

NORTH OGDEN WATERSHED, UTAH WATERSHED WORK PLAN AGREEMENT

between

North Ogden City

and

Weber-Box Elder Conservation District
(Referred to herein as Sponsors)

and the

Natural Resources Conservation Service,
U.S. Department of Agriculture
(Referred to herein as NRCS)

Whereas, application has heretofore been made to the Secretary of Agriculture by North Ogden City, Utah and the Weber-Box Elder Conservation District for assistance in preparing a plan for works of improvement for the North Ogden Watershed, Utah, under the authority of the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. Sections 1001 to 1008, 1010, and 1012; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act (Public Law 83-566), as amended, has been assigned by the Secretary of Agriculture to the NRCS; and

Whereas, there has been developed through the cooperative efforts of the Sponsors and the NRCS a Watershed Work Plan and Environmental Assessment for works of improvement for the North Ogden Watershed, Utah, hereinafter referred to as the Watershed Project or Plan, which Plan is annexed to and made part of this agreement;

Now, therefore, the Secretary of Agriculture through the NRCS and the Sponsors hereby agree on this Watershed Plan and that the works of improvement for this project will be installed, operated, and maintained in accordance with the terms, conditions, and stipulations provided for in this Watershed Plan and including the following:

- 1. Term.** The term of this agreement is for the installation period (2 years) and evaluated life of the project (100 years) and does not commit the NRCS to assistance of any kind beyond the end of the evaluated life (102 years).
- 2. Costs.** The costs shown in this plan are preliminary estimates. Final costs to be borne by the parties hereto will be the actual costs incurred in the installation of works of improvement.
- 3. Real Property.** The Sponsors will acquire such real property as will be needed in connection with the works of improvement. The amounts and percentages of the real property acquisition costs to be borne by the Sponsors and the NRCS are as shown in the cost-share table in section 5 hereof.

The Sponsors agrees that all land acquired for measures, other than land treatment practices, with financial or credit assistance under this agreement will not be sold or otherwise disposed of for the evaluated life of the project except to a public agency that will continue to maintain and operate the development in accordance with the operation and maintenance agreement.

4. **Uniform Relocation Assistance and Real Property Acquisition Policies Act.** The Sponsors hereby agrees to comply with all of the policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601 et seq. as further implemented through regulations in 49 CFR Part 24 and 7 CFR Part 21) when acquiring real property interests for this federally assisted project. If the Sponsors is legally unable to comply with the real property acquisition requirements, it agrees that, before any Federal financial assistance is furnished; it will provide a statement to that effect, supported by an opinion of the chief legal officer of the state containing a full discussion of the facts and law involved. This statement may be accepted as constituting compliance.
5. **Cost-Share for Watershed Project Plans.** Table 1 shows the cost-share percentages and amounts for the Watershed Project Plan implementation.
6. **Land Treatment Agreements.** The Sponsors will obtain agreements from owners of not less than 50 percent of the land above each multiple-purpose and floodwater-retarding structure. These agreements must provide that the owners will carry out farm or ranch conservation plans on their land. The Sponsors will ensure that 50 percent of the land upstream of any retention reservoir site is adequately protected before construction of the dam. The Sponsors will provide assistance to landowners and operators to ensure the installation of the land treatment measures shown in the Watershed Plan. The Sponsors will encourage landowners and operators to continue to operate and maintain the land treatment measures after the long-term contracts expire, for the protection and improvement of the watershed.
7. **Floodplain Management.** Before construction of any project for flood prevention, the Sponsors agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs. The Sponsors is required to have development controls in place below low and significant hazard dams prior to NRCS or the Sponsors entering into a construction contract.
8. **Water and Mineral Rights.** The Sponsors will acquire or provide assurance that landowners or resource users have acquired such water, mineral, or other natural resources rights pursuant to State law as may be needed in the installation and operation of the works of improvement.
9. **Permits.** The Sponsors will obtain and bear the cost for all necessary Federal, State, and local permits required by law, ordinance, or regulation for installation of the works of improvement.

