

Official copy

Contract No. DACW57-73-C-0030
(Negotiated)

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE OREGON STATE GAME COMMISSION

Contractor and Address: STATE OF OREGON
Oregon State Game Commission
1634 S. W. Alder
Portland, Oregon 97205

Contract for: Operation and maintenance of Cole M. Rivers Fish Hatchery

Payment to be made by the Disbursing Officer, Corps of Engineers, at
P. O. Box 2946, Portland, Oregon 97208.

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same:

Appropriation: 96x3122, Construction General, Lost Creek Lake
96x3123, O & M General, Lost Creek Lake

This contract is negotiated pursuant to the following authority:

10 U.S.C. 2304 (a)(10)

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE OREGON STATE GAME COMMISSION

THIS AGREEMENT, entered into this 23d day of August 1972 by the United States of America, represented by the Contracting Officer (hereinafter referred to as the Government) and the State of Oregon, represented by the Oregon Game Commission (hereinafter referred to as the State)(or Contractor), witnesseth that:

WHEREAS, the Government is constructing and will complete the Cole M. Rivers Hatchery, hereinafter called "Hatchery" located on Rogue River, Oregon, for the purpose of propagation and rearing of salmon, rainbow trout and steelhead trout, and acquired certain equipment appertaining to said Hatchery and its use, and

WHEREAS, the purpose of propagation and rearing of salmon, rainbow trout and steelhead trout is to replace those displaced from their natural spawning areas by establishment of Lost Creek Lake, and

WHEREAS, the State is agreeable to operating and maintaining the hatchery, and to releasing its production into the Rogue River (or, upon approval of the Contracting Officer, elsewhere if sound biological justification exists and the Corps of Engineers is reimbursed for its share of the invested costs) all upon the terms hereinafter specified, and

WHEREAS, the accomplishment of the work and services hereinafter described in the manner contemplated herein is authorized by law, and

WHEREAS, it is in the best interests of the Government to obtain the assistance of the State's organization in connection with said work and services,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. Character and Extent of Services. Except as otherwise provided in Article 2 hereof, and in compliance with General Safety Requirements of the Corps of Engineers Manual EM 385-1-1, Article 22 hereof, the State shall perform all the services and provide the labor, supplies, materials, and equipment needed or required under this agreement generally as described as follows for the sole purpose of propagation and rearing of salmon, rainbow trout and steelhead trout:

(a) Furnish technical assistance as required during final construction and upon completion of construction, operate and maintain in a proper and efficient manner all of the initially constructed hatchery including the eighty-seven rearing ponds and two brood ponds solely for the propagation and rearing of salmon, rainbow trout and steelhead trout.

(b) Furnish biological and/or pathology services as may be required for proper operations.

(c) Furnish the Contracting Officer advance budgetary information for approval, and at the close of each fiscal year an annual report of pertinent hatchery operating statistics to include the number of adults by species collected during the preceding season; eggs taken; juvenile releases by species, numbers, pounds and locations over the preceding season and amount of food used.

ARTICLE 2. Government Responsibilities. The Government will reimburse the State without profit for the cost of all work performed, materials and equipment furnished by the State for such operation and maintenance as may be identified with project mitigation and enhancement obligations of the Cole M. Rivers Hatchery. Such equipment, tools and supplies are defined in Exhibit A. The items in Exhibit A will be purchased at Government expense either by the Government or by the State as delineated by subsequent correspondence. Pro rata cost of production in excess of annual total poundage identified with mitigation and enhancement obligations of Lost Creek, (Elk Creek and Applegate Projects at such time as scheduled stream closures at these proposed projects necessitate providing for mitigation) as shown below, shall be borne by agencies other than the Corps of Engineers. However, should the production capacity of the hatchery prove greater than the stated obligations, the Government reserves the right to assign the excess capability to fulfill possible future obligations of its other projects.

