COOPERATIVE AGREEMENT

THIS CONTRACT AND AGREEMENT is entered into by and between the parties shown below, pursuant to the authority granted and in compliance with the provisions of: Title 7, Chapter §201, Agriculture Code of Texas, and Title 31, Part 17, Chapter 529, Texas Administrative Code.

I. Contracting Parties:

This Agreement is made and entered into by and between the *Texas State Soil and Water Conservation Board*, hereinafter referred to as "RECEIVING AGENCY" whose principal place of business is located at 1497 Country View Lane, Temple, Texas 76501 and Wise County, hereinafter referred to as "PERFORMING AGENCY" whose principal place of business is located at P. O. Box 393 Decatur, TX 76234, with reference to the following facts:

II. Scope of Work:

a. The PERFORMING AGENCY shall complete all structural repair activities on flood control dam(s) as follows in Table 1:

Table 1.

National Inventory of Dams Identification Number	Flood Control Dam Common Name	Structural Repair Activity to be Performed
TX01524	Denton Creek Watershed Site 16	PERFORMING AGENCY costs for construction repair related to the listed dam(s) according to USDA-NRCS approved plans and specifications.
TX01509	Denton Creek Watershed Site 23A	
TX01510	Denton Creek Watershed Site 23B	
TX01473	Denton Creek Watershed Site 26	

b. The PERFORMING AGENCY agrees to complete the structural repair activities listed in Table 1 in accordance with all applicable local, state, and federal laws and rules, including Texas Administrative Code, Title 31, Chapter 529.

c. The PERFORMING AGENCY agrees to perform all activities within Table 1 in accordance with the "Consideration/Price" specified in Section IV of this cooperative agreement.

d. The PERFORMING AGENCY agrees to perform all activities within Table 1 in accordance with engineering plans and design specifications provided to the PERFORMING AGENCY by the USDA NRCS. All deviations from the engineering design specifications require approval by the USDA NRCS prior to initiating work.

e. Upon completion of structural repair activities specified in Table 1, unexpended funds obligated within this cooperative agreement may be used by the PERFORMING AGENCY to conduct operation and maintenance activities as defined by Texas Administrative Code, Title 31, Part 17, Chapter 529. Utilizing unexpended funds from this cooperative agreement for operation and maintenance activities requires prior approval of the RECEIVING AGENCY.

III. Deliverables:

The PERFORMING AGENCY agrees to submit all deliverables as specified or indicated in the "Scope of Work".

IV. Consideration/Price:

a. The RECEIVING AGENCY shall provide the PERFORMING AGENCY reimbursement for approved work at the rates set herein for labor, material, and/or completion of work. Invoices will be reimbursed at a **rate of .2375% of eligible cost, not to exceed a maximum agreement amount of $131,764.00.** Eligible cost includes construction activities. The PERFORMING AGENCY shall successfully complete the services specified in Section II "Scope of Work" in accordance with contract requirements and within the ceiling price and budget as specified.

b. Project Budget.

   i. Not more than $131,764.00 may be expended for construction activities without prior approval by the RECEIVING AGENCY.

c. The PERFORMING AGENCY's payment requests must comply with the RECEIVING AGENCY's invoice processing procedures. A quarterly invoice and progress report must be completed for the end of each state fiscal quarter – November, February, May, and August – and submitted within 30 days after the end of each quarter. Payment may be withheld by RECEIVING AGENCY until invoice and progress reports are approved.

d. The RECEIVING AGENCY may reject requests for payment which fail to demonstrate that costs are allowable and eligible for reimbursement or which fail to conform to the conditions in this Agreement. The PERFORMING AGENCY'S costs that are incurred before the beginning date of this agreement are not eligible for reimbursement.

V. Term of Contract:

This contract begins upon execution by both parties and ends July 31, 2018. Final bill is due August 1, 2018. Contract may be extended, provided both parties agree in writing to do so, prior to the expiration date. Any extensions shall be at the same terms and conditions, plus any approved changes.

