



**MEMORANDUM OF AGREEMENT
PURSUANT TO SECTION 1118(f)(1) OF WRDA 2016
TO RECEIVE AND EXPEND FUNDS
FOR THE REVIEW PROPOSALS TO INCREASE WATER SUPPLIES
AT RESERVOIRS CONSTRUCTED BY THE CORPS
AND OPERATED BY ANOTHER FEDERAL AGENCY**

December 10, 2018

Applicability and Instructions.

1. The attached agreement is provided as a template to be used in the development of a Memorandum of Agreement (MOA) for the receipt and expenditure of non-Federal funds for the review of a proposal by a non-Federal interest, pursuant to Section 1118(f)(1) of WRDA 2016, to increase the quantity of available supplies of water through modification of project operations at a Federal reservoir constructed by the Corps but operated by another Federal agency. Guidance on the acceptance and expenditure of such funds and the conduct of the review is provided in the Implementation Guidance, dated October 23, 2017, for Section 1118 of WRDA 2016, except as changed by the following paragraph.
2. Authority to approve the MOA is delegated to the Division Commander, with no further delegation authorized. Division Counsel concurrence that the negotiated MOA is acceptable and legally sufficient is required prior to approval. Signature authority for an MOA, once approved, is delegated to the District Commander.
3. Make all required insertions; remove this cover page; remove the open and close brackets and any instructional text; and ensure the spacing and page breaks throughout the MOA are appropriate.
4. The Certificate of Authority and Certification Regarding Lobbying are to be included as a part of the agreement package. These certificates can found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL INTEREST]
FOR REVIEW OF THE PROPOSAL OF THE **[FULL NAME OF NON-FEDERAL
INTEREST]**
TO INCREASE THE AVAILABILITY OF WATER SUPPLIES
AT
[FULL NAME OF THE PROJECT]

This MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Commander, **[NAME OF DISTRICT]** (hereinafter the “District Commander”), and the **[FULL NAME OF NON-FEDERAL INTEREST]** (hereinafter the “Non-Federal Interest”), represented by **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, the **[FULL NAME OF THE PROJECT]** (hereinafter the “Project”) was constructed pursuant to **[CITE AUTHORITY, INCLUDING SECTION NUMBER AND PUBLIC LAW NUMBER]**, by the Department of the Army, and is operated by the **[FEDERAL OPERATING AGENCY]**;

WHEREAS, Section 1118(f)(1) of the Water Resources Development Act of 2016, Title I of Public Law 114-322 (hereinafter “Section 1118”), authorizes the Government to review a proposal from a non-Federal interest to increase the quantity of available supplies of water at a water resources development project through modification of project operations consistent with project authorities, including at a project constructed by the Department of the Army but operated by another Federal agency, provided that the development, review and implementation of the proposal is at non-Federal expense;

WHEREAS, the Non-Federal Interest is requesting review of its proposal to modify Project operations under Section 1118 to increase the availability of water supplies at the Project (hereinafter the “Proposal Review”) in accordance with Section 7 of the Flood Control Act of 1944 (33 U.S.C. 709) (hereinafter “Section 7”), which directs the Department of the Army to regulate the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes; and

WHEREAS, the Non-Federal Interest agrees to fund all costs of the Proposal Review.

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

1. The Non-Federal Interest shall provide to the Government funds to pay all costs associated with the Proposal Review, including the costs of environmental compliance. While the Government will endeavor to limit costs associated with the Proposal Review under this MOA to the current estimate of \$_____, the Non-Federal Interest acknowledges that the actual costs for the Proposal Review may exceed this estimated amount due to unforeseen circumstances and that the Non-Federal Interest is responsible for all costs related to the Proposal Review.

a. Within sixty (60) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government the sum of \$_____, which is the current estimated cost of Proposal Review work to be performed during the remainder of the _____ fiscal year of the Government. No later than August 1st prior to each subsequent fiscal year of the Government covered by this MOA, the Government shall provide the Non-Federal Interest with a written estimate of the full amount of funds for all estimated costs of Proposal Review work to be accomplished in that fiscal year. Not later than September 1st prior to that fiscal year, the Non-Federal Interest shall provide the full amount of such required funds to the Government.

b. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED, **[DISTRICT EROC CODE]**” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If the Non-Federal Interest is providing funds that it received from another Federal agency, it must provide written confirmation from that Federal agency that the funds are authorized to be used for the Proposal Review.

c. The Government shall draw from the funds provided by the Non-Federal Interest to cover the costs of the Proposal Review. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and no later than sixty (60) calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

2. Following receipt of funds to pay the costs associated with the Proposal Review, including the costs of environmental compliance, the Government shall initiate the Proposal Review in order to determine whether to recommend to the U.S. Army Commander, **[NAME OF DIVISION]** (hereinafter the “Division Commander”) modification of Project operations in accordance with Section 7, as implemented by Engineer Regulation (ER) 1110-2-240, for the purpose of increasing the availability of water supplies at the Project.

3. In the conduct of the Proposal Review, the Government shall comply with all applicable public participation requirements, including consultation with: affected States; affected Federal Power Marketing Administrations; entities responsible for operation and maintenance costs; entities contracting to withdraw water from Project storage; entities determined by the applicable State to hold rights under State law to the use of water from the Project; and units of local government with flood risk reduction responsibilities downstream from the Project.

4. The District Commander shall submit the completed Proposal Review to the Division Commander, along with the District Commander's recommendations concerning the advisability of modifying Project operations pursuant to Section 7, for the approval of the Division Commander in accordance with ER 1110-2-240 and ER 1110-2-1400. If the Division Commander approves modification of Project operations, a separate MOA will be required between the Government and non-Federal interests for provision of funds by non-Federal interests for the separable costs associated with implementation, including the administrative costs of revising the water control plan to effectuate such modification to Project operations.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Proposal Review. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Proposal Review.

6. Upon conclusion of the Proposal Review and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest's responsibility to pay for all costs associated with the Proposal Review, including contract claims or any other liability that may become known after the final accounting. If the costs of the Proposal Review exceed the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within sixty (60) calendar days of such written notice, using one of the methods identified in paragraph 1.b. Should the final accounting determine that the Non-Federal Interest has provided funds in excess of the costs of the Proposal Review, the Government shall refund the excess amount to the Non-Federal Interest.

7. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the Project in the future; and nothing herein shall represent, or give rise to, obligations of the United States.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

9. a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Contributor:

[RECIPIENT'S TITLE & ADDRESS]

If to the Government:

[RECIPIENT'S TITLE & ADDRESS]

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

10. This MOA may be modified only by a written amendment to this MOA signed by both Parties. Either party may terminate further performance under this Agreement by providing 60 calendar days advance written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for all costs incurred by the Government pursuant to this MOA.

11. Nothing herein shall constitute, represent, or imply any commitment regarding the Government's consideration of the Proposal Review. The acceptance and expenditure of funds will not impact impartial decision making at any level of the Government with respect to the review and any final decision, either substantively or procedurally. The review must comply with all applicable laws, regulations and procedures.

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

THE DEPARTMENT OF THE ARMY

[FULL NAME OF NON-FEDERAL INTEREST]

BY: [SIGNATURE]
 [TYPED NAME]
 [TITLE IN FULL]

BY: [SIGNATURE]
 [TYPED NAME]
 [TITLE IN FULL]

DATE: _____

DATE: _____