Table 1. Cost-share Table for Watershed Operation Projects

Works of Improvement	NRCS		Sponsors		Total
	Percent	Cost	Percent	Cost	Cost
Cost-Sharable Items ^{1/}					
Flood Prevention - Storage Reservoir, Pump Station, and Floodwater Pipelines (Flood Prevention)	100	\$2,598,488	0	\$0	\$2,598,488
Agricultural Water Management - Storage Reservoir, Pump Station, and Irrigation Pipelines (Agricultural Water Management)	75	\$5,872,055	25	\$1,957,352	\$7,829,407
Recreation - Trail, Pavilion, Restrooms, Open Space, Playground Equipment, Courts, and Parking Lot (Public Recreation)	50	\$1,252,633	50	\$1,252,633	\$2,505,267
Relocation ^{2/}	0	\$0	0	\$0	\$0
Subtotal: Cost-Sharable Costs		\$9,723,177		\$3,209,985	\$12,933,162
Non-Cost-Sharable Items	Percent	Cost	Percent	Cost	Cost
NRCS Technical Assistance/Engineering	100	\$1,799,397	0	\$0	\$1,799,397
Project Administration	97	\$449,849	3	\$12,000	\$461,849
Water, Mineral and Other Resource Rights	0	\$0	0	\$0	\$0
Permits	0	\$0	100	\$30,000	\$30,000
Real Property Rights	0	\$0	0	\$0	\$0
Relocation, Beyond Required Decent, Safe, Sanitary	0	\$0	0	\$0	\$0
Non-Project Costs	0	\$0	0	\$0	\$0
Subtotal: Non-Cost-Sharable Costs		\$2,249,246		\$42,000	\$2,341,246
Total		\$11,972,423		\$3,251,985	\$15,224,408

1/ The cost-share rate is the percentage of the average cost of installing the practice in the selected plan for the evaluation unit. During project implementation, the actual cost-share rate must not exceed the rate of assistance for similar practices and measures under existing national programs.

2/ / Investigation of the watershed project area indicates that no displacements will be involved under present conditions. However, in the event that displacement becomes necessary at a later date, the cost of relocation assistance and payments will be cost-shared in accordance with the percentages shown.

- 10. NRCS Assistance.** This agreement is not a fund-obligating document. Financial and other assistance to be furnished by the NRCS in carrying out the plan is contingent upon the fulfillment of applicable laws and regulations and the availability of appropriations for this purpose.
- 11. Additional Agreements.** A separate agreement will be entered into between the Sponsors and the NRCS before either party initiates work involving funds of the other party. Such agreements will set forth in detail the financial and working arrangements and other conditions that are applicable to the specific works of improvement.
- 12. Amendments.** This plan may be amended or revised only by mutual agreement of the parties hereto, except that the NRCS may deauthorize or terminate funding at any time if it determines that the Sponsors has failed to comply with the conditions of this agreement or when the program funding or authority expires. In this case, the NRCS must promptly notify the Sponsors in writing of the determination and the reasons for the deauthorization of project funding, together with the effective date. Payments made to the Sponsors or recoveries by the NRCS must be in accordance with the legal rights and liabilities of the parties when project funding has been deauthorized. An amendment to incorporate changes affecting a specific measure may be made by mutual agreement between the Sponsors and the NRCS having specific responsibilities for the measure involved.
- 13. Prohibitions.** No member of or delegate to Congress, or resident commissioner, may be admitted to any share or part of this plan, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this agreement if made with a corporation for its general benefit.
- 14. Operation and Maintenance (O&M).** The Sponsors will be responsible for the operation, maintenance, and any needed replacement of the works of improvement by performing the work or arranging for such work, in accordance with an O&M Agreement. An O&M agreement will be entered into before Federal funds are obligated and will continue for the project life 100 years. Although the Sponsors's responsibility to the Federal Government for O&M ends when the O&M agreement expires upon completion of the evaluated life of measures covered by the agreement, the Sponsors acknowledge that continued liabilities and responsibilities associated with works of improvement may exist beyond the evaluated life.
- 15. Emergency Action Plan.** Prior to construction, the Sponsors must prepare an Emergency Action Plan (EAP) for each dam or similar structure where failure may cause loss of life or as required by state and local regulations. The EAP must meet the minimum content specified in NRCS Title 180, National Operation and Maintenance Manual (NOMM), Part 500, Subpart F, Section 500.52, and meet applicable State agency dam safety requirements. The NRCS will determine that an EAP is prepared prior to the execution of fund obligating documents for construction of the structure. EAPs must be reviewed and updated by the Sponsors annually.

16. Nondiscrimination Provisions. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at "How to File a Program Discrimination Complaint" and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

By signing this agreement, the recipient assures the USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

17. Certification Regarding Drug-Free Workplace Requirements (7 CFR Part 3021).

By signing this Watershed Agreement, the Sponsors is providing the certification set out below. If it is later determined that the Sponsors knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action as authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. Section 812) and as further defined by regulation (21 CFR Sections 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantees' payroll; or employees of sub-recipients or sub-contractors in covered workplaces).