TABLE OF
MITIGATION AND ENHANCEMENT OBLIGATION

<u>Species</u>	<u>Total Pounds at Release</u>
Spring Chinook (Lost Creek) <i>7.5/ll</i>	263,000 - 1,973,000
Summer Steelhead (Lost Creek) 7	14,300 - 100,000
Kokanee and/or Trout (Lost Creek)	45,420 - 107,400 + 1,475,200
Coho (Elk Creek) 18	5,000 - 90,000
Winter Steelhead (Elk Creek) 7	37,000 - 259,000
Kokanee and/or Trout (Elk Creek)	14,480 - 35,400 + 484,050
Coho (Applegate)	3,000 - 54,080
Winter Steelhead (Applegate)	28,700 - 200,900
Kokanee and/or Trout (Applegate)	10,700 - 25,290 + 395,750

ARTICLE 3. Changes. The Contracting Officer may at any time, by a written order, make any changes within the general scope of this agreement which either increases or decreases the work and services hereunder. If such change causes an increase or decrease in the cost of or the time required for performance of this agreement, an equitable adjustment shall be made and the agreement shall be modified in writing accordingly. Any

claim by the contractor for adjustment under this article must be asserted within 30 days from the date of receipt by the contractor of the notification of change: Provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this agreement. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this agreement entitled "Disputes". However, nothing in this clause shall excuse the contractor from proceeding with the agreement as changed.

ARTICLE 4. Period of Services. The State shall furnish services under this agreement beginning on 1 August 1972, and the agreement shall remain in force until 30 June 1973. It is further provided that this agreement may be extended for periods of one year beyond 1 July 1973, upon written agreement between the parties hereto.

ARTICLE 5. Compensation to the State. The Government agrees, subject to availability of funds, that it will reimburse the State without profit for all necessary expenses incurred by the State after 1 August 1972 for the proper performance of this agreement, including such overhead costs as are allocable to the work. The State shall make available to the Government at all reasonable times the original records and accounts for all charges and expenditures for which reimbursement will be claimed from the Government in order that the Contracting Officer may properly verify and audit invoices and supporting evidence submitted by the State. So far as practicable, separate records shall be maintained of all items and accounts which will constitute the basis of information from which invoices for reimbursement will be prepared.

ARTICLE 6. Method of Payment. The Government will reimburse the State on a monthly basis for hatchery operation and maintenance costs incurred after 1 August 1972, and for such subsequent monthly periods during the life of the agreement as provided herein upon receipt of properly certified invoices in quadruplicate, supported by such evidence of payment made by the State as may be required by the Contracting Officer.

Article 7. Rights in Technical Data - Specific Acquisition (May 1964).

(a) Definition. Technical Data as used in this clause means technical writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Government Rights. The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) Material Covered by Copyright. - (1) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

(2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner above described.

(3) The Contractor shall report to the Government (or higher-tier Contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

(d) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) Limitation on Charges for Data. The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions

upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

Article 8. Contracting Officer's Decisions. The extent and character of the work and services to be performed by the Contractor shall be subject to the general supervision, direction, control and approval of the Contracting Officer to whom the Contractor shall report and be responsible. In the event that there shall be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Contractor shall have the right of appeal as provided in Article 9.

Article 9. Disputes. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Article 10. Termination for the Convenience of the Government (Jan 1961)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in Section XV, Part 3, of the Armed Services Procurement Regulations, as in effect on the date of this contract, except that if the Contractor is not an educational institution the determination shall be governed by Section XV, Part 2, thereof.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities

and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand; provided, that if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 per cent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) completed or partially completed plans, drawings and information; and

(ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

Article 11. Officials not to benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article 12. Covenant against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

Article 13. Equal Opportunity (1971 APR). During the performance of this contract, the Contractor agrees as follows:

(The following clause is applicable unless this contract is exempt under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Chapter 60). Exemptions include contracts and sub-contracts (i) not exceeding \$10,000 and (ii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor created thereby.

e. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 and by the rules, regulations, and orders of the said Secretary, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each such subcontractor or vender. *The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vender as a result of such direction by the Contracting Agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

*Unless otherwise provided, the "Equal Opportunity" clause is not required to be inserted in subcontracts below the second tier except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Secretary's rules and regulations) in which case the clause may be inserted in all such subcontracts. Subcontracts may incorporate by reference the "Equal Opportunity" clause. (ASPR 12-802(a) as amended by DPC 36, 21 Oct 1965).

In accordance with regulations of the Secretary of Labor, the rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive Orders superseded by Executive Order No. 11246, shall, to the extent that they are not inconsistent with Executive Order No. 11246, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of Executive Order No. 11246.