VI. Other Administrative Terms:

a. This contract is subject to cancellation, without penalty, either whole or in part, if funds are not appropriated by the Texas Legislature.

b. Information, documentation and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). If the performing agency receives a request for open records relating to the project, the performing agency will immediately provide a copy of that request to the receiving agency.

c. The PERFORMING AGENCY hereby assigns to RECEIVING AGENCY, any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Business and Commerce Code, Section 15.01, et. seq. to the extent of RECEIVING AGENCY's reimbursement provided in accordance with Section IV, *supra*.

d. The dispute resolution process provided for in Chapter 2260 of Texas Government Code shall be used by the RECEIVING AGENCY and the PERFORMING AGENCY to resolve all disputes arising under this contract.

e. The PERFORMING AGENCY will, to the extent allowed by the laws and Constitution of the State of Texas, indemnify, defend and hold harmless the RECEIVING AGENCY against any action or claim brought against the RECEIVING AGENCY that is based on a claim

that software used by PERFORMING AGENCY to complete the work listed in Section IV, *supra* infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. PERFORMING AGENCY will pay any damages attributable to such claim that are awarded against the RECEIVING AGENCY in a judgment or settlement. If RECEIVING AGENCY's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of RECEIVING AGENCY, PERFORMING AGENCY shall, at its sole expense (1) procure for RECEIVING AGENCY the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

f. The PERFORMING AGENCY possesses or will acquire all land rights, easements, licenses, or right-of-ways as will be needed in connection with accomplishing the work outlined in the "Scope of Work".

g. PERFORMING AGENCY shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When required, PERFORMING AGENCY shall furnish RECEIVING AGENCY with satisfactory proof of its compliance. The PERFORMING AGENCY shall be responsible for damage to RECEIVING AGENCY's equipment, and/or the workplace and its contents, by its, or its contractors' work, negligence in work, personnel, and equipment. To the extent required by law, and without waiving any governmental immunity available to THE PERFORMING PARTY, the PERFORMING AGENCY shall be responsible and liable for the safety, injury and health of its employees and contractors while they are performing work for RECEIVING AGENCY under this Contract. The PERFORMING AGENCY shall provide all labor and equipment necessary to furnish the goods or perform the service. All employees shall be a minimum of 17 years of age and experienced in the type of work to be performed. No visitors or relatives of employees and contractors will be allowed on work site unless they are bona fide employees or contractors of the PERFORMING AGENCY under this Contract. PEFORMING AGENCY's liability under this section shall be limited to that authorized by the laws and Constitution of the State of Texas.

h. The PERFORMING AGENCY shall not assign or subcontract the whole or any part of the contract without RECEIVING AGENCY's prior written consent. The PERFORMING AGENCY may assign its right to receive payment to such third parties as the contractor may desire without the prior written consent of the RECEIVING AGENCY, provided that PERFORMING AGENCY gives written notice (including evidence of such assignment) to the state thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

i. To the extent allowed by the laws and Constitution of the State of Texas, the PERFORMING AGENCY shall defend, indemnify, and hold harmless the RECEIVING AGENCY, its officers, and employees and contractors from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omission of PERFORMING AGENCY or any agent, employee, subcontractor, or supplier of PERFORMING AGENCY in the execution or performance of this contract.

j. PERFORMING AGENCY shall procure and maintain at its expense during the term of the contract or any extensions thereof, workers compensation and liability insurance as appropriate.

k. If the PERFORMING AGENCY defaults on the contract, RECEIVING AGENCY reserves the right to cancel the contract without notice and re-award the contract to the next best responsive and responsible respondent. The defaulting PERFORMING AGENCY will not be considered in the re-award and may not be considered in future awards for the same type of work, unless the specification or scope of work is significantly changed. The period of suspension will be determined by the RECEIVING AGENCY based on the seriousness of the default.

l. PERFORMING AGENCY understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, agency name or any successor agency, to conduct an audit or investigation in connection with those funds. PERFORMING AGENCY further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all records requested. PERFORMING AGENCY shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING AGENCY and the requirement to cooperate is included in any subcontract it awards.

m. RECEIVING AGENCY may grant relief from performance of the contract if the PERFORMING AGENCY is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the PERFORMING AGENCY. The burden of proof for the need of such relief shall rest upon the PERFORMING AGENCY. To obtain release based on force majeure, the PERFORMING AGENCY shall file a written request with RECEIVING AGENCY.