18. Certification:

- A. The Sponsors certifies that they will or will continue to provide a drug-free workplace by:
- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 - (2) Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The danger of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1).
 - (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee must:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

- (5) Notifying the NRCS in writing, within 10 calendar days after receiving notice under paragraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice must include the identification numbers of each affected grant.
 - (6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (4) (b), with respect to any employee who is so convicted.
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
 - (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).
- B. The Sponsors may provide a list of the sites for the performance of work done in connection with a specific project or other agreement.
 - C. Agencies must keep the original of all disclosure reports in the official files of the agency.

19. Certification Regarding Lobbying (7 CFR Part 3018) (for projects > \$100,000)

- A. The Sponsors certifies to the best of their knowledge and belief, that:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsors, to any person for influencing or attempting to influence an officer or employee of an agency, 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 must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Sponsors must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients must certify and disclose accordingly.
- B. 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 31 U.S.C., Section 1352. 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.

20. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions (7 CFR Part 3017).

- A. The Sponsors certifies to the best of their knowledge and belief, that they and their principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A(2) of this certification; and
 - (4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- B. Where the Sponsors is unable to certify to any of the statements in this certification, such prospective participant must attach an explanation to this agreement.

21. Clean Air and Water Certification. (Applicable if this agreement exceeds \$100,000, or a facility to be used has been subject of a conviction under the Clean Air Act (42 U.S.C. Section 7413(c)) or the Federal Water Pollution Control Act (33 U.S.C. Section 1319(c)) and is listed by EPA, or is not otherwise exempt.)

- A. The Sponsors signatory to this agreement certifies as follows:

- (1) Any facility to be utilized in the performance of this proposed agreement is (), is not () listed on the Environmental Protection Agency List of Violating Facilities.
- (2) To promptly notify the NRCS-State administrative officer prior to the signing of this agreement by the NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which is proposed for use under this agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (3) To include substantially this certification, including this subparagraph, in every nonexempt sub-agreement.

- B. The Sponsors signatory to this agreement agrees as follows:

- (4) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. Section 7414) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, issued there under before the signing of this agreement by the NRCS.
- (5) That no portion of the work required by this agreement will be performed in facilities listed on the EPA List of Violating Facilities on the date when this agreement was signed by the NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (6) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.
- (7) To insert the substance of the provisions of this clause in any nonexempt sub- agreement.

- C. The terms used in this clause have the following meanings:

- (8) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.).

- (9) The term “Water Act” means Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.).
- (10) The term “clean air standards” means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Air Act (42 U.S.C. Section 7414) or an approved implementation procedure under section 112 of the Air Act (42 U.S.C. Section 7412).
- (11) The term “clean water standards” means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. Section 1342), or by a local government to assure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. Section 1317).
- (12) The term “facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location or site of operations, owned, leased, or supervised by a Sponsors, to be utilized in the performance of an agreement or sub-agreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location will be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.


22. Assurances and Compliance. As a condition of the grant or cooperative agreement, the Sponsors assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out below which are hereby incorporated in this agreement by reference, and such other statutory provisions as a specifically set forth herein.

State, Local, and Indian Tribal Governments: OMB Circular Nos. A-87, A-102, A-129, and A-133; and 7 CFR Parts 3015, 3016, 3017, 3018, 3021, and 3052.

Nonprofit Organizations, Hospitals, Institutions of Higher Learning: OMB Circular Nos. A-110, A-122, A-129, and A-133; and 7 CFR Parts 3015, 3017, 3018, 3019, 3021 and 3052.

23. Examination of Records. The Sponsors must give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement, and retains all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

24. Signatures

Sponsors: North Ogden City	
Signature:	
Name:	
Title: Mayor	
Date:	
Address:	
<p><i>The signing of this plan was authorized by a resolution of the governing body of North Ogden City</i> <i>Adopted at a meeting held on</i> _____ Address _____ Secretary [or other Title]: _____ Date: _____</p>	
Sponsors: Weber-Box Elder Conservation District	
Signature:	
Name:	
Title: President	
Date:	
Address:	
<p><i>The signing of this plan was authorized by a resolution of the governing body of the Weber-Box Elder Conservation District</i> <i>Adopted at a meeting held on</i> _____ Address _____ Secretary [or other Title]: _____ Date: _____</p>	
 Natural Resources Conservation Service	
Approved By:	
	_____ EMILY FIFE
Title:	NRCS State Conservationist
Date:	