Article 14. Convict Labor. In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

Article 15. Assignment of Claims. (a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S. Code 203, 41 U.S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", or "Confidential", be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: Provided, That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

Article 16. Interest. Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of six percent per annum from the date due until paid, and shall be subject to the adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first demand for payment, (iii) the date of a supplemental agreement fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the contractor stating the amount of refund payment in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

Article 17. Definitions. (a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

Article 18. Deleted.

Article 19. Examination of Records (Feb. 1962). (a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor, involving transactions related to this contract.

(b) The Contractor further agrees to include in all his sub-contracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transaction related to the subcontract. The term "subcontract" as used in the clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Article 20. Gratuities (Mar. 1952). (a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Article 21. Contract Work Hours Standards Act-Overtime Compensation (Jun 1964). This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b)

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

Article 22. Accident Prevention. (a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual EM 385-1-1, dated 1 March 1967 entitled "General Safety Requirements", as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

(d) Compliance with the provisions of this article by subcontractors will be the responsibility of the Contractor.

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program.

Article 23. Approval. This agreement shall be subject to the written approval of the Director of the Department of Finance and Administration of the State of Oregon, and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this agreement
as of the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Paul D. Triem
PAUL D. TRIEM
Colonel, Corps of Engineers
Contracting Officer

STATE OF OREGON

Acting by and through
Oregon State Game Commission

ATTEST:

/s/ C. C. Jensen
/s/ Dorothy Godfrey

By /s/ Leslie C. Zumwalt
Assistant Director

EXHIBIT A

B. Schedule of Equipment to be Furnished to the Hatchery

<u>No.</u>	<u>General</u>	<u>Delivery Date</u>
1	American flag	
1	State flag	

<u>No.</u>	<u>Rolling Stock</u>	<u>Delivery Date</u>
2	Lib trucks	May 1, 1973
2	Pick-up trucks	February 1, 1973
1	Station wagon	August 1, 1972
1	Fish pump	July 1, 1973
1	Sartorias loader	Cancelled
1	Forklift, outside	April 1973
1	Forklift, inside	April 1973
3	Personnel scooters	March 1973
4	Hand truck, dock, rubber wheel	March 1973

No.

Shop Equipment, Tools, and Supplies

Delivery Date

Shop Equipment:

March 1973

1	Oxygen-acetylene welding unit, HD, two-stage, goggles
1	Welder, elec. w/mask, welders gloves, chipping hammer
1	Skill saw, HD, 7½"
1	Table saw, 10", jointer w/dato heads
1	Radial arm saw, 10"
1	Drill press
1	Elec. bench grinder, HD, 2 8" x 1" wheels (fine and coarse)
1	Pedestal stand for grinder
1	Electric drill, ½"
1	Electric drill, ¾"
1	Chain saw, gas
1 set	Plumbing dies, electric, ½" to 2"
1 set	High speed drill bits, 1/16" to ½" by 64th
1	Face shield for shop (use w/grinder)
1	Pipe cutter, ½" to 2"
1 set	Screw extractors (E-Z outs)
1 set	Taps & dies, ½" to ¾", nat. coarse & fine
1 set	Steel letter stamps, ½"
1 set	Steel number stamps, ½"
1 set	Lettering stencil set, 3", Gothic
1	HD soldering iron
1	Pipe reamer, ½" to 2"
1	Flat steel sewer rod, 100' x 3/4", ex. heavy 1/8"
1	Sewer spring steel auger, ½" x 25'
1 set	Copper tube cutting and flaring kit-bending springs for ½"-5/8"
1	O.D. flaring tool for 3/16"-½"-5/16"-3/8"-7/16"-½"-5/8"
1	Soldering iron, elec., HD, finger trigger control
1	Propane torch kit
1	Bench Vise, HD, 5" jaw
1	Plumbers vise, HD, self-locking, ½" to 2"
1	Rotary sander, polisher, HD, 7"
1	Anvil
1	HD, shop vacuum
2	100', HD, electric extension cords
1	Hydraulic floor jac, 2-ton capacity
1	Mechanic floor creeper
1	6 & 12 volt battery charger
2	Log chains w/slip & grab hooks, 20'
1	Paint spray respirator w/extra filters
2	Cartons wiping rags

No.