n. Except as required by the Texas Public Information Act, other applicable state or federal law, or an order of a court of competent jurisdiction, PERFORMING AGENCY will not disclose any information to which it is privy under this Contract without the prior consent of the RECEIVING AGENCY. PERFORMING AGENCY will indemnify and hold harmless the RECEIVING AGENCY, its officers and employees for any claims or damages that arise from the disclosure by PERFORMING AGENCY or its contractors of information held by the State of Texas.

o. Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the RECEIVING AGENCY by the PERFORMING AGENCY upon completion, termination, or cancellation of this contract, with the exception of one (1) copy of all work product described above, which may be retained by PERFORMING AGENCY for its records and for compliance with state and federal requirements and its own records retention policy. RECEIVING AGENCY may, at its own expense, keep copies of all its writings for its personal files. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works; however PERFORMING AGENCY may copy the work product described above as needed to comply with public information law or to maintain the documents in accordance with its records retention policy. All deliverables, publications, dissemination, and information required as performance of the agreement will require review and approval of RECEIVING AGENCY. Publications outside of the agreement but based on work done through the agreement would be subject to the sixty (60) day review for confidential information.

p. This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

q. RECEIVING AGENCY reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, the PERFORMING AGENCY shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. RECEIVING AGENCY name shall be liable for payments limited only to the portion of work authorized by RECEIVING AGENCY in writing and completed prior to the effective date of cancellation, provided that RECEIVING AGENCY shall not be liable for any work performed that is not acceptable to RECEIVING AGENCY and/or does not meet contract requirements. All work products produced by the PERFORMING AGENCY and paid for by RECEIVING AGENCY shall become the property of RECEIVING AGENCY and shall be tendered upon request, but it is expressly agreed that "work product" excludes all physical work done on the flood control dam itself, and no ownership interest in any real property owned by PERFORMING AGENCY shall be created pursuant to this Agreement.

r. Substitutions are not permitted without the written approval of RECEIVING AGENCY.

s. PERFORMING AGENCY represents and warrants that, to the extent permitted by applicable competitive bidding laws and without waiving its discretion to utilize public funds in the most efficient way possible, it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

t. No public disclosures or news releases pertaining to this contract shall be made without prior written approval of RECEIVING AGENCY.

u. The PERFORMING AGENCY expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments.

v. Neither RECEIVING AGENCY nor PERFORMING AGENCY may be liable to the other for any delay in, or failure of performance caused by force majeure. Each party must inform the other in writing, with proof of receipt, within three business days of the existence of such force majeure, or otherwise waive this right as defense.

w. PERFORMING AGENCY must comply will all laws, regulations, requirements, and guidelines that currently exist and as they are amended throughout the term of this agreement. The RECEIVING AGENCY reserves the right, in its sole discretion, to unilaterally amend this agreement throughout its term only to incorporate any modification necessary for the RECEIVING AGENCY's or PERFORMING AGENCY's compliance with all applicable State and Federal laws and regulations.

x. PERFORMING AGENCY represents and warrants that neither the PERFORMING AGENCY nor any person or entity that will participate financially in this agreement has received compensation from the RECEIVING AGENCY for participation in preparation of specifications for this agreement. The PERFORMING AGENCY represents and warrants that it has not given, offered to give, and does not intend to give any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any public servant or employee in connection with this agreement.

y. The RECEIVING AGENCY, or designated agents, may review and inspect products and services purchased through this agreement to ensure compliance with specifications. The RECEIVING AGENCY, or designated agents, may also review and inspect products and services before they are purchased under this agreement.

THIS AGREEMENT constitutes the entire Agreement by and between the parties for purposes of accomplishing the results and objectives herein contained and any alteration hereof, or addition, or deletion shall be by addendum hereto in writing and executed by both parties. Furthermore, the undersigned contracting parties do hereby certify that, (1) the services specified are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, and (3) the services, supplies of materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

RECEIVING AGENCY

Texas State Soil and Water Conservation Board

By: John Foster

FOR: REX ISOM, EXECUTIVE DIRECTOR

Title: Executive Director

Date: OCT 25 2016

PERFORMING AGENCY

Wise County

By: [signature]

Title: Wise County Judge

Date: 10-25-16