLICABLE LOCATION AND RIVER BASIN OR WATERSHED]** consisting of the following activities **[DESCRIBE THE ACTIVITIES TO BE CONDUCTED]** as generally described in the Letter Report for **[INSERT NAME OF THE LETTER REPORT]** dated **[MONTH YEAR]** and approved by the Director of Civil Works on **[MONTH DAY, YEAR]**.

b. The term “invasive species activities costs” means all costs incurred by the Government and Non-Federal Interest following the date of execution of this Agreement directly related to the invasive species activities and cost shared. The term includes, but is not necessarily limited to: the Non-Federal Interest’s costs for planning, engineering, design, establishment, operation, maintenance, supervision and administration of watercraft inspection and decontamination stations; the Non-Federal Interest’s costs to prepare for and engage in rapid response actions (such as costs to train, perform response drills, obtain equipment for use in response drills and actual rapid response actions, investigate new detections of Dreissenid mussels, etc.); the Government’s costs for conducting any environmental compliance activities not completed as a part of the Letter Report, providing management oversight, reviewing design work, and invoices provided by the Non-Federal Interest, conducting monitoring and periodic inspections, and any other costs the Government incurs pursuant to this Agreement’s provisions; and the Non-Federal Interest’s costs for completing any other regional compliance required at state, county, or local levels. The term does not include any costs for dispute resolution, real property interests, or audits.

2. The Government is responsible for completing environmental compliance activities required by Federal environmental law. The Non-Federal Interest is responsible for completing any other regional compliance required at state, county, or local levels and must provide written documentation of such compliance to the Government.

3. In carrying out its obligations under this Agreement, the Non-Federal Interest shall comply with requirements of Federal laws and implementing regulations, if applicable, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto, and the following paragraphs.

a. The Non-Federal Interest shall provide the real property interests required to conduct the invasive species activities at no cost to the Government. The Non-Federal Interest hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Interest now or hereafter owns or controls for the purpose of performing periodic inspections pursuant to Paragraph 4.

b. The Non-Federal Interest shall perform the invasive species activities in accordance with the Letter Report, its subsequent amendments if any, and any annual or supplemental scope of work, work plan, or other decision document applicable to such activities, approved by the Government. In performing the invasive species activities covered by this Agreement, the Non-Federal Interest shall obtain all applicable licenses and necessary permits and comply with applicable Federal labor laws covering non-Federal construction.

c. No more frequently than every 30 calendar days, the Non-Federal Interest shall provide the Government an invoice with the documentation necessary for the Government to determine whether the Non-Federal Interest's costs are eligible for inclusion in invasive species activities costs. Appropriate documentation includes invoices and certification of specific payments to the Non-Federal Interest's contractors, suppliers, and employees.

d. The Non-Federal Interest shall hold and save the Government free from all damages arising from invasive species activities, except for damages due to the fault or negligence of the Government or its contractors.

e. The Non-Federal Interest shall not use Federal funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for invasive species activities. Federal funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

4. The Government may perform periodic inspections to verify the progress of the invasive species activities and that the work is being performed in a satisfactory manner.

5. The annual invasive species activities costs are projected to be \$ _____. The Government shall be responsible for 50 percent of invasive species activities costs, with reimbursement for costs incurred by the Non-Federal Interest determined in accordance with this paragraph. The Government shall review each invoice provided by the Non-Federal Interest pursuant to paragraph 3.d. and shall determine the costs, or portion thereof, that are eligible for inclusion in invasive species activities costs. To the maximum extent practicable, within 30 calendar days of receipt of each invoice, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Interest for costs for each invoice by taking 50 percent of the Non-Federal Interest's eligible costs, less 50 percent of the costs incurred by the Government during that same invoice period. The Government shall provide a written explanation to the Non-Federal Interest for costs it determines are not eligible for inclusion in invasive species activities costs.

6. After the Non-Federal Interest has provided its final invoice to the Government, the Government shall conduct a final accounting and furnish the Non-Federal Interest with the written results of such final accounting. As a part of the final accounting, the Government will determine the total reimbursable amount by taking 50 percent of the Non-Federal Interest's eligible costs, less 50 percent of the Government's costs for the invasive species activities. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Interest, the Non-Federal Interest, within 60 calendar days

of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursement by delivering a check payable to “FAO, USAED, [INSERT DISTRICT AND EROC CODE, e.g., Walla Walla (G4)]” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Interest are less than the total reimbursable amount, the Government, subject to the availability of funds, shall reimburse the Non-Federal Interest for the amount equal to such difference.

7. As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party 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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

8. Maintenance of Records and Audits.

a. The parties shall develop procedures for the Non-Federal Interest to maintain books, records, documents, or other evidence pertaining to costs and expenses for a minimum of five years after such costs and expenses are incurred. The Non-Federal Interest shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

b. The Government may conduct, or arrange for the conduct of, audits of inspection station activities costs. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government’s costs of audits shall not be included in inspection and decontamination station activities costs.

c. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Interest to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Interest’s request, provide to the Non-Federal Interest or independent auditors any such information necessary to enable an audit of the Non-Federal Interest’s activities under this Agreement. The Non-Federal Interest shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

9. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

10. 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 either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

[TITLE]

[FULL NAME OF NON-FEDERAL INTEREST]

[ADDRESS]

If to the Government:

District Commander

U.S. Army Corps of Engineers, _____ District

[ADDRESS]

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

11. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

12. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

13. This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either Party may unilaterally terminate this Agreement by providing at least 90 calendar days written notice to the other Party. In the event of termination, the Parties will proceed to a final accounting as provided in Paragraph 6.

14. Authority for the Non-Federal Interest to undertake invasive species activities under this Agreement expires five years after the effective date of this Agreement. The Parties will proceed to a final accounting as provided in Paragraph 6.

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

DEPARTMENT OF THE ARMY

**[FULL NAME OF NON-FEDERAL
INTEREST]**

BY: _____
[INSERT TYPED NAME]
[Insert Rank], U.S. Army
District Commander

BY: _____
[INSERT TYPED NAME]
[Insert Full Title]

DATE: _____

DATE: _____