Shop Equipment, Tools, and Supplies

Delivery Date

Shop Tools and Supplies:

March 1973

- 1 set Sockets w/ratchet, extensions, universal joint, 3/8" drive, 3/8" to 3/4"
- 1 set Sockets w/ratchet, extensions, 3/4" drive, HD, 1-1/16" to 2"
- 1 set 12 pieces open-end wrenches, 1/2" x 5/16" to 1 1/2" x 1-5/8"
- 1 set 14 pieces box-end wrenches, 1/2" x 5/16" to 1-5/8" x 1-11/16"
- 2 Bit brace
- 1 set 14 piece wood auger bits, 1/2" to 1" by 16th
- 1 Handsaw set tool
- 1 Handsaw filer
- 1 Nail puller
- 1 set Allen wrenches, 11 pieces, 1/16" to 1/2"
- 8 Shovels, SP
- 8 Shovels, RP
- 1 ea. 1/8", 5/32", 3/16", 1/2", 7/16", 9/16" belt punches
- 1 Air grease gun
- 1 Professional HD pop rivet tool w/rivets
- 1 HD pipe wrench, 18"
- 1 HD pipe wrench, 24"
- 1 HD pipe wrench, 30"
- 2 Aluminum levels
- 2 Steel carpenters square
- 2 Combination squares, 12"
- 2 Tin snips
- 1 Keyhole saw
- 1 Wood plane, 2" blade width
- 1 Wood plane, 1-5/8" blade width
- 2 Wrecking bar, 30"
- 2 5' to 6' steel crow bars, wedge point
- 1 Hacksaw w/2 dozen blades
- 1 HD pipe wrench, 56"
- 1 Chain pipe tong for 3/4" to 4" pipe
- 2 Crescent wrench, 6"
- 2 Crescent wrench, 8"
- 2 Crescent wrench, 10"
- 2 Crescent wrench, 12"
- 1 Crescent wrench, 16"
- 1 set Metal chisels, 1/2", 1/2", 5/8", 3/4"
- 1 Pliers, arc joint, 16"
- 1 Pliers, arc joint, 12"
- 2 Pliers, slip joint, 6"
- 2 Pliers, slip joint, 8"
- 2 Pliers, lineman's, 8"
- 2 Pliers, long chain-nose, 6"
- 2 Locking plier wrench, 7 1/2"
- 2 Locking plier wrench, 10"
- 1 set Wood chisels, 1/2", 1/2", 3/4", 1", 1-1/4"
- 2 Wood hand saw, fine
- 2 Wood hand saw, coarse
- 8 Claw hammers, solid steel handle
- 1 Hammer, ball-pein, 8 oz.
- 2 Hammer, ball-pein, 16 oz.
- 1 Hammer, ball-pein, 24 oz.

No.

Shop Equipment, Tools, and Supplies

Delivery Date

March 1973

Shop Tools and supplies:

- 2 HD hammers, 3 pound head
- 3 Axes, double bit w/3½ pound head
- 6 Splitting wedges
- 2 Sledges, 8 pound
- 2 Splitting maul, 8 pounds
- 1 doz. Flat files, 10"
- 2 Rules, folding, 6'
- 4 3/4" tapes w/power return, 10'
- 1 Tape, steel, 100'
- 1 Sharpening stone carb., 1 side fine, 1 coarse
- 1 Blow torch, gasoline
- 4 Trouble light w. cord
- 2 Gas can, 5 gallon
- 2 Gas can, 2 gallon
- 2 Tarps, 10' x 12'
- 1 Hand saw jointer
- 1 set Flat screw drivers, ex. small to large
- 1 set Phillips screw drivers, ex. small to large
- 1 Rawhide hammer, iron head faced w/ hide
- 2 Pump oiler w/flexible spout (hand oiler)
- 2 Alemite oilers, pistol type
- 6 Wire scratch brushes
- 20 lb. Lincoln electrodes, #37, 1/8" dia.
- 20 lb. Lincoln electrodes, #37, 5/32" dia.
- 10 lb. Lincoln electrodes, #37, 3/32" dia.
- 20 lb. Lincoln electrodes, #180, 1/8" dia.
- 20 lb. Lincoln electrodes, #180, 5/32" dia.
- 10 lb. Lincoln electrodes, #180, 3/32" dia.
- 20 lb. Brazing rod
- 2 Cans brazing flux (for making dip nets)
- 1 Carton nails, 20 P, galvn. common
- 1 Carton nails, 16 P, galvn. common

Pond Equipment and Supplies

Delivery Date

No.		Delivery Date
2	Pumps, 750#, high pressure, HD, washing	August 1973
4	Pumps, pond	June 1973
14	Feeders, trough, starting ponds, inside	June 1-Dec. 1973
1	Portable fin-clipping building	July 1, 1973-
2	Graders, fish, Morton	June 30, 1974
1	Grader, fry	June 1974
4	Crowders, 20' x 3', aluminum	September 1973
1 pc.	Nylon seine material, 1/8" sq., delta style, 4' x 15'	September 1973
1 pc.	Nylon seine material, 1/4" sq., delta style, 4' x 15'	March 1973
1 pc.	Nylon seine material, 3/8" sq., king style, 4' x 15'	March 1973
1 pc.	Nylon seine material, 1/2" sq., king style, 4' x 15'	March 1973
1	Air compressor, electric, portable, w/wheels, w/hoses	March 1973
	2.5 to 3.0 gal. paint tank and spray gun	March 1973
75	Buckets, aluminum, 5 gal.	March 1973
50	Buckets, aluminum, 3 gal.	March 1973
10	Milk cans, aluminum, w. lids, 10 gal.	March 1973
12	Wash tubs, square	March 1973
4	Postal scales	July 1973
2	Platform scales	May 1973
1 roll	Hardware cloth, galv., 1/2" - 36" width	May 1973
1 roll	Fly screen, galv., 24" width	May 1973
1 roll	Hardware cloth, galv., 1/2" - 24" width	March 1973
3 doz.	Scrub brushes, alligator	March 1973
3 doz.	Dairy brushes, cong.	March 1973
2 doz.	Pond brooms, plastic bristle	March 1973
6	Push brooms, Tampico fiber (building, office, etc.)	March 1973
100 gal.	Pettit copper yacht paint, red, nontoxic	March 1973
2 lbs.	No. 6 nylon seine twine	March 1973
3 lbs.	No. 9 nylon seine twine	March 1973
8 lbs.	No. 12 nylon seine twine	March 1973
8 lbs.	No. 18 nylon seine twine	March 1973
10 lbs.	No. 24 nylon seine twine	March 1973
3	Nylon seine, 1/8" sq., delta material, 8' deep x 25' long	March 1973
3	Nylon seine, 1/4" sq., delta material, 10' deep x 25' long	March 1973
3	Nylon seine, 3/8" sq., king material, 12' deep x 25' long	March 1973
3	Nylon seine, 1/2" sq., king material, 12' deep x 25' long	March 1973

No.

Yard Equipment, Supplies, and Tools

Delivery Date

Yard Equipment, Supplies, and Tools:

3	Garden rake	March 1973
3	Garden hoe	March 1973
1	Loop bolt grass snath w/grass scythe	March 1973
1	Loop bolt brush snath w/grass brush scythe	March 1973
2	Long-handled weeder	March 1973
3	Grass hook, hand	March 1973
3	HD grass shears, hand	March 1973
2	Commercial hand pruning shears	March 1973
1	Hedge shears	March 1973
1	Sweeper, asphalt	June 1973
4	Wheel borrows	July 1973
1	Weed burner, HD	July 1973
1	Sprayer, power, weed, portable, 10-12 gallon	July 1973
1	Lawn spreader, fertilizer	September 1973
2	Lawn mower, gas power, rotary, HD	March 1973
1	Lawn edger, gas power, HD, w/curb wheel	March 1973
2	Step ladder, aluminum, 8'	April 1973
1	Extension ladder, aluminum, 8'	April 1973
2	Thermometer, weather, outside, inside	February 1973
15	Litter containers, w/self-closing lid	May 1973
3	Pitch forks, 5-tine	March 1973
6	Lawn rakes	March 1973
200 ft.	3/8" nylon rope	March 1973
60	Lineal feet, 4 x 4, lumber, finished	March 1973
100	Lineal feet, 2 x 12, lumber, finished	March 1973
150	Lineal feet, 2 x 4, lumber, finished	March 1973
6	Sheets interior 3/4" plywood	March 1973
6	Sheets interior 1/2" plywood	March 1973
6	Snow shovels	March 1973
6	Grass whips	March 1973
2	Lopping shears	March 1973
1	Long-handled tree pruner w/anvil head and attachable pruning saw, reach - approximately 20'	March 1973

No.

Office Equipment and Building Supplies

Delivery Date

Building Supplies:

February 1973

5 gal. Window cleaner
1 cs. Floor wax
Soap for dispensers in restrooms, etc.
2 Mop buckets w/mops
2 Window squeegees, long handle
2 Window squeegees, short handle

Office Equipment:

February 1973

1 Commercial HD floor polisher-waxer
1 HD vacuum cleaner (ad:-crew-public areas)
4 Dust pans
3 Paper staplers (office)
3 Desk tray and corner supports
10 Waste paper baskets
3 Desk lamps
1 Tape recorder, portable
3 Bookcases, 3 shelves (office)
2 Desks, office, w/5 drawers
1 Desk, office, w/typewriter tray, 4 drawer
3 Chairs, desk (1 seceterial)
3 Chairs, office
1 Typewriter, wide carriage, electric
1 Adding machine, 10-key, electric
1 Calculator, electronic, 10-key, "Sharp" or equiv.
1 set Assorted office supplies and equipment

No.

Laboratory Equipment and Supplies

Delivery Date

Laboratory Equipment:

March 1973

- 1 Compound microscope w/light
- 1 Dissecting microscope w/light
- 1 Scales, gram
- 2 32 oz. graduates (hatchery)
- 2 16 oz. graduates (hatchery)
- 2 8 oz. graduates (hatchery)
- 1 set Assorted equipment (list to be submitted later)
- 1 Desk, office, 5 drawer
- 1 Chair, desk
- 1 Chair, office
- 1 Calculator, electronic, 10-key, "Sharp" or equiv.

Laboratory Supplies:

March 1973

- 50 ft. Latex rubber tubing, 5/16" ID, 1/16" walls
- 50 ft. Latex rubber tubing, 3/8" ID, 3/32" walls
- 12 ft. Glass tubing, 7 mm ID
- 12 ft. Glass tubing, 9 mm ID
- 12 ft. Glass tubing, 11 mm ID
- 1 set. Assorted supplies (list to be submitted later)
- Drugs and chemicals as needed

No.	Clothing, etc.	Delivery Date
3 pr.	Chest waders, size 8.	February 1973
3 pr.	Chest waders, size 9	February 1973
3 pr.	Chest waders, size 10	February 1973
12 pr.	Spawning gloves, wool, large	May 1973
6	Spawning aprons	May 1973.
9	Raincoats and hats	May 1973
24 pr.	Canvas gloves, large	February 1973

Agreement Between the United States of America
and the Oregon State Game Commission
September 5, 1972

COLE RIVERS HATCHERY
Lost Creek Project - Rogue River

Table of
Mitigation and Enhancement Obligation

Species	Total Pounds at Release	Number	
		Yearling	Fingerling
Spring Chinook (Lost Creek)	263,000	1,973,000	
Summer Steelhead (Lost Creek)	14,300	100,000	
Kokanee and/or Trout (Lost Creek)	45,420	110,000	1,475,200
Coho (Elk Creek)	5,000	90,000	
Winter Steelhead (Elk Creek)	37,000	259,100	
Kokanee and/or Trout (Elk Creek)	14,480	35,406	484,050
Coho (Applegate)	3,000	54,080	
Winter Steelhead (Applegate)	28,700	200,900	
Kokanee and/or Trout (Applegate)	10,700	25,290	345,750

Enclosure No. 5

ROGUE RIVER PROJECT
Corps of Engineers

TOTAL ANADROMOUS FISH AFFECTED BY THE PROJECT
Based on 1965 population of spring chinook and no passage

Species	Lost Creek	Elk Creek	Applegate	Total
Spring Chinook	13,020			13,020
Coho		1,560	500	2,060
Summer Steelhead	500			500
Winter Steelhead		2,600	2,000	4,600
Total	13,520	4,160	2,500	20,180

